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# SPECIAL REPORT: THE DEBT CEILING AGREEMENT AND HEALTH CARE POLICY

## Introduction

With the debt ceiling crisis averted with just hours to spare before the nation's first-ever default, Washington policy makers will now move on to the hard work of actually determining how to implement the spending cuts called for in the Budget Control Act (P.L. 112-25), the bipartisan agreement that was signed into law by President Obama on August 2.

## Bipartisan Debt Ceiling Agreement

The Budget Control Act requires that the new *Joint Select Committee on Deficit Reduction*, known as the "Super Committee," make its recommendations for spending cuts totaling between $1.2 trillion and $1.5 trillion over the next decade by November 23, and for Congress to approve the cuts by December 23. The twelve members of the Super Committee, equally divided into groups of three members of each party from both chambers, are required to be named by the four leaders of the House and Senate no later than August 16, giving them just over three months to develop their recommendations. The Budget Control Act requires reductions in discretionary spending for FY12 totaling $7 billion.

Should the Super Committee fail to meet their November 23 deadline, or should Congress fail to enact the bipartisan, bicameral committee recommendations by December 23, an enforcement mechanism, or trigger – known as "sequestration" – will automatically make $1.2 trillion in across-the-board spending cuts. Half of these cuts will be allocated to defense, and half to non-defense spending, while also allowing the President to further increase the debt ceiling by $1.2 trillion. There are exemptions—across the board cuts would apply to Medicare providers, but not to Social Security, Medicaid, Medicare beneficiaries, civil and military employee pay, or veterans. In addition, the across-the-board cuts would apply to mandatory and discretionary spending in the years 2013 to 2021 and be in an amount equal to the difference between $1.2 trillion and the amount of deficit reduction enacted from the joint committee.

## Annual Appropriations Process

The process for identifying spending reductions will begin almost immediately, with the first hurdle being the Fiscal Year (FY) 2012 appropriations process, which is already underway. It is fair to say that the new norm for congressional appropriations is no longer for the House and Senate to each pass twelve spending bills as stand-alone measures as we all learned in Government 101. Instead, we are almost assured of seeing a series of Continuing Resolutions (CRs) funding the government for short periods of time once FY12 begins on October 1, with the ultimate funding bill likely being an “Omnibus” spending measure, under which everything will be on the table for consideration. Look for the CR, or, more likely, multiple CRs, to extend through these dates with the final Omnibus not being approved until the very end of the year, or even early in 2012.

Prospects for the FY 2012 Labor-HHS Appropriations bill as a standalone vehicle are murky. The House Appropriations Labor, Health and Human Services, Education, and Related Agencies Subcommittee planned a mark-up for late July but postponed it during the debt ceiling talks. House Republican aides indicate that the committee intends to go through the normal process with action in September, but no official notice has gone out yet. In the Senate, action on a bill might not take place until later this year.

Finally, the Labor-HHS Appropriations bill (and frankly the entire appropriations process) is also particularly susceptible to policy “riders”. This will be particularly true this year, when there appears to be fewer legislative trains leaving the station. The policy riders that may be attached to the Labor-HHS bill include, but are not limited to, language regarding abortion policy or defunding all or parts of the health reform law. As in most years, it is hard to see how all of the riders would survive, but we could see moderate Democrats, especially those up for reelection, joining with Republicans in arguing that we need to include some specific policy riders that incorporate popular political trends.

**Health Care Policy Implications**

Everything is on the table when it comes to what cuts can be considered by the Super Committee, and cuts in health care programs are inevitable regardless of whether the Super Committee is able to reach a deal or not. Even the underlying Budget Control Act itself singled out and incorporated program integrity provisions designed to further strengthen fraud and abuse prevention programs in the Medicare, Medicaid, and CHIP programs, a strong indicator of the desire by lawmakers to get costs in those programs under control. Medicare, Medicaid, and CHIP consumed approximately 21 percent of our nation’s expenditures in 2010 with Medicare accounting for two-thirds of that spending – more than defense and more than Social Security. And according to the Congressional Budget Office, due to a number of factors, Medicare annual spending alone is set to skyrocket to nearly $1 trillion by 2021. However, especially since health care programs remain political lightening rods, and given the diversity of interests among health care stakeholders, what programs will be cut, and under which scenarios these cuts will be made, continue to dominate the debate.

Until the Super Committee is named (again, the Budget Control Act requires this by August 16), it is very difficult to speculate what approach the gang of 12 Members will take on health care. Some of the initial speculation (and this is by no means comprehensive) has centered on the following: (1) gradually increasing the Medicare eligibility age, potentially from 65 to 67; (2) restructuring Medicare benefits (increasing co-pays and deductibles); (3) requiring new rules imposing restrictions on how much Medigap plans can cover; (4) raising Medicare Part B premiums; (5) cutting hospital payments for bad debts; (6) Medicaid “blended” matching rate; (7) drug rebates for Medicare-Medicaid “dual eligibles”; and (8) repeal of the CLASS Act.

Which members are named to the Super Committee could largely determine the path of any deal and the eventual probability of consensus within the Committee. There have been numerous proposals already put forward to reform health care spending ranging from House Budget Committee Chairman

Paul Ryan's (R-WI) Medicare proposal to the bipartisan "Gang of Six" Senate proposal. There are some items that could generate bipartisan support, such as program integrity provisions and some attempt to increase cost-sharing, that are very likely to be included in some form. There are other items, however, such as proposals to convert Medicare to a "premium support" subsidy program, which will be non-starters for Democratic Members.

Before determining what to cut, it is likely that the Super Committee will determine how much it will need to glean from health care. The Coburn-Lieberman Medicare proposal identified $600 billion in cuts, but most observers believe that any proposal with such a large amount would face a nearly impossible task of attracting broader bipartisan compromise. Some observers believe that the Super Committee will be aiming for a number around $300 billion, and even those people express skepticism that the Committee will be able to reach a deal with that target. Outside of Medicare, Medicaid and CHIP, other programs are sure to be touched, but any savings or cuts to those programs will amount to mere rounding errors of the savings they need to find in the big three.

If the Super Committee fails to reach consensus or Congress fails to pass the plan devised by the Super Committee, sequestration will kick-in. In this scenario, the White House Office of Management and Budget would oversee across-the-board cuts in federal government spending. For health care spending, the most significant number would be a 2 percent cut in Medicare spending (to Medicare providers and insurers, not beneficiaries) over ten years from 2011 baselines as calculated by the Congressional Budget Office. According to those baselines, cuts to the program would amount to less than $200 billion. In that scenario, the cuts are certain to be more evenly spread out. However, that also means that popular programs that might have been immune from the Super Committee might also be impacted. In addition, this type of across-the-board approach could touch aspects of the recent health care reform law set to get into effect in 2014 such as subsidies to purchase insurance on the insurance exchanges. It is possible for the Super Committee to enact a deficit reduction package, with some savings in health care entitlement programs, valued at less than $1.2 trillion and then to make up the rest of the required savings via the sequestration process according to the ratios determined in the Act. In this scenario, health care programs could get hit at a total amount more than $200 billion. However, many observers rate this possibility as an unlikely outcome politically due to a variety of complicating factors and believe that the Super Committee is facing an "all or nothing" endeavor.

Until the Super Committee has been named and negotiations are underway, it is hard to speculate with any degree of accuracy the exactly policy implications of the debt deal for health care and which of the various scenarios is mostly likely to play out. One thing is certain, though: everything is on the table. With so many different scenarios and so much uncertainty, groups representing a variety of interests are sure to engage to lobby hard to protect their interests in the face of one of the most powerful Congressional Committees ever created – and a measure of victory may be who gets cut the least.

## Conclusion

Clearly, there are a lot of factors that are unknown at this point, but there is going to be a lot of give and take on federal programs and tax incentives, making it imperative that interested stakeholders work with decision makers on Capitol Hill to ensure that their priorities are taken into consideration. With so much at play at one time, there are going to be multiple winners and losers. Notably, this new era of austerity does not appear to be shaping up to be a period of decreased activity on Capitol Hill as the focus looks to be broadening from simply cutting spending to working to find ways for the federal government to operate more efficiently with the limited dollars and resources available.