



## President Bullies Senate to Remain in Session for Debt Limit Talks

### *Debt Ceiling Increase and Geithner's Next Move?*

Amid rumors of his desire to leave the Obama Administration, **Treasury Secretary Timothy Geithner** reaffirmed August 2nd as the “drop dead” date for Congress to enact an increase in the federal debt ceiling limit. The President also likened Congress to school children not doing their homework, thus embarrassing the Senate to remain in session this week, along with the returning House. Deficit reduction negotiations would likely have to be concluded by July 22nd in order for Congress to have time to draft and pass any deal that can be reached. The tough words of the President pushing back on **House Speaker John Boehner's** admonition that the House cannot pass legislation including tax increases leaves much in doubt the realization of a grand \$2+ trillion deficit reduction deal. However, the House has recourse to pass a temporary debt limit increase along with short-term spending reductions of equal magnitude to tide Congress over into September, or into next year, if the increase amounts to about \$1 trillion in spending reductions which have already been targeted in the now stalled negotiations chaired by **Vice President Joseph Biden.** The Senate would have little recourse but to accept whatever the House passes, given the timeframe left for increasing the debt ceiling limit. The House could force the hand of the Senate by recessing until September after the spending reduction/debt ceiling vote. A deal of less than \$2+ trillion,

which would take the debt limit off the table until after the 2012 elections, would ante up the tough decisions on taxes and entitlement spending just before next year's elections. The truncated “Gang of Five” proposal may be unveiled in a week or so, or not, depending on the continuation of any negotiations among **the President, Senate Majority Leader Harry Reid and House Speaker John Boehner.** This week, the House is scheduled to continue consideration of the Defense Appropriations Act for FY 2012, thus making it even harder for Democrats to reach into the defense budget for deficit reduction. To date Senate Democrats have not offered up any proposal on spending or taxes for FY 2012, however **Senate Budget Committee Chairman Kent Conrad** said he intends to introduce a budget proposal this week which would trim 10-year deficits by about \$4 trillion (and including about

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\$1 trillion in new revenues), a target considered as a minimum by the President's own Deficit Reduction Commission. With Republicans sticking to their position on no new taxes and Democrats on their position of no new Medicare and Social Security cuts, **Senators Joseph Lieberman and Tom Coburn** have offered up a bipartisan \$600 billion 10-year proposal (saving an estimated \$10 trillion over 75 years) to "save" Medicare by:

- ◆ slowly raising the eligibility age for 65 to 67;
- ◆ combining Part A and Part B deductibles into a single \$550 annual deductible;
- ◆ accelerating planned changes to home health services;

- ◆ creating new maximum out-of-pocket annual maximums that would be higher for high-income earners;
- ◆ limiting Medigap policy cost-sharing; requiring wealthy earners to pay their full Part B premiums; and
- ◆ increasing the Part B premium enough to cover 35% of the program's cost.

Of note, the Lieberman/Coburn proposal also includes a three-year fix to the Medicare physician payment sustainable growth rate which would come at a 10-year cost of \$37.7 billion.

Not quite closing the door on revenue increases, **Senate Minority Whip Jon Kyl** also indicated that some Republicans are open to increases in various

user fees and the means testing of several federal spending programs.

The debt ceiling issue has also stalled South Korea, Colombia, and Panama trade legislation with Republicans also resisting the Administration's insistence that the pact include extended Trade Adjustment Assistance (TAA) financial help and medical assistance for displaced workers. To help pay for the TAA extensions, about \$400 million would be raised by reducing Medicare provider payments for imaging services (the utilization rate for imaging services would be increased from 75% under the PPACA to 80% in 2012 and to 90% in 2013).

## Sixth Circuit Declares PPACA Individual Mandate Constitutional

In the first higher court decision on the constitutional validity of the PPACA individual mandate, the U.S. Court of Appeals for the Sixth Circuit held 3-1 that the PPACA individual mandate is a valid exercise of congressional authority under the commerce clause. The court said that Congress can regulate even wholly intrastate economic activity, so long as it would substantially affect interstate

commerce, and that Congress can also regulate noneconomic intrastate activity if doing so would be essential to a larger scheme that regulates economic activity. A statement from the Department of Justice said that DOJ will continue to vigorously defend the health care reform statute in any litigation challenging it.

## Health Insurance Agents Win NAIC Task Force Vote

The Professional Health Insurance Advisors Task Force of the NAIC has voted to support House legislation introduced by **Reps. Mike Rogers and John Barrow** that would remove agent commissions from the "medical loss ratio" that insurance companies must meet under the PPACA.

The executive committee of the NAIC will now consider this move as a potential recommendation for HHS to change the medical loss ratio definition accordingly.

## CMS Proposes Medicare Physician Payment Cut Next Year

CMS issued a proposed rule under which Medicare Part B physician payments would be cut by 29.5% under the current sustainable growth rate formula. The proposal also

includes measures that would be used in establishing a new value-based modifier that would reward physicians for providing higher quality and more efficient care. CMS also said that “While the

Congress has provided temporary relief from these reductions for every year since 2003, a long-term solution is critical....”

## OPPS and Dialysis Provider Payments to Increase

CMS issued a proposed rule under which payments beginning next year would increase by 1.5% to more than four thousand outpatient hospitals subject to the outpatient

prospective payment system. CMS also issued a proposed rule under which ESRD-related payments to dialysis providers will increase by 1.8% next year. The proposal will also set out requirements

for the ESRD quality incentive program (QIP). Comments on both proposals are due by August 30th and final rules are expected to be issued by November.

## HHS Primary Care Survey Put on Hold

HHS announced that “now is not the time” to proceed with priority plans for a primary care survey that was going to involve fake patients trying to see how long it would take them to get appointments with doctors. The reason for the survey was never disclosed.

## Grants for Disaster Preparedness

HHS announced that more than \$352 million in grant funding has been awarded under the Hospital Preparedness Program to improve disaster preparedness of hospitals and health care systems in all states. HPP funding was most recently used in aiding hospitals treating Joplin Missouri tornado victims.

## New HHS Health Study Data Standards

HHS Secretary Kathleen Sebelius announced that the agency has proposed new standards on the collection of data on race, ethnicity, sex, primary language and disability status in an effort to improve the monitoring of health data and address health disparities among minorities.

## Medicare Coverage of Provenge for Prostate Cancer

CMS released a final decision memorandum stating that Medicare will now cover Provenge (sipuleucel-T) for the treatment of prostate cancer, but only for those indications supported by evidence and consistent with the FDA label.

## HHS Issues HIPAA Interim Final Rule

HHS released an interim final rule under which health plans, health care clearinghouses and certain health care providers would have to abide by new HIPAA operating rules in 2013 for two electronic health care transactions. To help simplify administration of claims, the rules would make it easier for providers to determine whether a patient is eligible for health care coverage and the status of health care claims submitted to health insurers. HHS said the new rules could save such entities \$12 billion over 10 years by reducing transaction costs between providers and insurers.

## Upcoming Hearings on Health Related Topics

**House Energy and Commerce Committee Health Subcommittee** will hold a hearing titled “Independent Payment Advisory Board: The Controversial Consequences for Medicare and Seniors” on July 13.

**House Appropriations Committee** on August 2nd will mark up draft legislation that would make FY 2012 appropriations for programs related to labor, health, human services, education and related agencies, subject to a LHHS subcommittee markup scheduled for July 26.

## Recently Introduced Health Legislation

**H.R. 2353 (TAXATION)**, to amend the Internal Revenue Code of 1986 to extend and increase the exclusion for benefits provided to volunteer firefighters and emergency medical responders; LARSON of Connecticut; to the Committee on Ways and Means, June 24.

**H.R. 2363 (LITIGATION)**, to establish performance-based quality measures, to establish limitations on recovery in health care lawsuits based on compliance with best practice guidelines, and to provide grants to states for administrative health care tribunals; PRICE of Georgia; to the Committee on Energy and Commerce, June 24.

**H.R. 2364 (FAMILY AND MEDICAL LEAVE)**, to amend the Family and Medical Leave Act of 1993 and Title 5, United States Code, to permit leave to care for a domestic partner, parent-in-law, adult child, sibling, grandchild, or grandparent who has a serious health condition, and for other purposes; MALONEY; jointly, to the committees on Education and the Workforce, House Administration, and Oversight and Government Reform, June 24.

**H.R. 2376 (STEM CELL RESEARCH)**, to amend the Public Health Service Act to provide for human stem cell research, including human embryonic stem cell research, and for other purposes; DEGETTE; to the Committee on Energy and Commerce, June 24.

**H.R. 2385 (TAXATION)**, to amend the Internal Revenue Code of 1986 to allow seniors a one-time, tax-free retirement plan distribution to pay for essential repairs to a principal residence, for medical expenses, or for expenses attributable to a Federally declared disaster; JONES; to the Committee on Ways and Means, June 24.

**H. RES. 334 (HIV)**, supporting the goals and ideals of “National HIV Testing Day”; LEE of California; to the Committee on Energy and Commerce, June 24.

**H. RES. 335 (PATIENT SAFETY)**, recognizing the need for safe patient handling and movement; McCARTHY of New York; to the committees on Education and the Workforce and Energy and Commerce, June 24.

**. RES. 336 (DISEASE AWARENESS)**, expressing support for designation of September 2011 as “National Prostate Cancer Awareness Month”; to the Committee on Energy and Commerce, June 24. S. 1309 (MEDICAID), to amend Title XIX of the Social Security Act to cover physician services delivered by podiatric physicians to ensure access by Medicaid beneficiaries to appropriate quality foot and ankle care; SCHUMER; to the Committee on Finance, June 30.

**S. 1310.** Durbin. A bill to improve the safety of dietary supplements by amending the Federal Food, Drug, and Cosmetic Act to require manufacturers of dietary supplements to register dietary supplement products with the Food and Drug Administration and to amend labeling requirements with respect to dietary supplements; to the Committee on Health, Education, Labor, and Pensions, June 30.

**S. 1317 (MEDICARE)**, to allow individuals to choose to opt out of the Medicare Part A benefit; DEMINT; placed on the calendar, June 30.