



GOP Reacts to SCOTUS Decision Upholding the PPACA; Medicare MD Increase?

Republicans React to SCOTUS Decision Upholding PPACA “Tax”

House Republican leaders were quick to seize on the Supreme Court’s decision that the PPACA individual mandate penalty is a “tax” by scheduling a vote in the House to repeal the statute. The House Rules Committee will meet in an “emergency session” on Monday to form the rule under which the repeal vote will take place on Wednesday.

It is also anticipated that the House will soon take up H.R. 6020, the FY 2013 Financial services appropriations bill that includes restrictions on PPACA-related funding between HHS and the IRS and restrictions on federal insurance exchanges from using federal funds to pay for administrative costs associated with abortions. The bill does not include the additional \$1 billion requested by the Administration for implementation of the PPACA by the IRS.

On Tuesday, according to **House Ways and Means Committee Chairman Dave Camp**, his panel will hold a hearing on the potential effect of the Supreme Court ruling that the individual mandate and related penalty is constitutional on the grounds that the penalty is a “tax” and that “Congress has the broad power to levy

taxes far beyond the historic scope of raising revenue.”

President Obama’s campaign rhetoric countered that the PPACA is “here to stay” and said Republicans should move on from the issue.

Republican presidential contender **Mitt Romney** also aligned his final position with other Republicans by stating that the Supreme Court has the final word and that “Obamacare is a tax.”

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Republican Senate to Use Reconciliation to Target PPACA

Senator Jon Kyl said that, if Republicans obtain a majority in the Senate after the election, the new majority could use the budget reconciliation process (requiring only 51 votes) to “reverse the more onerous provisions of Obamacare

and replace them with what Republicans have been talking about.” The Supreme Court decision upholding the individual mandate and penalty as a “tax” would likely allow for its repeal to survive the so-called “Byrd Rule”, but other PPACA provisions

“extraneous” to budget matters would not be eligible for repeal under reconciliation. The CRS has released a new report on the provisions involving the individual mandate and related penalties.

PPACA Medicaid Expansion/Exchanges in Jeopardy in Some States

Republican governors in some states may still resist establishing PPACA state health insurance exchanges pending the outcome of the November elections. If a significant number of states refuse to establish state-run exchanges, an enormous burden will be placed on HHS to establish and run federal exchanges in those states. Also, **Senator Jim DeMint and Reps. Michele Bachmann and Jim Jordan** sent letters to all 50 governors urging them to oppose the establishment of state-based exchanges. The implementation of the

goals for PPACA coverage expansion could also be severely impeded; if Republican-led states refuse to expand Medicaid coverage to persons up to 133% of poverty. States can follow this course without fear of losing their current level of federal Medicaid funding according to the Roberts’ Court ruling. The governors of Florida, Texas and Louisiana have indicated they will not expand Medicaid coverage in 2014 and 14 other Republican-led states could also follow suit.

Proposed Medicare MD Payment Increase

CMS issued a proposed Medicare physician payment rule that would increase payments to family physicians by about seven percent and between 3-5% for other practitioners providing primary care services. CMS reiterated that unless Congress acts this

year the overall Medicare Part B physician payment rate will fall by 27% next January. CMS also proposed a new payment code for care management services to help patients transition back to the community within 30 days after a discharge from a hospital or skilled nursing facility. In addition,

CMS said it would continue to implement the physician value-based payment modifier included under the PPACA for groups of physicians with 25 or more eligible professionals.

OPPS Payment Increase for 2013

CMS released a proposed rule that would give over four thousand outpatient hospital facilities a 2.1% increase in CY 2013 under the outpatient prospective payment system (OPPS). Also, CMS proposed to continue the statutory two percentage point reduction in payments for hospitals failing to meet the hospital outpatient quality reporting (OQR) requirements. Ambulatory surgical center (ASC) payment rates would also be increased by 1.3% under the rule.

FDA Issues

The FDA released a proposed rule, pursuant to the User Fee law, under which most of the medical devices distributed in the United States would be required to carry a unique device identifier (UDI). Comments on the rule are due within 120 days.

Home Health Rates to be Reduced for 2013

CMS released another proposed rule under which home health agency payment rates would be reduced in 2013 by 0.1% or about \$20 million overall. The rule would also give HHAs new methods, such as directed plans of correction or directed in-service training, as means to achieve compliance with federal health and safety standards (i.e. conditions of participation).

ESRD Payments to Increase in 2013

CMS issued a proposed rule under which payments in CY 2013 to ESRD facilities would increase by about \$320 million. In addition, payment rates for outpatient maintenance dialysis treatments are anticipated to increase by 2.5%.

H.R. 6048 (REFORM), to amend the Internal Revenue Code of 1986 to repeal the individual and employer health insurance mandates; TURNER of Ohio; to the Committee on Ways and Means, June 28.

H.R. 6053 (REFORM), to repeal the provisions of the Patient Protection and Affordable Care Act and the health-related provisions of the Health Care and Education Reconciliation Act of 2010 not declared unconstitutional by the Supreme Court; MACK; jointly, to the committees on Energy and Commerce, Ways and Means, Education and the Workforce, the Judiciary, Natural Resources, House Administration, Appropriation, and Rules, June 28.

H.R. 6054 (REFORM), to prohibit funding to implement any provision of the Patient Protection and Affordable Care Act or of the health-related provisions of the Health Care and Education Reconciliation Act of 2010; MACK; jointly, to the committees on Energy and Commerce, Ways and Means, Education and the Workforce, the Judiciary, Natural Resources, and House Administration, June 28.

H.R. 6059 (MEDICARE), to amend Title XVIII of the Social Security Act to protect Medicare beneficiaries' access to home health services under the Medicare program; MCGOVERN; jointly, to the committees on Ways and Means and Energy and Commerce, June 29.

H.R. 6071 (VETERANS' HEALTH), make supplemental appropriations for medical and prosthetic research of the Department of Veterans Affairs for fiscal year 2012; BARROW; to the Committee on Appropriations, June 29.

H. RES. 714 (HIV/AIDS), expressing support for the XIX International AIDS Conference (AIDS 2012) and the sense of the House of Representatives that continued commitment by the United States to HIV/AIDS research, prevention, and treatment programs is crucial to protecting global health; HASTINGS of Florida; jointly, to the committees on Foreign Affairs and Energy and Commerce, June 28.

H. RES. 722 (DISEASE AWARENESS), expressing support for designation of July as National Sarcoma Awareness Month; CASTOR of Florida; to the Committee on Oversight and Government Reform, June 29.