



**ML**  
STRATEGIES

**Tom Koutsoumpas**, TKoutsoumpas@mlstrategies.com  
**Jeremy Rabinovitz**, JRabinovitz@mlstrategies.com  
**Alexander Hecht**, AHecht@mlstrategies.com  
**Kevin M. Kappel**, KMKappel@mlstrategies.com  
**Benjamin J. Schorr**, BJSchorr@mlstrategies.com

**ML Strategies, LLC**  
701 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004 USA  
202 434 7300  
202 434 7400 fax  
www.mlstrategies.com

## **HEALTH CARE REFORM UPDATE**

### **August 1, 2011**

#### Leading the news

After months of negotiations and various failed proposals, President Obama, House Speaker John Boehner, Senate Majority Leader Harry Reid, and Senate Minority Leader Mitch McConnell announced late on Sunday, July 31<sup>st</sup>, that they had reached an agreement to raise the federal government's debt ceiling, just two days ahead of the deadline set by Treasury Secretary Geithner in order to avoid the nation's first ever default. Below is a brief overview of the agreement.

#### **Immediate Increases to Debt Ceiling**

If approved by the House and Senate, the agreement allows an increase in the debt ceiling of \$900 billion, with an initial increase of \$400 billion, which will be enough for the federal government to meet its obligations through September. The second increase of \$500 billion, to come later this Fall and enabling Treasury to meet its obligations through early next year, will be subject to a resolution of disapproval by Congress, but that resolution can be vetoed by the president and it would require two-thirds majorities in both the House and Senate to override the veto.

#### **Spending Reductions**

Initial spending cuts will total \$900 billion spread out over the next decade, with discretionary spending for Fiscal Year 2012 reduced by \$7 billion, and Fiscal Year 2013 by \$3 billion. National security spending accounts for approximately half of these reductions, and would affect the Department of Defense, the Department of Homeland Security, the Department of Veterans' Affairs, the National Nuclear Security Administration, the intelligence community management account, and all accounts under international affairs.

#### **Creates Bicameral "Super Committee"**

The agreement creates a twelve-member *Joint Select Committee on Deficit Reduction* with members evenly divided among Democrats and Republicans and appointed by Speaker Boehner, Minority Leader Pelosi, Majority Leader Reid, and Minority Leader McConnell

The committee will be charged with recommending deficit reduction measures, which could include entitlement and tax reform, for Fiscal Years 2012 through 2021 totaling at least \$1.2 trillion, but as much as \$1.5 trillion, by

**November 23.** These cuts are to be evenly distributed between domestic and defense spending. The committee recommendation, once made, cannot be amended or filibustered, and must be approved by **December 23.**

The agreement requires Congress to vote on a balanced budget amendment to the constitution sometime between October 1 and the end of the year and sent to the states for ratification. If that happens, the president can increase the debt ceiling by another \$1.5 trillion.

Alternatively, if the spending reductions recommended by the Super Committee total between \$1.2 trillion and \$1.5 trillion, the president can again increase the debt ceiling by that amount. This increase is subject to a resolution of disapproval by Congress that can be vetoed by the president. It would require a two-thirds majority of the House and Senate to override the veto.

The balanced budget amendment provision had been included in Speaker Boehner's proposal late last week when it looked like he didn't have the votes to ensure passage, and is credited with winning over enough Republican votes to ensure passage of the bill that ultimately failed in the Senate.

### **Enforcement Mechanism (trigger)**

Should Congress fail to enact the bicameral committee recommendation, there is an enforcement mechanism, or trigger, that will automatically make \$1.2 trillion in spending cuts with half allocated to defense, and half to non-defense spending, including Medicare, but not Social Security, Medicaid, veterans, or civil and military pay. The cuts to Medicare will not affect beneficiaries, but are targeted toward healthcare providers and insurance companies, which would see a reduction in payments. These cuts are limited to two percent. The triggered spending cuts would not, however, be implemented until January 2013, just over a year from the December 23 deadline. Any spending cuts resulting from the enforcement mechanism will apply to Fiscal Year 2013 through Fiscal Year 2021. Interestingly, January 2013 is also the month in which the so-called "Bush tax cuts" are set to expire, so any debate resulting from the triggered cuts, and expiring tax cuts, will likely involve a substantial review of tax and entitlement reform.

A failure to enact the recommendations of the Super Committee by December 23 would also allow the president to further increase the debt ceiling by \$1.2 trillion. As with the \$500 billion increase expected later this year, the Congress can vote on a resolution of disapproval of the \$1.2 trillion increase, but it would also require a two-thirds majority to override a presidential veto.

### Implementation of the Affordable Care Act (ACA)

On July 26<sup>th</sup> the conservative Thomas More Law Center submitted a petition to the Supreme Court asking it to overturn an earlier decision by the 6<sup>th</sup> Circuit Court of Appeals upholding the constitutionality of the ACA. The petition is the first petition in the cases challenging the ACA to make it to the Supreme Court. A copy of the petition can be found [here](#).

On July 28<sup>th</sup> the Center for Consumer Information and Insurance Oversight (CCIIO) posted its grant announcement for the Consumer Operated and Oriented Plan (CO-OP) program. The announcement makes 51 awards available to set up nonprofit insurance coverage organizations. These applications are due by Dec. 31, 2012. More information on the announcement can be found [here](#).

On July 28<sup>th</sup> Sen. Orrin Hatch (R-UT), the Ranking Member of the Senate Finance Committee, made a statement following the release of the annual CMS report on national health expenditures for 2010. In his statement, Sen. Hatch cited the CMS data to claim that the ACA is the driver behind continually increasing health care costs over the next decade. The Senator's statement can be found [here](#). More information on the national health expenditures data from CMS can be found [here](#).

On July 29<sup>th</sup> HHS announced \$71.3 million in grants to expand nursing education, training, and diversity. These workforce development programs were reauthorized under the ACA and are administered by HHS' Health and Resources and Services Administration. The programs address training and education from entry level nurses through advanced practice as well as preparation for faculty that will teach the future workforce. More information on these awards can be found [here](#).

On July 29<sup>th</sup> CMS posted the final rules for payment rates for hospices, skilled nursing facilities, and inpatient rehabilitation facilities. The final rule issued for hospices will set forth the hospice wage index for fiscal year (FY) 2012 and continue the phase-out of the wage index budget neutrality adjustment factor (BNAF) in addition to changing the hospice aggregate cap calculation methodology. Overall, the rule implements a 2.5% increase in hospice payments and can be found [here](#). The final rule for skilled nursing facilities updates the payment rates used under the prospective payment system for skilled nursing facilities (SNFs) for FY 2012 in addition to discussing the impact of certain provisions of the ACA. Ultimately, the rule reduces SNF pay by 11.1%, or \$3.87 billion in FY 2012 and can be found [here](#). Immediately after a number of nursing home groups blasted the rule claiming that it would reduce the ability of these companies to provide quality care. A statement of the American Health Care Association (AHCA) can be found [here](#). The final rule for inpatient rehabilitation facilities will implement section 3004 of the ACA, which establishes a new quality reporting program that provides for a 2 percent reduction in the annual increase factor beginning in 2014 for failure to report quality data to the Secretary of Health and Human Services. The final rule on inpatient rehabilitation facilities can be found [here](#).

#### Other HHS and Federal Regulatory Initiatives

On July 25<sup>th</sup> the FDA issued a report from its Center for Drug Evaluation and Research (CDER) identifying the current science needs that will guide CDER's strategic planning of internal research initiatives and the contributions to the development of the agency's regulatory science efforts. More information on the report can be found [here](#).

On July 26<sup>th</sup> the FDA issued draft guidance that would clarify when exactly modifications to a previously cleared device would need a new premarket submission to comply with regulations. More information on the draft guidance can be found [here](#).

On July 27<sup>th</sup> Colorado Governor John Hickenlooper (D) headlined the White House and HHS Faith-Based conference in Denver, Colorado. The event was part of a series of Connecting Communities for the Common Good interactive conferences that are working to support organizations doing critical work in communities around the country. More information on this event can be found [here](#).

On July 29<sup>th</sup> the Institute of Medicine released a much-anticipated report on the FDA's 501 (k) medical device review program. Immediately after, the FDA announced that it will open a public docket to begin taking public comments on the report. While none of the IOM recommendations are binding, the FDA plans to hold an event to discuss the recommendations made in the report. The report can be found [here](#), and more information on the FDA announcement can be found [here](#).

#### Other Congressional and State Initiatives

On July 26<sup>th</sup> the House Energy & Commerce Subcommittee on Health passed a bill reauthorizing the Children's Graduate Medical Education Program. The program was eliminated in President Obama's FY 2012 budget released in February. The bill authorizes the program at current levels of \$330 million over five years.

On July 26<sup>th</sup> Sen. Frank Lautenberg (D-NJ) and Rep. Carolyn Maloney (D-NY) introduced companion bills that would prevent pharmacies from denying the sale of contraceptives because of the employee's religious beliefs. Recently, the Institute of Medicine (IOM) released a report saying contraceptives should be made widely available without co-pays. The next day, 83 House members signed a letter to HHS Secretary Kathleen Sebelius

to adopt the IOM's recommendation to require coverage of contraceptives without co-payments in all new health plans. The text of the legislation can be found [here](#). The letter from the House members to Secretary Sebelius can be found [here](#).

#### Other Health Reform News

On July 25<sup>th</sup> the Associated Press reported that London Research firm EvaluatePharms Ltd. Has found that there is an upcoming wave of expiring drug patents on drugs with about \$255 million in global annual sales. The generic versions of these drugs will come in the next 14 months. More information about these expiring patents can be found [here](#).

#### Hearings scheduled

##### *Senate*

On Tuesday, August 2<sup>nd</sup> at 10:00 a.m., in room 430 of the Dirksen Senate Office Building the Senate HELP Committee will hold a hearing entitled, "Health Overhaul and Insurance Premiums."

On Wednesday, August 3<sup>rd</sup> at 10:00 a.m., in room 215 of the Dirksen Senate Office Building the Senate Finance Committee will hold a hearing entitled, "Dually-Eligible Beneficiaries."