



## President to Deliver State of the Union Address; Conference on Doc Fix Begins

### *The Budget Noose Tightens*

The President delivers his State of the Union Address this Tuesday and the Administration will release the President's FY 2013 budget recommendations on February 6th.

The next budget year spending totals are capped at \$1.047 trillion pursuant to the Budget Control Act (BCA), thus laying the groundwork for a partisan fight over spending priorities, particularly over the implementation of the PPACA and spending levels under other federal health programs. If the FY 2013 appropriations bills are delayed beyond the November election season, any resolution of spending in the new fiscal year during a lame-duck session will be heavily influenced by the results of the Presidential election and whether the House and/or Senate change parties. The mandated sequestration of \$1.2 trillion in defense and non-defense spending mandated under the BCA to begin in January 2013 will hang heavy over any budget compromise prior to the election. If Congress resorts to passing just a continuing resolution into 2013, the BCA mandates could catapult severe spending cuts into the early months of next year. However, Medicaid is exempted from the sequestration and Medicare cuts are limited to 2% of program spending. Although the federal debt ceiling will be raised \$1.2 trillion as requested by the President in accordance with the BCA, despite the 239-176 vote

by the House last week to disapprove of the increase, an unexpected decrease in federal revenues this year could again bring this issue into focus later this year or early next year.

The first order of business for Congress is to negotiate a compromise on extending the payroll tax cuts and "doc fix" in their conference on H.R.3630, the Middle Class Tax Cut Act of 2011. The House/Senate conferees are expected to meet publicly on Tuesday to discuss the method, payfors and period over which to extend the current Medicare physician payment basis which expires at the end of February. Democrats are hopeful a bi-partisan deal can be struck and enacted by mid-February. With the push-back to avoid payfors coming from non-physician provider groups, it is likely that the doc fix will not be extended over much more than one-year.

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## PPACA Exchanges Make Progress

The White House issued a report, 2012 Progress Report: States Are Implementing Health Reform, stating that all states have taken some action toward implementing state health insurance exchanges with 28 states closing in on full

implementation before the 2014 effective date. The report also summarized the actions that 44 states have taken to review premium rates for “excessive” increases. HHS has granted \$730 million in PPACA funding to help 49 states to establish their own

state-run exchanges. States that do not meet the PPACA guidelines will forfeit their rights, and HHS will step in with federally-facilitated exchanges with respect to which HHS is developing IT and operational processes.

## New Briefs Filed with U.S. Supreme Court on PPACA

The Supreme Court recently received over 24 friend-of-the-court briefs, including those from **Senator Harry Reid** and **House Minority Leader Nancy Pelosi**, which defend the constitutionality of the individual mandate and other aspects of the PPACA. For example, a brief filed by the American Hospital Association and other hospital associations argues that the Eleventh Circuit decision striking down the mandate does not take into account the mandate will help prevent the cost shifting of uncompensated care to those who already have health

insurance coverage. The self-named “Working Group of State Legislators for Health Reform” consisting of 480 legislators from all states also signed onto a Constitutional Accountability Center brief arguing that the “idea that the federal government does not have the power to address a national problem such as the health care crisis has no basis in the Constitution’s text and history.” In addition, eleven state AG’s filed a similar brief in support of the individual mandate. On the other hand, 36 Republican senators filed an amicus brief urging the court to agree with their view that, given

the lack of a “severability” clause under the PPACA, there was a “clear expression” of congressional intent that the entire law be held invalid if the court strikes down any element of the law. On another issue, the Supreme Court granted a motion by the National Federation of Independent Business to add two individuals as plaintiffs in the NFIB’s suit challenging the individual mandate. An individual plaintiff in the original complaint may have been held to lack standing in the suit after declaring bankruptcy.

### CLASS is Out?

The House Ways and Means Committee voted 23-13 last week to repeal the PPACA’s Community Living Assistance Services and Supports program (CLASS Act). The legislation, H.R. 1173, was approved in November by the House Energy and Commerce Committee. Only one Democrat voted with Republicans for the repeal. **Rep. Charles Boustany**, who introduced the legislation, said he is working on legislation to replace the CLASS Act.

### GAO Says HHS Falls Short on PPACA Quality Measurement

GAO issued a report criticizing HHS and its subcontractors who are charged with developing specific plans, goals, benchmarks and standardized health quality measures pursuant to the PPACA mandate. GAO said they have failed to set priorities and deadlines for quality metrics which can hinder the law’s requirement for timely health quality reporting.

## Democrats Call for Medical Device Hearings

**W**ith the Medical Device User Fee Amendments of 2007 expiring in September, the FDA is charged and expected to release its recommendations for renewal of

the Act this week. In a related development, Democrats on the House Energy and Commerce Committee have asked the Republican majority to hold additional hearings to examine

several implanted medical devices which some say are defective in order to give members additional information to consider in the context of the reauthorization of MDUFA.

## CBO Bashes DEMO Cost Efficiency

**C**BO released a policy brief questioning the results of Medicare demonstration projects focusing on disease management and value-based payments. CBO said most disease management program demos did

not reduce Medicare spending while value-based payment demos produced mixed results. However, CBO found that one demo which bundled hospital and physician payments for heart bypass surgery actually reduced

costs by 10% over the fee-for-service model. To improve future demos, CBO recommended that they be rigorously evaluated using randomized designs and similar groups of demo participants.

### Recently Introduced Health Legislation

**H.R. 3786 (FEDERAL PROGRAMS)**, to ensure clarity of regulations to improve the effectiveness of federal regulatory programs while decreasing burdens on the regulated public; **BRALEY** of Iowa; jointly, to the committees on the Judiciary and Oversight and Government Reform, Jan. 18.

## MedPAC on Subsidies under Part D

**M**edPAC voted to recommend that Congress change the Medicare Part D low income subsidy program to slow costs by directing HHS to develop a copayment structure which also emphasizes the use of generic drugs.

## DSH Payment Change

**C**MS issued a proposed rule for disproportionate share hospital payments which broadens the definition of the term “uninsured expenses” to mean medical expenses that are not specifically covered under a patient’s plan and those that exceed a plan’s annual or lifetime limit. Comments are due within 30 days.