



## Senate Minority Leader Plays High Stakes Game with Vote to Increase Debt Ceiling

### Budget Issues

**Senate Minority Leader Mitch McConnell** has upped the ante in securing Senate Republican votes in favor of increasing the debt limit. He has firmed up his insistence that the vote be accompanied by an agreement with the President and Senate Democrats providing for a long-term deficit reduction plan, including major reforms leading to reduced spending for Medicare, Medicaid and Social Security.

**Senate Budget Chairman Kent Conrad** also said he will delay a vote in his committee on any FY 2012 budget resolution, inasmuch as the spending goals for the coming fiscal year will likely be resolved in the spending/debt ceiling negotiations being conducted by **Vice President Biden**. In addition to Biden, the group includes **Senators Inouye, Baucus, and Kyl and Reps. Van Hollen, Clyburn and Cantor**. The extent of the hurdle **Senator Conrad** has in reaching even an agreement among Democrats is demonstrated by **Senator Bernie Sanders'** statement that he will not support any budget deal unless it requires high income earners to "pay their fair share of taxes."

Acknowledging the difficulty of coming to a bipartisan deficit reduction plan in the Senate outside of the Biden talks, **Senator Tom Coburn** has pulled out of the so-called Gang of Six negotiations, now being headed by **Senators Conrad, Durbin, Warner, Chambliss and Crapo**.

### Treasury Secretary Geithner

remains adamant that the debt limit be raised by August 2nd with or without a budget deal. Despite the lack of a Senate Budget Committee plan, **Senate Majority Leader Harry Reid** may still hold a vote on the House-passed budget which includes the unpopular Medicare "premium support" reform still strongly supported by **Chairman Paul Ryan**.

The Democrat-led Joint Economic Committee released a report with state-by-state results of the Ryan plan which is purported to double out-of-pocket spending for Medicare beneficiaries in 2022. **Senator Reid** also said any agreement resulting from the Biden talks will be taken up in the Senate as a budget resolution in order to pass the plan with a majority vote, rather than the 60 votes otherwise needed to avoid a stalemate.

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### Appropriations and Reauthorization Health Issues

The House returns this week to take up H.R. 1216, legislation to amend the Public Health Service Act to convert funding for graduate medical education in qualified teaching health centers from direct appropriations to an authorization of appropriations. **Rep. Joe Pitts**

**and Senator Sherrod Brown** also said they are working to pass their bipartisan legislation, H.R. 1852 and S. 958, which would reauthorize the Children's Hospitals Graduate Medical Education Program for 56 hospitals training more than 5,000 residents annually. In addition, 162 House Democrats urged President Obama to push for the House to take up and pass reauthorization of the Trade Adjustment Assistance program which includes an 80%

Health Coverage Tax Credit for displaced workers. At a Senate HELP Committee hearing on the reauthorization of the Pandemic All-Hazards Preparedness Act, **Senator Richard Burr** said that the emergency use process is too slow in the face of serious threats, particularly for certain medical products and vaccines that are not approved by the FDA.

### ACO Initiatives

**C**MS announced several new CMMI initiatives for providers to help form accountable care organizations under the PPACA. The so called "Pioneer" ACO model, with letters of intent due by June 10, is designed to provide an accelerated pathway for advanced

organizations ready to participate in shared savings. The payment models to be tested in the first two years of the Pioneer model are a shared savings payment policy with generally higher levels of shared savings and risk than levels proposed in the Medicare Shared Savings Program. Also, comments

are due by June 17 on a so-called "Advance Payment" ACO model for ACOs entering the Medicare Shared Savings Program to test how pre-paying a portion of future shared savings could increase provider participation.

### Final Rule for Review of Premium Increases of 10% or More

**H**HS announced final rate review regulations under the PPACA which require annual premium rate increases of 10% or more to be reviewed by state insurance departments. HHS would step in only if the agency determines that a particular state does not have an "effective review" process which includes "public input." In a related matter, **Senator Mike Enzi** wrote HHS demanding that the agency send their proposed rule on PPACA minimum medical loss ratios to Congress for review and potential repeal pursuant to the Congressional Review Act.

### CRS Questions Affordability of CLASS Act

**C**MS has requested public comment on its plan to sponsor a new "Federal Research and Development Center" operated by a private contractor which would assist CMS in updating its processes, systems and operations. Comments are due by July 5th.

## Update on Constitutional Challenges to PPACA

Five federal appeals courts are now engaged in considering challenges to the constitutionality of the PPACA, including the individual mandate, with the most recent the U.S. Court of Appeals for the District of Columbia. Individual plaintiffs complain that the mandate violates not only the commerce clause but their rights under the Religious

Freedom Restoration Act (RFRA) to be left uncovered according to their beliefs. In the Florida case, the Department of Justice filed their brief stating that the 26 state plaintiffs are attempting to “radically reshape the law and override the judgment of the elected branches of government,” among other arguments. In defending the PPACA Medicaid

expansion, the department argued that no court has ever invalidated a condition on federal spending on the ground that it was coercive, as the states argue. In the case to be heard in the Sixth Circuit Court of Appeals, the court has asked for parties to address the issues of standing and ripeness.

## Final MA/PDP Marketing Guidance

CMS issued marketing guidelines for Medicare Advantage (MA) and Part D prescription drug plans (PDPs) requiring them to inform beneficiaries in their marketing

materials that their “star” performance ratings in the 5-star system are only for the current year and may change in the future. Sales agents are also prohibited from steering beneficiaries to

particular plans in areas where patients receive health care services.

## Guidance on Enhanced Matching Rates for Health IT

CMS has issued additional guidance to states on qualifying for enhanced federal funding for administrative expenses related to the Medicaid electronic health record incentive program under the AARA. State expenses for health information exchange activities may also qualify for enhanced funding.

## Clarification of Policies on Rare-Disease Drugs

HS published a proposed rule to clarify the manner in which orphan drugs can be purchased under the so-called 340B program that provides drug discounts for certain safety-net providers. Under the rule, orphan drugs are excluded from covered outpatient drugs for specified newly eligible entities for 340B purposes, if the drugs are used to treat the rare ailment for which they received the orphan-drug designation from the FDA.

## Upcoming Health Related Committee Hearings and Markups

**Senate Judiciary, Subcommittee on Crime and Terrorism**, to hold hearings May 24 to examine response to the prescription drug epidemic and strategies for reducing abuse, misuse, diversion and fraud.

**House Appropriations, Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies**, to meet May 24 to mark up FY 2012 appropriations bill.

**House Energy and Commerce, Subcommittee on Health**, to hold a hearing May 25, “Expanding Health Care Options: Allowing Americans to Purchase Affordable Coverage Across State Lines.”

**House Rules to hold hearings May 23 on H.R. 1216**, to amend the Public Health Service Act to convert funding for graduate medical education in qualified teaching health centers from direct appropriations to an authorization of appropriations.

**House Appropriations, Full Committee**, to meet August 2 to mark up FY 2012 LHHS appropriations bill, subject to July 26 mark up by LHHS Subcommittee.

## Recently Introduced Health Legislation

**H.R. 1897 (ALZHEIMER’S DISEASE)**, to amend the Public Health Service Act to require a federal commitment to Alzheimer’s disease research to advance breakthrough treatments for people living with Alzheimer’s disease; SMITH of New Jersey; to the Committee on Energy and Commerce, May 13.

**H.R. 1915 (REFORM)**, to amend Subtitle D of Title I of the PPACA to clarify Congressional consent to and expand flexibility for interstate health choice compacts; GRIFFITH of Virginia; jointly, to the committees on Energy and Commerce and Ways and Means, May 13.

**H.R. 1919 (MEDICAL SCREENING)**, to authorize the secretary of health and human services to conduct programs to screen adolescents, and educate health professionals, with respect to

bleeding disorders; MCCARTHY of New York; to the Committee on Energy and Commerce, May 13.

**H.R. 1929 (NURSES)**, to provide relief for the shortage of nurses in the United States, and for other purposes; SENSENBRENNER; jointly, to the committees on the Judiciary and Energy and Commerce, May 13.

**H.R. 1930 (VETERANS’ HEALTH)**, to amend Title 38, United States Code, to provide for certain requirements relating to the immunization of veterans, and for other purposes; STEARNS; to the Committee on Veterans’ Affairs, May 13.

**S. 1002 (MEDICAL THEFT)**, to prohibit theft of medical products, and for other purposes; SCHUMER; to the Committee on the Judiciary, May 16.

**S. 1005 (ABORTION)**, to provide for parental notification and intervention in the case of a minor seeking an abortion; BOOZMAN; to the Committee on the Judiciary, May 16.

**S. 1031 (MEDICAID/SCHIP)**, to empower states with programmatic flexibility and financial predictability to improve their Medicaid program and State Children’s Health Insurance Program by ensuring better health care for low-income pregnant women, children, and families, and for elderly individuals and disabled individuals in need of long-term care services and supports, whose income and resources are insufficient to meet the costs of necessary medical services; COBURN; to the Committee on Finance, May 19.