



House Takes Up FY 2013 Budget Resolution; Supreme Court PPACA Hearings Begin

House Budget Committee Plan Sent to House Floor

The House Budget Committee voted 19-18 to adopt **Chairman Paul Ryan's** budget resolution which sets forth FY 2013 appropriations spending limits and Medicare/Medicaid reforms, among other major tax and budget reforms. The House Republican leadership said there is no question that they will garner the 218 votes needed to pass the resolution in the House this week (debate is scheduled for Wednesday with a final vote on Thursday). Democrats decried the plan's discretionary spending limit of \$1.028 trillion which is \$19 billion less than the limit set last year under the federal debt ceiling law (BCA). The Ryan plan also would negate the cuts to the defense budget beginning next year established under the BCA's sequestration framework. Over ten years the Ryan plan reduces spending by \$5 trillion as compared to the President's budget proposal. As to health-related matters, the Ryan plan would: repeal the PPACA (keep the law's assumed \$500 billion in 10-year Medicare savings); raise the Medicare eligibility age from 65 to 67 between 2023 and 2034; introduce the Ryan-Wyden Medicare reform beginning in 2023 (which would provide vouchers to pay for private coverage in a competitive health insurance exchange that beneficiaries could choose as an alternative to traditional Medicare fee-for-service; insurers would be paid risk-adjusted/geographic-adjusted

rates and total payments could not exceed the rate of GDP growth plus .5%); provide for the repeal of the current Medicare physician payment SGR system and use a deficit-neutral reserve fund as an offset for its replacement; block grant the Medicaid program; and increase funding for anti-fraud programs. The plan would reduce Medicare spending from 6.5% of GDP under current law to 4.25%. Of note, Chairman Ryan has asked House committees to report by May on spending and savings alternatives to the \$1.2 trillion in domestic and defense cuts mandated under the BCA (resulting in a net \$497 billion in mandatory 10-year cuts to both domestic and defense spending). During House appropriations committee hearings, NIH Director Francis Collins testified that the 8% cuts under the BCA would have a devastating impact on medical research beginning next year.

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House Votes to Repeal IPAB

The House voted 223 to 181 to pass H.R. 5, the Help Efficient, Accessible, Low Cost, Timely Healthcare (HEALTH) Act of 2011, which would repeal the PPACA's Independent Payment Advisory Board and introduce medical malpractice reforms that are estimated to reduce federal health spending by \$48 billion over ten years and cut the federal deficit by \$57 billion. Although seven Democrats voted with 216 Republicans to pass the bill, the legislation, opposed by the White House, is not expected to be considered in the Senate this year. In general, the med-mal provisions would: cap noneconomic damages to \$250,000 and punitive damages to twice that amount; eliminate

joint and several liability; establish a 3-year statute of limitations for filing medical malpractice suits; and allow courts to supervise and limit attorney fees. Major amendments adopted on the House floor include: a Dent provision that would exempt emergency room physicians from medical liability; a Gosar provision that would amend the McCarran-Ferguson Act to restore the application of antitrust laws to health insurers and prohibit class action lawsuits against insurers for antitrust violations; and a Stearns provision that would grant limited civil liability protections to health care workers who volunteer at federally declared disaster sites.

CCIIO Will Collect Exchange and Employer Data to Enforce Coverage Rules

At a House Energy and Commerce Health Subcommittee hearing last week, the director of the Center for Consumer Information and Insurance Oversight (CCIIO) testified that the agency will determine whether individuals have purchased health insurance coverage mandated in 2014 by collecting data from health insurance exchanges and employers who sponsor health

plans. However, the IRS has the main role in enforcement by means of assessing the penalties mandated under the PPACA. **Wisconsin Senator Ron Johnson** said that employers subject to the PPACA health benefit mandate (over 50 employees) would likely drop coverage after considering the difference between the \$2,000 penalty for ignoring the employer mandate and the \$20,000 estimated cost of family coverage. The

CCIIO disputed that a significant percentage of employers would drop their coverage. The CCIIO has already spent about \$150 million to implement the PPACA and, recently, has determined that two health insurers have proposed premium rate increases which violate the "unreasonable rate increase" standard under the PPACA.

Good Faith Standard Adopted for Plan Benefit Summaries

The Departments of Treasury, Labor and HHS served notice that employers and health insurers will not be penalized under the PPACA if they act in "good faith" in providing the standardized summary of benefits and coverage required under the PPACA.

Comments Due on Medical Device User Fees

OMB has approved the FDA/Medical Device Manufacturer agreement on the level of user fees to be assessed on medical device manufacturers. Public comments on the agreement are due by April 16, after which the agreement will be submitted to Congress for inclusion in reauthorization legislation.

Supreme Court Hearings on PPACA Conclude This Week

The U.S. Supreme Court will hear this week from the Administration (DOJ) and other parties who will take six hours to argue whether various provisions of the PPACA are either constitutional or otherwise. On Monday, the justices will hear 90 minutes of argument on whether the Anti-Injunction Act (AIA) precludes a decision on the individual mandate until the mandate and associated penalty becomes effective in 2014. The two hour argument on Tuesday will center on the constitutionality of the individual mandate. The Administration has argued that

the commerce clause is broad enough to validate the provision while the plaintiffs (including Florida and 26 states) say the mandate is unprecedented and exceeds congressional authority. On Wednesday the court will hear 90 minutes of debate on the issue of severability, whether some or all of the statute's provisions should be voided even if only one provision is held unconstitutional, and another hour on whether the PPACA is unconstitutionally "coercive" in forcing states to expand Medicaid coverage. A decision on the issues is expected to be issued by the court in late

June. If the AIA is held to preclude consideration of the other issues, then the court will likely defer until 2014 any decision on the constitutionality of the individual mandate and Medicaid expansion. The Supreme Court will make audio recordings of the arguments available later the same day on its website. **Senate Minority Leader Mitch McConnell** said, if Senate Republicans gain a majority in November, he will make the repeal of the PPACA the first order of business next year, regardless of what the Supreme Court decides.

Senate Hearing on Prescription Drug Abuse

At a Senate Finance Health Subcommittee hearing last week, **Chairman Rockefeller** and **Senator Grassley** put pressure on an absent CMS to increase the agency's role in reining in the abuse of prescription drugs, including painkillers. Senator Rockefeller promoted his legislation, S. 507,

the Prescription Drug Abuse Prevention and Treatment Act, which he said would improve the tools for Medicare and Medicaid to help educate patients and coordinate care so that prescriptions are used correctly.

Medicaid Premature Birth Initiative

CMS announced a new \$43.2 million "Strong Start Campaign" initiative which is designed to help reduce premature births among pregnant

Medicaid enrollees. Nonbinding letters of intent are due by May 11th for OB care providers, state Medicaid agencies, Medicaid managed care organizations and

"conveners" which may include direct applicants or entities supporting other applicants.

H.R. 4209 (PRESCRIPTION DRUG COVERAGE), to amend Title XXVII of the Public Health Service Act to limit copayment, coinsurance, or other cost-sharing requirements applicable to prescription drugs in a specialty drug tier to the dollar amount (or its equivalent) of such requirements applicable to prescription drugs in a non-preferred brand drug tier, and for other purposes; MCKINLEY; to the Committee on Energy and Commerce, March 19.

H.R. 4215 (MEDICARE), to amend Title XVIII of the Social Security Act to provide for pharmacy benefits manager standards under the Medicare prescription drug program to further fair audits of and payments to pharmacies; MCMORRIS, RODGERS; jointly, to the committees on Energy and Commerce and Ways and Means, March 20.

H.R. 4220 (HOME HEALTH), to establish a pilot program to train public housing residents as home

health aides and in home-based health services to enable such residents to provide covered home-based health services to residents of public housing and federally assisted rental housing, who are elderly and disabled, and for other purposes; VELÁZQUEZ; to the Committee on Financial Services, March 20.

H.R. 4223 (MEDICAL PRODUCTS), to amend Title 18, United States Code, to prohibit theft of medical products, and for other purposes; SENSENBRENNER; to the Committee on the Judiciary, March 20.

H.R. 4224 (HEALTH REFORM), to repeal the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, to amend the Internal Revenue Code of 1986 to repeal the percentage floor on medical expense deductions, expand the use of tax-preferred health care accounts, and establish a charity care credit, to amend the Social Security Act to create a

Medicare Premium Assistance Program and reform EMTALA requirements, and to amend the Public Health Service Act to provide for cooperative governing of individual and group health insurance coverage offered in interstate commerce; BROUN of Georgia; jointly, to the committees on Energy and Commerce, Ways and Means, Education and the Workforce, the Judiciary, Natural Resources, Rules, Appropriations, and House Administration, March 20.

H.R. 4238 (TRAUMATIC BRAIN INJURY), to amend the Public Health Service Act to reauthorize certain programs for individuals with traumatic brain injury, and for other purposes; PASCRELL; to the Committee on Energy and Commerce, March 21.