



## Memo to Joint Deficit Reduction Committee: Let the Cutting Begin

### *“Big Twelve” Named to Joint Congressional Deficit Reduction Committee*

Pursuant to the Budget Control Act of 2011 (the BCA, P.L. 112-25), **Senate Majority Leader Harry Reid, Senate Minority Leader Mitch McConnell, House Speaker John Boehner and House Minority Leader Nancy Pelosi** named their appointments to the joint congressional committee which is to recommend at least \$1.5 trillion in federal spending reductions by December 23rd. Failure of the committee to act would “trigger” \$1.2 trillion in spending cuts evenly distributed between defense and non-defense accounts (with a cap on Medicare cuts for providers limited to 2% and no cuts to Medicaid, Social Security and low-income programs).

Senator Reid appointees are:

- ◆ Senator Max Baucus (D-Mont.), Chairman of the Senate Finance Committee
- ◆ Senator John Kerry (D-Mass.) and
- ◆ Senator Patty Murray (D-Wash.)

Senator McConnell appointees are:

- ◆ Senator Jon Kyl (R-Ariz.), the Assistant Republican Leader
- ◆ Senator Rob Portman (R-Ohio), former OMB Director and

- ◆ Senator Pat Toomey (R-Pa.)

House Speaker Boehner appointees are:

- ◆ Congressman Dave Camp (R-Mich.), Chairman of the Ways and Means Committee
- ◆ Congressman Jeb Hensarling (R-Texas), a member of the House Leadership and
- ◆ Congressman Fred Upton (R-Mich.), Chairman of the Energy and Commerce Committee

Minority Leader Pelosi appointees are:

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- ◆ Congressman Xavier Becerra (D-Calif.), a member of the House Leadership
- ◆ Congressman James Clyburn (D-S.C.), Assistant Democratic Leader and
- ◆ Congressman Chris Van Hollen (D-Md), ranking Democrat on the Budget Committee

If the committee fails to agree on a deficit reduction plan, the “trigger” would require \$600 billion in domestic program cuts over ten years which could short-change the implementation of the PPACA as intended. However, the S&P downgrade of the U.S. debt to AA+ could serve as incentive for the committee to come up with the S&P’s desire to see \$4 trillion in deficit reduction, including reforms to Medicare and other entitlement programs. Perhaps the GAO has paved the way for the committee to find cost savings from curtailing waste, fraud and abuse from federal health programs. A new GAO report finds that Medicare tops the list of wasteful spending programs

with \$48 billion in FY 2010 improper payments. Republicans on the committee will likely propose changes to scale-back the cost of the PPACA, Medicare and Medicaid, while Democrats can be expected to avoid cutbacks to these programs. For example, **Rep. Becerra** voted against the President’s Deficit Reduction Commission recommendations citing entitlement cutbacks. Congressional committees have until October 14th to make recommendations to the joint committee. Individual members are already ahead of the curve is stating their preferences, with **Rep. Mike Quigley** offering up a budget plan that would trim deficits by \$2 billion over ten years, including by giving CMS the authority to negotiate drug prices with manufacturers under Medicare Part D. **Senator Reid** stated that if Republicans continue to say there can be no new revenues under the plan, then there will be no agreement. In this connection and further complicating the committee’s negotiations is a dispute over the budget “baseline” to be used by the panel in counting revenue increases

and spending reductions. **House Budget Committee Chairman Paul Ryan** maintains that the BCA requires the committee to use the CBO’s current law baseline if their recommendations are to be passed by Congress. The CBO baseline assumes that the 2001 and 2003 “Bush” tax cuts expire as scheduled at the end of 2012 which would make tax increases nearly impossible, including the President’s proposal to extend the tax cuts to the middle class. Democrats will argue that the committee has the authority to set their own budget “baseline” for scoring committee recommendations. Beyond the federal budget consequences, a committee agreement to squeeze Medicare or Medicaid spending will likely have negative consequences for health providers. For example, according to the S&P credit rating agency, various hospital and other health providers could receive credit downgrades if any deficit reduction agreement results in significant federal payment reductions to their institutions.

## HHS/Treasury Issue Proposed Rules on Health Insurance Exchanges

**O**n August 12th the Treasury and HHS issued proposed regulations on how PPACA health insurance exchanges are to determine the eligibility of uninsured individuals and employees of small businesses for “affordability” tax credits through a simplified, coordinated system that verifies income and eligibility in “real time” from federal data sources. The proposed rules also provide procedures for the Small Business Health Options Program (SHOP) that allows employees of qualified small businesses to buy health insurance on either state exchanges or a separate exchange. The HHS rule defines how an individual may receive advance payments of tax credits if a state exchange determines that the individual is expected to have a household income of at least 100-400% of the Federal Poverty Level (FLP)

in the current tax year. About 16 million previously uninsured are expected to qualify for Medicaid due to earnings of less than 133% of the FPL. To enforce the employer mandate to offer coverage for businesses employing more than an average of 50 full-time workers, an IRS rule requires such employers to report the value of their health care plans or pay a tax penalty of up to \$3,000 per employee/per year, if they fail to offer affordable coverage. In related news, HHS announced that thirteen states and DC have been awarded \$185 million in grants to fund efforts in developing health insurance exchanges. HHS also announced that more than \$28 million in PPACA authorized grants will be made to help develop and expand community health centers across the nation.

## Question of Constitutionality of Individual Mandate Headed to Supreme Court?

**A** second circuit court, the U.S. Court of Appeals for the Eleventh Circuit, has issued an opinion on the constitutionality of the PPACA individual mandate. In a 2-1 ruling, the court held that Congress exceeded its powers under the Constitution’s commerce clause in enacting the individual mandate, but did not strike down the remainder of the law as ruled by the district court and argued

by the state of Florida and other state plaintiffs. In ruling that the individual mandate was “severable” from the other parts of the PPACA, the circuit court said that the proper test was whether Congress would have enacted the PPACA without the individual mandate. The first court to rule on the issue, the Court of Appeals for the Sixth Circuit, held the opposite in that the mandate meets constitutional muster. The Thomas

More Law Center, the plaintiff in the latter action, has filed a petition for review with the Supreme Court. The split decision in the two circuits would appear to guarantee that the Supreme Court will take up the issue, the only question being the timing, probably in the next session with a decision possibly being issued during next year’s election season.

## Proposed Quality Measures for Medicaid

A subcommittee of the AHRQ National Advisory Council approved a draft of 24 health quality measures for Medicaid-eligible adults which

CMS will use to compare quality of care among state Medicaid programs. The measures focus on five areas: prevention and health promotion; management of acute

conditions; management of chronic conditions; family experiences of care; and availability of services.

## New DEMO for Psychiatric Emergencies

CMS announced a \$75 million 3-year demonstration program that will allow states to receive

federal matching dollars when Medicaid patients with psychiatric emergencies are treated in private inpatient facilities with 17 or more

beds. The goal is to remove such patients from emergency room care.

## Proposed Medicare Coverage of Certain Counseling Benefits

CMS issued a proposed Medicare coverage decision under which high intensity behavioral counseling and screening would be covered in the case of STIs (sexually transmitted infections) and cardiovascular disease.

## Grants for Physician Quality DEMOs

CMS announced that four physician groups—in WI, MN, MO, and MI—have been awarded \$29.4 million for the fifth and final year of a Medicare quality incentive demonstration project as a result of the PGP's health quality improvements and savings they have achieved for the Medicare program.

## Recently Introduced Health Legislation

**H.R. 2798 (ALZHEIMER'S DISEASE)**, to amend the Public Health Service Act to authorize grants for training and support services for Alzheimer's patients and their families; WATERS; to

the Committee on Energy and Commerce, Aug. 5.

**H.R. 2799 (DIABETES)**, to amend the Public Health Service Act to authorize grants to provide

treatment for diabetes in minority communities; WATERS; to the Committee on Energy and Commerce, Aug. 5.