



## Rhetoric Over Fiscal Cliff Heats Up; President's Plan a "Laughter" Say Republicans

### *Fiscal Cliff Looms As Parties Continue to Spat Publicly*

At least publicly, the White House and Republican and Democrat congressional leaders appear to have reached little agreement on the means to avoid the upcoming end to the Bush-era tax cuts and \$110 billion in Budget Control Act mandated cuts to FY 2013 federal discretionary spending. Last week the President sent **Treasury Secretary Timothy Geithner** to the Hill to give congressional Republicans his opening bid to avoid the fiscal cliff. The plan had **Senate Minority Leader Mitch McConnell** chuckling over the non-serious nature of the bid and caused **House Speaker John Boehner** to call the negotiations "stalled". In general, the President's two-stage plan, which was termed "unbalanced and unreasonable" by Republicans, would avert the fiscal cliff and: raise \$1.6 trillion in tax revenue, reduce federal spending (unspecified) and prevent the 27% reduction in Medicare physician payments in 2013 through legislation to be adopted this year; cut \$400 billion from Medicare and other mandatory federal health programs by means of legislation to be adopted in 2013; provide additional economic "stimulus" under federal programs.

**Senate Majority Leader Harry Reid** and other Democrats saw the Obama offer as an opportunity to

goad Republicans into offering more detail on their own proposed cuts to Medicare, Medicaid and other federal entitlement programs. However, Republicans have previously made clear their goals to reduce entitlement spending; for example, under a 10-year deficit reduction plan proposed by **Senator Bob Corker** Medicare spending would decline by \$641 (including by raising the eligibility age to 67 by 2027, combining the Part A and B programs, limiting DME payments, phasing-out Medigap policies, but also providing a two-year doc fix) and Medicaid spending would decline by \$70 billion (including by phasing out provider taxes and streamlining the waiver process).

In response, **Senators Dick Durbin and Debbie Stabenow** have rejected raising the Medicare

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eligibility age as a long-term means to slow Medicare spending; although, **Senator Durbin** has been more open to other health program changes, such as allowing deeper rebates for Medicaid prescription drugs, increasing the use of generic drugs for Medicaid and Medicare patients and expanding competitive bidding for durable medical equipment. **Senator Durbin** also indicated he might be open to discussing “elements we need to reconsider” with respect to provisions under the PPACA.

Despite the harsh rhetoric, **Speaker John Boehner** said he is still hopeful that a bipartisan compromise can be reached during the lame-duck session. As to rounding up a majority of House votes for any such compromise, it might be noted that the complexion of the House in the 113th Congress appears to be set with 234 Republicans and 201 Democrats expected to take their seats in what is expected to be a contentious first session beginning next January 3rd.

It might also be noted that the continuing resolution for FY 2013 spending ends in March which necessitates another round of appropriations negotiations either this year or early next year. Appropriation earmarks should not be a major roadblock to agreement given that House Republicans have extended the current ban on earmarking for another two years. However, House Republicans will continue their efforts to defund various PPACA programs, including the Center for Medicare and Medicaid Innovation and the Independent Payment Advisory Board.

*Health Measures Considered*

The House passed H.R. 5997, legislation that would expand the existing authorization of the Homeland Security Department’s Urban Area Security Initiative and State Homeland Security Grant Program to allow local use of such funds for general emergency medical preparedness programs. Funds could be used for the development and maintenance of an initial pharmaceutical stockpile, medical kits and diagnostics to aid first-responders and the immediate victims of a chemical or biological event. The Senate also considered the Defense reauthorization bill, S. 3254, and will vote on amendments relating to an extension of military health programs, TRICARE pharmacy benefit program adjustments and autism coverage, planning for military mental health counseling and the expansion of emergency medical service benefits.

*House Hearing on Means to Curb Fraud Under Medicare*

The House Energy and Commerce Health Subcommittee heard testimony from GAO which criticized CMS efforts to reduce health care fraud which costs Medicare \$60 billion annually. The Health Care Director said that CMS has not implemented GAO recommendations to: remove Social Security numbers from Medicare cards; require providers in high-risk areas to post surety bonds; and to integrate the CMS predictive analytics system into existing HIT systems. Also discussed were efforts to set up smart ID card pilot programs and expanding CMS authority to prevent beneficiaries from doctor shopping to obtain large amounts of drugs.

## PPACA Proposed Rules on Multi-state Plans and Pre-Existing Conditions

**C**MS released a 373-page proposed “Notice of Benefit and Payment Parameters for 2014” which provides further guidance on risk programs established under a final rule HHS

released in March and on advance payments of premium tax credits and cost-sharing reductions. The Office of Personnel Management also released a proposed rule “Establishment of the Multi-State

Plan Program for the Affordable Insurance Exchanges” under which at least two multistate plans will be certified to operate under health insurance exchanges in 2014.

### It’s Not Over Until It’s Over

**D**espite the Supreme Court’s decision backing the constitutionality of the PPACA and its individual mandate, the Court has granted a petition by Liberty University which challenges an appeals court decision which said that the University’s suit (maintaining that the PPACA employer mandate is unconstitutional) was barred by the tax anti-injunction act (AIA).

### IB on Medicaid Psychiatric Service Reimbursements

**C**MS released an informational bulletin which will give state Medicaid programs more flexibility in the reimbursement of facilities providing inpatient psychiatric services to individuals under age 21. States may now directly reimburse individual practitioners or other providers of psychiatric services, provided they are part of an individual’s overall treatment plan supervised by an inpatient psychiatric facility.

### CMS National Coverage Decision Topics

**C**MS released a list of topics that could be considered for purposes of granting national coverage decisions. Topics include, among others: surgical procedures, diagnostic tests or procedures, imaging or radiology services, lab tests, or durable medical equipment (such as glucose monitors or wheelchairs); treatments for diseases such as cancer, heart disease, kidney disease or gastrointestinal disease; and procedures such as orthopedic or eye procedures. The agency also released draft updated guidance on the use of coverage with evidence development (CED) for Medicare coverage decisions.

## Health Legislation Recently Introduced

**S. 3641 (ASTHMA)**, to amend the Public Health Service Act with regard to research on asthma, and for other purposes; LAUTENBERG; to the Committee on Health, Education, Labor, and Pensions, Nov. 27.

**H.R. 6606 (CONTROLLED SUBSTANCES)**, to amend the Controlled Substances Act to provide that federal law shall not preempt state law; DEGETTE; jointly, to the committees on the Judiciary and Energy and

Commerce, Nov. 27. **H.R. 6608 (ASTHMA)**, to amend the Public Health Service Act with regard to research on asthma, and for other purposes; MCCARTHY of New York; to the Committee on Energy and Commerce, Nov. 27.

**H. CON. RES. 141 (MENTAL HEALTH)**, expressing the sense of Congress, efforts by mental health practitioners to change an individual’s sexual orientation and gender identity or expression are dangerous and harmful and

should be prohibited from being practiced on minors; SPEIER; to the Committee on Energy and Commerce, Nov. 28.

**H.R. 6611 (MEDICARE)**, to amend Title XVIII of the Social Security Act to promote public notification and provide incentives to reduce drug shortages, and for other purposes; CASSIDY; jointly, to the committee on Energy and Commerce and Ways and Means, Nov. 29.