



Health Policy Briefing

February 3, 2014

Republicans React to President's SOTUA Challenge With Alternatives to ObamaCare

President Promotes PPACA Gains in State of the Union Address

In last week's State of the Union Address (SOTUA), the President overlooked the problems with his signature health care law and touted its benefits, including the coverage of 9 million individuals who "won't have to lose everything" if they get sick, students' coverage until age 26 under their parents' policies, the elimination of pre-existing condition exclusions, gender-neutral premiums and helping keep Medicare premiums "flat". He also praised **Kentucky Governor Steve Beshear (D)**, who was in the audience, for his efforts to get his state-based health insurance exchange up and running successfully. Of note, the President did not reference the HealthCare.gov website when he urged "every American who knows someone without health insurance to help them get covered by March 31st". The President also promised to address veterans' health care issues, particularly mental health problems for returning veterans. Egging Republicans for what the President said is their 40+ votes to repeal the Patient Protection and Affordable Care Act (PPACA), he also challenged them "Now I don't expect to convince my Republican friends on the merits of this law. But I know that the American

people aren't interested in refighting old battles....So again, if you have specific plans to cut costs, cover more people and increase choice, tell America what you'd do differently. Let's see if the numbers add up..." Although the President did not mention the need for PPACA "fixes", the **Senate Majority Leader, Harry Reid (D-NV)**, mentioned that he may be open to allowing some Democrat sponsored "fixes" to be offered for a vote in the senate. A possibility is a measure supported by **Senator Jeanne Shaheen (D-NH)** that would extend the March 31st enrollment date by several months to help individuals avoid the tax penalty for failure to obtain health coverage by that date.

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Republicans Respond to SOTUA

Responding to the President, House Republican Conference Chair Cathy McMorris Rodgers (R-WA) criticized the PPACA for increasing premiums and said “whether you’re a boy with Down Syndrome or a woman with breast cancer” you should be able to find coverage and a doctor who will treat you.” She said “No, we shouldn’t go back to the way things were, but this law is not working....” The Tea Party also chimed in with Senator Mike Lee (R-UT) saying “When it comes to health care, we know the best way to repeal Obamacare is to deliver better solutions. We can’t just return to the old system. Health care policy used to give too much power to insurance companies; Obamacare now gives far too much power to government. We know that real reform will put health care dollars and decisions where they belong: in the hands of patients and families and their doctors and nurses....” On the eve of the President’s speech, Senators Hatch (R-UT), Burr (R-NC) and Coburn (R-OK) announced they are asking the health care community to work with them to fashion an alternative to Obamacare, legislation they dubbed “The Patient Choice, Affordability, Responsibility, and Empowerment (CARE) Act”. They said the Patient CARE Act would be a legislative roadmap to fully repeal Obamacare and replace the law with common-sense measures that would: “Establish sustainable, patient-centered reforms” by:

- Adopting common-sense consumer protections (e.g. one-time open enrollment and 5:1 age bands);
- Creating a new protection to help Americans with pre-existing conditions (e.g. COBRA-like continuous-coverage/preexisting-continuous rules);
- Empowering small business and individuals with purchasing power (e.g. tax credits for individuals and businesses with 100 or fewer employees);
- Empowering states with more tools to help provide coverage while reducing costs (e.g. auto-enrollment with individual opt out);
- Expanding and strengthen consumer directed health care;
- “Modernize Medicaid to provide better coverage and care to patients” by transitioning to capped allotments to provide states with predictable funding and flexibility (e.g. allowing tax credits to pay for private coverage for Medicaid-eligible individuals);
- Reauthorizing Health Opportunity Accounts to empower Medicaid patients;
- “Reduce unnecessary defensive medicine practices and rein in frivolous lawsuits” through Medical Malpractice reforms;
- “Increase health care price transparency to empower consumers and patients” by requiring basic health care transparency to inform and empower patients; and
- “Reduce distortions in the tax code that drive up health care costs” by capping the exclusion of an employee’s employer-provided health coverage [to help pay for the new tax credits].

Although the Patient CARE Act would repeal the PPACA’s individual and employer mandates and the taxes on insurers and medical devices, it would apparently not repeal the provisions allowing student’s to continue coverage under their parents plans, the expansion of Part D drug coverage and Medicare preventive care benefits. After the Hatch/Burr/Coburn initiative was announced, Senate Minority Leader Mitch McConnell (R-KY) revealed that a request was made to the Republican Governors Association for their ideas on how to replace the health law. The House Majority Leader, Eric Cantor (R-VA), also wound up the House Republican Legislative Retreat by saying the House will attempt to advance a vote on legislation that would repeal and replace the PPACA. While not endorsing any legislation already introduced, the discussion revolved around “guiding principles” involving high-risk pools, portability of health coverage across state lines, medical liability reform and expanded health savings accounts.

Budget Matters

With the enactment of the fiscal year (FY) 2014 Omnibus Appropriations Act, it still remains to be seen the extent to which House and Senate appropriators will be able to agree on the allocations to be made for FY 2015 under the legislation's cap of \$1.014 trillion. House Budget Committee Chairman Paul Ryan (R-WI) has indicated his desire to put forward a budget resolution under regular order while appropriators may try to obtain approval from House and Senate leaders to negotiate a pre-arranged deal in allocating \$492.5 billion in defense spending and \$521.4 billion in non-defense spending. Buttressing his SOTU remarks, the President will also lay out the Administration's priorities later this month in his budget recommendations for FY 2015 and beyond. He indicated that he wants to build on progress in reducing annual federal deficits with a "growth and opportunity agenda that includes a commitment to strengthening" the nation's fiscal health by, among other things, "reforming and strengthening entitlements". Hinting at his health-related priorities, he said that Congress should "undo the damage done by last year's cuts to basic research so we can unleash the next great American discovery – whether it's vaccines that stay ahead of drug-resistant bacteria" or other innovations. The President also said he would take administrative action to advance his agenda when legislative compromise is not possible. In this connection, it is possible that House Republicans will attempt to thwart the President's efforts by taking up H.R. 3857, legislation that would give the House and the Senate the ability to challenge the constitutionality of the President's executive orders in court. It also remains to be seen whether Republicans will insist on conditions to gain their support later this month in passing legislation extending the federal debt limit. Possible conditions could include the repeal of PPACA-related rules, such as one relating to risk-corridor payments to insurers.

Health Legislation Passes

The House voted 227-188 to pass H.R. 7, "The No Taxpayer Funding for Abortion Act," that would prohibit the use of federal funds to pay for abortions or health insurance plans that cover the procedure. Incorporating the Hyde Amendment exceptions, the bill would disallow the use of PPACA small business and individual tax credits to help buy health insurance coverage including such procedures and also prevent individuals from using flexible savings accounts (FSAs) and health savings accounts (HSAs) and claiming medical expense tax deductions for such procedures. The House also passed H.R. 1791, the "Medical Preparedness Allowable Use Act," under suspension of the rules. The Senate passed S. 1417, the "Newborn Screening Saves Lives Reauthorization Act," which authorizes appropriations to help improve newborn and child screening and follow-up for inheritable disorders and establish an advisory committee and information clearinghouse. The President also signed into law H.R. 3527, legislation amending the Public Health Service Act (PHSA) to reauthorize the poison center national toll-free number (P.L 113-77).

Member Announcements

Rep. Henry Waxman (D-CA) announced that he will not seek reelection in 2014, thus sending into retirement one of the most senior members of Congress who has been heavily involved in passing major health care legislation. House Republicans also named their Labor/Health and Human Services (HHS)/Education appropriations subcommittee members: Reps. Jack Kingston (R-GA) (Chairman), Steve Womack (R-AR), Chuck Fleischmann (R-TN), Martha Roby (R-AL), Andy Harris (R-MD), David Joyce (R-OH), and Chris Stewart (R-UT).

PPACA Health Reform Update

Republican Lawmakers Target Specific PPACA Rules

At a House Ways and Means Committee hearing, witnesses took exception to the PPACA's 30-hour/week definition of "full-time employee" for purposes of the mandate requiring employers with 50 more employees to offer minimum coverage. A Hoover Institution witness estimated that 2.6 million workers could have their hours reduced below the threshold as businesses seek to cut their costs under the health care law. However, a witness from the University of Michigan's Population Studies Center testified that many more employees could have their hours decreased, say from 40 hours to 39, if the minimum-hour requirement were raised. A change in this rule may likely be considered when House Republicans devise their alternative to Obamacare. The Chairman of the House Small Business Committee also raised concerns with the Department of Health and Human Services (HHS) about the delay in the PPACA's Small Business Health Options Program (SHOP). He asked HHS Secretary Kathleen Sebelius for a reply by this week on his request for enrollment data in each of the SHOP exchanges and for the anticipated date when multiple plans will be offered under the federally-facilitated exchange. In another move against the PPACA, Senator Orrin Hatch (R-UT) and several other Republicans filed an amicus brief with the Supreme Court in support of Hobby Lobby Stores and other privately held businesses in their suit asking the court to overturn, on religious grounds, the PPACA's women's preventive services mandate. Senate Democrats, led by Sen. Patty Murray (D-WA), filed an opposing brief contending that Congress did not intend the Religious Freedom Act to extend free-exercise rights to secular, for-profit corporations. Finally, in the continuing saga concerning the extent of the security of HealthCare.gov, House Oversight and Government Reform Committee Chairman Darrell Issa (R-CA) convened a closed hearing to take testimony from Kevin Charest, the HHS Chief Information Security Officer, and the MITRE Corp. which issued a report on the website's security. The HHS Secretary said that disclosure of the MITRE study details could give a blueprint for hackers to attack the website, but Rep. Issa said "the Administration can't have it both ways. They can't say these [unclassified] documents represent completely mitigated vulnerabilities then say they are a pathway for hackers so they can't be released...."

CMS Rules on Coverage Changes/Medicaid Eligibility

The Centers for Medicare and Medicaid Services (CMS) issued guidance affecting individuals whose "life changes" would change their HealthCare.gov coverage status or eligibility for individual subsidies. To properly effect such a change, individuals would be required to submit a whole new application which would result in a new determination for coverage during a special enrollment period. Another CMS bulletin provides states and hospitals with guidance on how to make rapid Medicaid eligibility determinations when patients do not otherwise show evidence of health insurance coverage. Hospitals would be able to enroll patients on a temporary basis under the new "Presumptive Eligibility" rules.

ACOs Show Medicare Savings

CMS issued a report stating that the PPACA's Medicare Accountable Care Organizations (ACOs) shared in \$273 million in savings in 2012 and helped bolster the Medicare Trust Fund by another \$128 million. The report said that 54 of 114 entities had actual expenditures lower than projected. CMS said that about 12% of all Medicare enrollees, about 5.3 million, now are served by ACOs.

Medicare/Medicaid/PHSA Corner***Progress Continues on Medicare SGR Reform Legislation***

While details have not been released on the progress made by House and Senate staff in narrowing the differences in three committee proposals (House Ways and Means, House Energy and Commerce, and Senate Finance), it appears that a number of provisions are being considered as potential sources to offset the ten-year cost of any final bill that is negotiated (likely between the W&M's \$121.1 billion cost and the \$150.4 billion cost of the Finance bill). Among the 65 potential 10-year-offsets taken from documents released by the Congressional Budget Office (CBO) and the Office of Management and Budget (OMB) are provisions: limiting the tax exclusion for employer-sponsored health insurance (raising \$262 billion in revenue over 10 years); requiring pharmaceutical manufacturers to pay a minimum rebate on drugs covered under Medicare Part D for low-income beneficiaries (saving about \$123 billion over 10 years); increasing premiums for Medicare Parts A, B and D (saving about \$287 billion); reducing PPACA subsidies for higher income individuals (saving about \$109 billion); and adjusting payment updates for certain post-acute care providers (saving about \$79 billion). If an agreement on the substance of the Medicare physician payment reform and cost offsets cannot be reached in early March, it is likely that Congress will again have to extend the March 31 date after which severe Medicare cuts would have to be made under current law.

CMS Fraud Alert

CMS announced, pursuant to the agency's efforts to reduce Medicare fraud, that a temporary Medicare enrollment moratorium has been placed on home health agencies in Fort Lauderdale, Dallas, Houston and Detroit and also on ambulance suppliers in Philadelphia.

Upcoming Health-Related Hearings and Markups

Senate HELP Committee: confirmation hearing to consider the nomination of Vivek Hallegere Murthy to be U.S. Surgeon General; 10:30 a.m., 430 Dirksen Bldg.; Feb. 4.

House Energy and Commerce Environment and the Economy Subcommittee: will hold a hearing titled "Testing of Chemicals and Reporting and Retention of Information Under TSCA [Toxic Substances Control Act] Sections 4 and 8;" 10:00 a.m., 2123 Rayburn Bldg.; Feb. 4.

Senate Budget Committee: will hold a hearing titled "The 2014 Outlook: Moving from Constant Crises to Broad-Based Growth." 10:30 a.m., 608 Dirksen; Feb. 4.

House Energy and Commerce Health Subcommittee: will hold a hearing titled "Examining the Implementation of the Food Safety Modernization Act;" 10:00 a.m., 2322 Rayburn Bldg.; Feb. 5.

Health Legislation Recently Introduced

H.R. 3931 (MEDICAID/CHIP), to amend Title XIX of the Social Security Act to allow for the continuation of the pre-Affordable Care Act flexibility of states in providing Children's Health Insurance Program coverage to low-income children; DENT; to the Committee on Energy and Commerce, Jan. 27.

H.R. 3932 (ABORTION), to prohibit taxpayer-funded abortions; BLACKBURN; jointly, to the committees on Energy and Commerce and the Judiciary, Jan. 27.

H.R. 3953 (ABORTION), to amend Title I of the Affordable Care Act concerning the notice requirements regarding the extent of health plan coverage of abortion; CARTWRIGHT; to the Committee on Energy and Commerce, Jan. 28.

H.R. 3954 (CONCUSSIONS), to provide for systemic research, surveillance, treatment, prevention, awareness, development of rules of play, standards and dissemination of information with respect to sports-related and other concussions; BEATTY; jointly, to the committees on Energy and Commerce, Armed Services and Education and the Workforce, Jan. 28.

H.R. 3958 (VETERANS' HEALTH), to provide for a one-year extension of the Department of Veterans Affairs pilot program on assisted living services for veterans with traumatic brain injury; BROUN of Georgia; to the Committee on Veterans' Affairs, Jan. 29.

H.R. 3966 (MEDICARE/MEDICAID), to amend titles XVIII and XIX of the Social Security Act to provide for equitable treatment of residents of the territories with respect to low-income subsidies under the Medicare prescription drug benefit program, and for other purposes; PIERLUISI; jointly, to the committees on Energy and Commerce and Ways and Means, Jan. 29.

H.R. 3969 (OVER-THE-COUNTER DRUGS), to amend the Federal Food, Drug, and Cosmetic Act to prevent the abuse of dextromethorphan, and for other purposes; JOHNSON of Ohio; to the Committee on Energy and Commerce, Jan. 29.

H.R. 3974 (TRICARE), to amend title 10, U.S. Code, to improve the TRICARE Program for adult children of members and former members of the uniformed services, and for other purposes; GRAVES of Missouri; to the Committee on Armed Services, Jan. 29.

H.R. 3975 (MEDICARE), to amend Title XVIII of the Social Security Act to provide coverage for low vision devices under Medicare, and for other purposes; OWENS; jointly, to the committees on Energy and Commerce and Ways and Means, Jan. 29.

H.CON. RES. 80 (BLOOD DONATION), expressing support for designation of January 2014 National Blood Donor Month; QUIGLEY; to the Committee on Energy and Commerce, Jan. 29.

S. 1978 (PRIMARY CARE), to increase access to primary care services through training and accountability improvements; UDALL of New Mexico; to the Committee on Finance, Jan. 30.