



President Attempts to Revive Health Reform in SOTU Address and GOP Retreat

FY 2011 Budget

In his State of the Union Address last Wednesday, the President telegraphed some of his intentions for the Administration's recommendations for FY 2011 spending. He said he will recommend a three year "freeze" on discretionary spending with the exception of defense, homeland security, intelligence, foreign aid and veterans' programs. However, entitlement spending increases for Medicare, Medicaid, Social Security, etc. would be unaffected. The recommended freeze is not expected to be across-the-board, but is expected to reduce or eliminate some programs and allow for an increase in others. The President also endorsed budget PAYGO provisions that would require new spending or tax reductions to be offset with other spending reductions or revenue increases.

The Senate statutory debt limit bill, S.J. Res. 45 which increases the limit by \$1.9 billion to \$14.3 trillion, passed last week includes such a provision, but has an exception for Medicare physician payment increases through 2014 and the effect of certain other tax provisions. The 60-40 vote on the Reid PAYGO provision was opposed by all the Senate Republicans. Also, the Senate rejected the Gregg/Conrad amendment that would have created a commission to recommend deficit reductions which would have been required to be voted on by Congress. However, the amendment

was defeated. In his SOTU address, the President said he would, as an alternative, create a similar Presidential commission to make deficit reduction recommendations, but their suggestions would not be required to be acted on by Congress. Republicans indicate they are reluctant to participate on the commission, fearing that the commission would advance a Democrat agenda that would prove harmful to Republican fortunes in this fall's congressional elections.

In another indication that Democrats fear congressional gridlock leading up to the fall elections, last week **Senate Budget Chairman Kent Conrad** indicated he will likely push for reconciliation as the basis for passing legislation fashioned under the FY 2011 budget resolution.

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Health Reform Update

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In other budget news, last week HHS announced that the President's budget will request \$1.7 billion to support health care anti-fraud activities, including strengthening the HEAT (Health Care Fraud Prevention and Enforcement Action Team) program and expanding Medicare fraud strike forces.

Jobs, Jobs, Jobs

The President spent most of his SOTU remarks addressing economic and jobs issues. Before moving to a more comprehensive jobs bill, Senate Democrats are reported to be considering moving an initial package of unemployment assistance and COBRA health subsidies for laid-off workers, coupled with several

infrastructure-related measures and small-business tax incentives. The COBRA subsidies extended last December will expire on February 28. A more comprehensive bill is likely to include an extension of the higher federal matching share for Medicaid payments authorized by last year's economic stimulus legislation. Last December the House passed a \$154 billion jobs bill that included unemployment insurance and COBRA extensions and various infrastructure spending programs and aid to states.

Mental Health Parity Regulations

Last week DOL, HHS, and the Treasury Department issued interim final regulations implementing the Paul Wellstone and Pete Domenici Mental Health

Parity and Addiction Equity Act of 2008 (Pub. L. No. 110-343) that requires group health plans and health insurance issuers offering mental health or substance abuse benefits to treat those benefits equally with medical and surgical benefits in terms of costs and access to care. The regulations subject the following six classifications to the parity requirements as to out-of-pocket costs, benefit limits and practices such as prior authorization and utilization review: inpatient, in-network; inpatient, out-of-network; outpatient, in-network; outpatient, out-of-network; emergency care; and prescription drugs. Plan deductibles and out-of-pocket caps must be treated as one limit. Comments on the final rule are due by May 3, 2010.

President's Five-Minute SOTU Health Reform Remarks

Last Wednesday the President waited until late in his SOTU speech to Congress to again promote his view that health reform should be passed this year. He said "Do not walk away from reform. Not now. Not when we are so close... Let us find a way to come together and finish the job for the American people... Democrats, I remind you we still have the largest majority in decades and the people expect us to solve some problems, not run for the hills." Using the same arguments for reform he has used this past year, the President said health reform is needed to reduce the federal deficit, provide more security to U.S. residents, provide help to small-business owners and more tightly regulate the health insurance industry (eliminate pre-existing condition limitations, etc.). However, he did not directly address how the House and Senate should resurrect the process

to enact health reform changes, given that the Senate and House passed bills have stalled after the election of **Scott Brown** to the late **Senator Ted Kennedy's** Massachusetts seat. In a challenge to Republicans, the President said "If anyone from either party has a better approach that will bring down premiums, bring down the deficit, cover the uninsured, strengthen Medicare for seniors and stop insurance company abuses, let me know." In the Republican response to the President's remarks, newly-elected **Virginia Governor Bob McDonnell** said that all U.S. residents agree on the need for "affordable, accessible and high quality" health care, but they "do not want to turn over the best medical care system in the world to the federal government...."

Bipartisanship?

Echoing his SOTU remarks for Congress to end “the numbing weight of our politics” and embrace bipartisanship, the President urged Republican House members at their annual retreat to work with him on health reform. However, he quickly added that the House and Senate bills are based on ideas by Republicans and Democrats, such as the proposal by **former Senators Howard Baker, Bob Dole and Tom Daschle**, and includes a high risk pool which **Senator John McCain** proposed during the presidential campaign. He also said he supports allowing insurance companies to sell

coverage across state lines, “provided that we do it hand-in-hand with broader reforms that protect benefits and protect patients and protect the American people.” He said “So all I’m saying is we’ve got to close the gap a little bit between the rhetoric and the reality...I’m not suggesting that we’re going to agree on everything, whether it’s on health care or energy or what have you. But if the way these issues are being presented by the Republicans is that this is some wild-eyed plot to impose huge government in every aspect of our lives, what happens is you guys then don’t have a lot of room to negotiate with me.”

House Minority Leader John Boehner said after the meeting that “Democrats’ government takeover of health care fails to bring down costs for businesses and consumers—it actually increases them.”

From all indications, and the imminent seating of **Senator “41” Scott Brown**, it does not appear that Republicans are anxious to resume a debate on comprehensive health reform, thus leaving the fate of the two bills in the hands of the Democrat leadership. However, Republican leaders appear open to the President’s invitation for them to meet with him on a monthly basis.

White House Health Reform Agreements Under Fire

Last week the House Energy and Commerce Committee by voice vote reported to the House floor, without recommendation, a Republican-sponsored resolution of inquiry, H.Res. 983, that would force the White House to turn over information on its agreements and negotiations on health care legislation with physicians, insurers, hospitals, and

drug and device manufacturers. While the action effectively kills the measure, **Committee Chairman Henry Waxman** said he still hopes to reach an agreement with Republicans on a narrower request for documents from the Administration.

Medicare Quality and Medical Home Demos

Last week CMS announced plans for two demonstration projects: the first, the Indiana Health Information Exchange (IHIE), will test whether quality improvement and pay-for-performance initiatives are more effective in a multi-payer environment; and the second, the North Carolina Community Care Networks demonstration, will test

the ‘medical home’ concept for low-income Medicare beneficiaries eligible for both Medicaid and Medicare; eight regional health care networks in the state will try to improve the coordination of care for this costly population, including through use of information technology.

National Practitioner Data Bank Final Rule

Last week HRSA released the final rule governing the National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners, which includes

new sections requiring due process procedures from various reporting agencies. It goes into effect March 1st.

House to Take Lead on further Health Measures

Although House and Senate Democrat leaders said that the President's SOTU speech might help re-energize Democrats to push some form of health reform legislation, **House Speaker Nancy Pelosi** said that she does not yet have the votes for the House to take up the Senate-passed bill. To do so, the Senate leadership would probably have to have firm commitments in the Senate to pass any House/Senate revisions to the Senate bill via the reconciliation process. **Senate Majority Whip Dick Durbin** said there is no fixed time frame for completing action on reform legislation and that he does not yet have the 51 votes necessary to pass health reform revisions under reconciliation. **Senate Majority Leader Harry Reid** said that Congress would complete work on health reform this year--"This is not a one-year Congress, it's a two-year Congress. And we've had a number of extensive meetings trying to come up with a path forward. ... And we're going to move forward on health care. We're going to do health-care reform this year. The question is, at this stage procedurally how do we get where we need to go...." However, **Senator Mary Landrieu** said "I think it's on life support, unfortunately, but it still has a pulse...." In an attempt to reassure her base, **House Speaker Nancy Pelosi** said "We'll go through the gate. If the gate's closed, we'll go over the fence. If the fence is too high, we'll pole-vault in. If that doesn't work, we'll parachute in. But we're going to get health care reform passed for the American people...." The Speaker made clear that the Senate bill would have to

be changed in several areas by means of reconciliation for her to get the 218 votes in the House needed to subsequently pass the Senate bill: e.g. removing the provision that would cover the full cost of a proposed Medicaid expansion in Nebraska; addressing cost issues for residents who would be required to obtain health insurance under an individual mandate; establishing the structure for the proposed health insurance exchanges; and reducing the proposed excise tax on high-priced insurance policies. That this approach may have its own problems, **Senator Ben Nelson** said that the House provision to create a single national insurance exchange is unnecessary and would jeopardize his support for reform legislation. In addition, **Senator Joe Lieberman**, said that he is undecided about how he'd vote on a package of House modifications under reconciliation. **Senator Blanche Lincoln** was more direct, stating her opposition to reconciliation as a means of changing the Senate bill. Perhaps leaving her options open, **Speaker Pelosi** said that the House may consider a series of smaller bills in the coming weeks, although they would not be meant to be a substitute for comprehensive reform. **House Majority Leader Steny Hoyer** mentioned several issues under consideration for incremental change: the creation of a "limited exchange," or marketplace, where uninsured Americans could shop for health insurance; a measure under which small businesses could come together in purchasing pools to create better markets; and provisions ending the antitrust exemption for health insurers.

Approval of Organizations to Accredit Imaging Suppliers

CMS issued a notice to the effect that suppliers of the technical component of advanced imaging modalities that want to receive Medicare payments will have to be accredited by

one of three organizations—the American College of Radiology, the Intersocietal Accreditation Commission or the Joint Commission. Accreditation requirements begin January 1, 2012.

NIH Issues

According to remarks by **NIH Director Francis Collins**, NIH is planning to place a greater emphasis on the potential immediate impact of its research by promoting links between the basic science that comprises much of the agency's research and clinical science that could more quickly benefit patients ("bench to the bedside"). While **Director Collins** said he is not proposing "an effort to derail basic science," he said a stronger focus on the immediate effects of NIH research could energize the agency's scientists and help justify the NIH's \$30 billion budget.

S. 2942 (NANOTECHNOLOGY), to amend the Federal Food, Drug, and Cosmetic Act to establish a nanotechnology program; PRYOR; to the Committee on Health, Education, Labor, and Pensions, Jan. 21.

H.R. 4492 (FIRST RESPONDERS), to amend the Homeland Security Act of 2002 to ensure continuation of the Metropolitan Medical Response System Program, and for other purposes; BILIRAKIS; jointly, to the committees on Energy and Commerce and Homeland Security, Jan. 21.

H.R. 4500 (APPROPRIATIONS), to rescind unobligated appropriations and repeal certain health care-related provisions in the American Recovery and Reinvestment Act of 2009 for purposes of reducing the national debt; McCOTTER; jointly, to the committees on Appropriations, Energy and Commerce and Science and Technology, Jan. 21.

H. RES. 1033 (DISEASE AWARENESS), expressing support for designation of April 2010 as “National Autism Awareness Month” and supporting efforts to devote new resources to research into the causes and treatment of autism and to improve training and support for individuals with autism and those who care for individuals with autism; REICHER; jointly, to the committees on Energy and

Commerce and Education and Labor, Jan. 21.

S. 2949 (MEDICARE), amend Section 1113 of the Social Security Act to provide authority for increased fiscal year 2010 payments for temporary assistance to United States citizens returned from foreign countries, to provide necessary funding to avoid shortfalls in the Medicare cost-sharing program for low-income qualifying individuals, and for other purposes; BAUCUS; considered and passed, Jan. 25.

H.R. 4502 (NANOTECHNOLOGY), to strengthen the capacity of eligible institutions to provide instruction in nanotechnology; WU; to the Committee on Science and Technology, Jan. 26.

H. RES. 1039 (AMERICAN HEART MONTH), supporting the goals and ideals of American Heart Month and National Wear Red Day; LEE of New York; to the Committee on Oversight and Government Reform, Jan. 26.

S. 2958 (LONG-TERM CARE), to provide funding and incentives for caregiver support and long-term care assistance; MENENDEZ; to the Committee on Finance, Jan. 27.

H.R. 4529 (REFORM PROPOSALS), to provide for the reform of health care, the Social Security system, the tax code for individuals and business, job

training, and the budget process; RYAN of Wisconsin; jointly, to the committees on Ways and Means, Energy and Commerce, Education and Labor, Rules, the Budget and the Judiciary, Jan. 27.

H.R. 4551 (MILITARY HEALTH), to restore health care coverage to retired members of the uniformed services, and for other purposes; VAN HOLLEN; jointly, to the committees on Armed Services and Oversight and Government Reform, Jan. 27.

H. CON. RES. 233 (HIV/AIDS), supporting the goals and ideals of National Black HIV/AIDS Awareness Day; LEE of California; to the Committee on Energy and Commerce, Jan. 27.

S. 2964 (MEDICARE/MEDICAID/CHIP), to amend titles XVIII, XIX, and XXI of the Social Security Act to prevent fraud, waste, and abuse under Medicare, Medicaid, and CHIP, and for other purposes; GRASSLEY; to the Committee on Finance, Jan. 28.