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How the “Supercommittee” can cut spending & roll back Obamacare

The 2011 Debt Crisis ended with a compromise that gave us the “Joint Select Committee on Deficit Reduction”—better known as the “Supercommittee.” The Supercommittee has been charged with recommending to Congress \$1.5 trillion of budget savings over ten years. Congress will then have to vote on the recommendation up or down and will not be able to block it with a filibuster or other procedural mechanisms.¹ If approved by Congress, the President will then have the option to sign or veto the bill.

But, if Congress and the President cannot agree to a proposal that saves at least \$1.2 trillion dollars by December 23, 2011, an automatic \$1.2 trillion cut in federal spending will be triggered.²

What, then, could the Supercommittee cut out of Obamacare to help meet their \$1.5 trillion dollar target? Here are a few suggestions:

PCIP

First, Congress should eliminate the unsuccessful Pre-existing Condition Insurance Program. The program was expected to spend all of the \$5 billion dollars allotted to it in the Affordable Care Act. But by April 2011 it had only spent 2% of that amount (or \$104 million).³ (See “Obamacare Recap” on page 2.)

Congress should freeze enrollment in the program and ask for the return of the more than \$4 billion that has yet to be spent.

Health Insurance Subsidies

Obamacare will pay a portion of the health insurance of individuals who make between 133% and 400% of the Federal Poverty Line (which equals up to \$89,400 for a

Another Quirk of Obamacare

In our very first comment to the Obama Administration on the Affordable Care Act we criticized the Secretary of Health and Human Services, Kathleen Sebelius, for defining the word “dependent” in a way that renders the word meaningless.

Obamacare requires that insurance plans that offer dependent coverage of children must continue to offer such insurance to those children until they reach the age of 26. Obamacare charged the Secretary of HHS with “defin[ing] the dependents to which coverage shall be made available.”

You would expect that no matter how Sebelius chose to define “dependent,” the definition would have to exclude those no longer dependent. Not so. Under Sebelius’s definition you can be independently wealthy and working and living on the other side of the country, but, if you are under 26, your parents’ insurance must cover you.

There is a quirky limited exception to this rule: After 2014, if your parents have a grandfathered plan, you won’t be able to stay on it if you’re qualified to get insurance from your employer—even though before 2014 such plans must cover such dependents.

¹ A plan that existed before the passage of Obamacare and essentially has not changed since.



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Supercommittee Cuts (continued)

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family of four⁴), if that individual has to pay more than 9.5% of his or her income on health insurance.⁵

Some fear that this will encourage businesses to drop their insurance benefits and let the federal government pay for it instead. Even with the penalty that such employers would be fined, it may still be advantageous for some employers to drop employees' health insurance under Obamacare.

How much will repealing these subsidies save American taxpayers? Approximately **\$464 billion**.⁶

CO-OPs

Congress has already trimmed the Consumer Operated and Oriented Plan (CO-OP) program from to **\$3.8 billion** from the original \$5 billion Obamacare had budgeted for it. Now Congress should eliminate this program entirely. The program was created to foster startup non-profit, beneficiary-run health insurance plans called CO-OPs by issuing loans to them as startup capital for operating expenses and reserves. But starting a health insurance plan from scratch is extremely difficult. Even the Obama Administration is expecting 35-40% of those seeking these loans to default.⁷

CLASS Act

Sen. Kent Conrad (D-ND), an Obamacare supporter, called the Community Living Assistance Services and Supports (CLASS) program “a Ponzi scheme of the first order, the kind of thing Bernie Madoff would be proud of.”⁸ Even the Obama Administration has admitted that it cannot remain solvent in its current form calling it “Totally unsustainable.”⁹ (see Obamacare Recap below.) We will be watching for a report HHS has said it will issue in October detailing its analysis of the sustainability of CLASS.¹⁰

If the members of the Supercommittee are short-sighted, they will only notice that CLASS actually “saves” \$86 billion dollars over 10 years.¹¹ But that is only because it will take in premiums but not pay any benefits for at least five years. In the long run, CLASS will only add to the \$14+ trillion the United States already owes. CLASS needs to be repealed now before it takes on beneficiaries.

¹ Budget Control Act of 2011, P.L. 112-25 (August 2, 2011).

² *Id.* at § 302

³ U.S. Government Accounting Office, “Pre-Existing Condition Insurance Plans: Program Features, Early Enrollment and Spending Trends, and Federal Oversight Activities, GAO-11-662 (July 27, 2011) available at <http://www.gao.gov/new.items/d11662.pdf>.

⁴ Annual Update of the HHS Poverty Guidelines, 76 Fed Reg. 3,647-3,638 (Jan. 20, 2011).

⁵ *Health Insurance Premium Tax Credit*, Notice of proposed rulemaking and notice of public hearing, 76 Fed. Reg. 50,931, 50,935 (Aug. 17, 2011).

⁶ Letter from Douglas W. Elmendorf, Director, Congressional Budget Office, to Nancy Pelosi, Speaker of the House, U.S. House of Representatives (March 18, 2010) at page 2 of Table 2, available at <http://www.cbo.gov/ftpdocs/113xx/doc11355/hr4872.pdf>.

⁷ 76 Fed. Reg. 43,237, 43,246 (July 20, 2011).

⁸ Republican Policy Committee, *CLASS' Untold Story: Taxpayers, Employers, and States on the Hook for Flawed Entitlement Program* (Sept. 2011) available at <http://energycommerce.house.gov/media/file/pdfs/class/classuntoldstoryreport.pdf>.

⁹ *Id.*

¹⁰ Kathy Greenlee, Assistant Secretary of Aging, HEALTHCARE.GOV HEALTHCARE BLOG, *The CLASS Program* (Sept. 28, 2011) <http://www.healthcare.gov/blog/2011/09/class09282011a.html>.

¹¹ Letter from Douglas W. Elmendorf, Director, Congressional Budget Office to John Boehner, Speaker of the House, U.S. House of Representatives (Feb. 18, 2011) at page 5 available at <http://www.cbo.gov/ftpdocs/120xx/doc12069/hr2.pdf>.

Obamacare Recap

It is now one and a half years since the passage of Obamacare. The more the Obama Administration implements Obamacare and the more Americans discover what it actually contains, the more we realize how disastrous it is.

Just last month Milliman, Inc. issued a report for the Ohio Department of Insurance that estimates Obamacare will cause individual health insurance premiums in Ohio to increase by 55-85%. Milliman also calculates that Ohio's health insurance exchange (now called “Affordable Insurance Exchanges” by the Obama

Administration) will cost between \$19 million and \$34 million per year, to operate.

A health insurance exchange is an online marketplace for health insurance—just like Expedia® and Orbitz® are online marketplaces for the airline and hotel industries. Every state must be on track to have their own exchange set up by 2014—otherwise, the federal government will be required to run an exchange for that state. As running an exchange is a substantial undertaking, the Obama Administration is working very hard and somewhat unsuccessfully to encourage states to start their own

Obamacare Recap (continued)

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health insurance exchanges. With only 13 states having passed exchange legislation into law, there's a good chance the federal government will have to run a significant number of state exchanges.

Obamacare gives the state exchanges the authority to issue subsidies to assist some people with paying for their health insurance. But a federally-run exchange, due to a glitch in the Obamacare statute reported by *Investor's Business Daily*, does not have the statutory authority to issue such subsidies. Perhaps unsurprisingly, the Administration has ignored the plain text of the statute and is proceeding as if both state and federal exchanges can offer subsidies. If the federal government continues to exceed its authority and provides people with health care subsidies it will mean tens of millions of additional taxpayer funded expenditures.

Then there's the high-risk pools. Due to pre-existing conditions, many individuals find it difficult to find health insurance. A high-risk pool is an insurance plan for people who cannot obtain health insurance elsewhere because of their pre-existing conditions. Obamacare sets aside \$5 billion to subsidize high-risk pools called "Pre-Existing Condition Plans" in every state. While early estimates predicted that the program would quickly run out of money, the program has instead been unsuccessful in attracting people who were presumed to be the most in need.

According to a July 2011 Government Accounting Office report, through April 2011, a mere 21,454 people (far fewer than was estimated at the outset of the program) have applied for the high-risk pool at a cost of \$104 million. This raises the obvious question of whether there actually was a great need for the federal government to intervene by creating high-risk pools? If this need was so acute, then why have so few participated?

States continue to petition the Obama Administration for waivers from Obamacare's Medical Loss Ratio (MLR). The MLR requires insurers to spend a predetermined percentage of premiums, typically 80-85%, on "health benefits." This harms consumers in two ways.

First, it jeopardizes not only the livelihoods of health insurance agents but also their ability to help their clients navigate the complex and confusing arena of health insurance. The Medical Loss Ratio is calculated in a way that has forced insurance companies to drastically cut commissions it pays to insurance agents and brokers. In fact some commissions have been cut by as much as 20-50%. Where agents are able to

remain in business, they are not able to provide the same level of education to their customers about the health insurance options available to them. This leaves consumers without the necessary knowledge to effectively choose the right health insurance policy for them.

Second, it increases costs by reducing competition. For instance, the state of Maine, asked the Obama Administration for a waiver from the Medical Loss Ratio. The state said that without a waiver the MLR would force one of its two health insurers who offer individual health insurance policies out of the market—thus creating a virtual monopoly. Maine's waiver was granted, demonstrating that the Obama Administration itself agreed that the impact of Obamacare would be to create a health insurance monopoly in the state.

Ironically, Nevada, home state of Obamacare proponent Senator Harry Reid, also asked for a waiver which was granted, in part, because it also expected insurance carriers to withdraw from the market place. In order for a state to get a waiver from the Medical Loss Ratio, a state must certify that the MLR would destabilize their individual health insurance market. So, far 16 other states have asked for a waiver. Of those, five requests have been approved (Maine, New Hampshire, Iowa, Kentucky, and Nevada).

Think about it this way, to date nearly 1/3rd of the states believe that Obamacare (particularly its MLR requirement) will destabilize their individual health insurance market making it more difficult or more expensive for consumers to obtain health insurance. So far, the Obama Administration has agreed with 5 of those states.

What's Next?

Just on the horizon we're expecting a regulation that will determine how the Department of Health and Human Services will define "Essential Benefits." The Administration has been waiting for a report from the Institute of Medicine which is expected by September 30, 2011. Once insurance companies know which benefits are considered "Essential," we will have a much better idea of how much the socialist experiment called the "Affordable Care Act" will really cost.

At Americans for Limited Government, we are monitoring how the Obama administration is implementing Obamacare with these and other regulations. Please visit our website at ObamacareWatcher.org and submit your own comments on Obamacare regulations.

How to Comment on a Regulation

1. Go to the Regulations page at: ObamacareWatcher.org
2. Choose a regulation.
3. Click on the "Comment Now" link to be directed to the Regulations.gov website.
4. Click "Submit a Comment" which is located towards the top of the page.
5. Fill out the comment form.

Glossary of Agency Abbreviations

- CMS:** Centers for Medicare and Medicaid Services
- DOL:** Department of Labor
- EBSA:** Employee Benefits Security Administration
- FDA:** Food and Drug Administration
- HHS:** Department of Health and Human Services
- IRS:** Internal Revenue Service
- OIRA:** Office of Information and Regulatory Affairs

Regulations Open for Comment

Summary of Benefits and Coverage and Uniform Glossary— Templates, Instructions, and Related Materials Under the Public Health Service Act
RIN: 0938-AQ73 **Agencies:** IRS; EBSA-DOL; HHS-CMS

Status: Notice of proposed rulemaking. Public comments accepted through October 21, 2011.

State Requirements for Exchange--Reinsurance and Risk Adjustments
RIN: 0938-AR07 **Agency:** HHS-CMS

Status: Proposed Rule. Public comments accepted through October 31, 2011 at 5pm.

Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Proposed Rule
RIN: 0938-AQ67 **Agency:** HHS-CMS

Status: Proposed Rule. Public comments accepted through October 31, 2011 at 5pm.

Medicaid Program; Eligibility Changes Under the Affordable Care Act of 2010
RIN: 0938-AQ62 **Agency:** HHS-CMS

Status: Proposed Rule. Public comments accepted through October 31, 2011 at 5pm.

Exchange Functions in the Individual Market: Eligibility Determinations; Exchange Standards for Employers; Proposed Rule
RIN: 0938-AR25 **Agency:** HHS-CMS

Status: Proposed Rule. Public comments accepted through October 31, 2011 at 5pm.

Health Insurance Premium Tax Credit

RIN: 1545-BJ82 **Agency:** IRS

Status: Proposed Rule. Public comments accepted through October 31, 2011.

Request for Information Regarding the State Flexibility to Establish a Basic Health Program Under the Affordable Care Act
RIN: 0938-AR03 **Agency:** HHS-CMS

Status: Request for Information. Public comments accepted through October 31, 2011.

Branded Prescription Drug Fee

RIN: 1545-BJ39 **Agency:** IRS

Status: Notice of proposed rulemaking by cross-reference to temporary regulations. Public comments accepted through November 16, 2011.

For the latest status on these and other regulations, visit us at:

<http://ObamacareWatcher.org>

Or follow our Twitter account: [@RegWatch](https://twitter.com/RegWatch)

Upcoming Regulations

Long Term Care: Ethics and Compliance

RIN: 0938-AQ93

Agency: HHS-CMS

Status: Under review by OIRA.

Covered Outpatient Drugs

RIN: 0938-AQ41

Agency: HHS-CMS

Status: Under review by OIRA.

Changes to the Demonstration Review and Approval Process

RIN: 0938-AQ41

Agency: HHS-CMS

Status: Under review by OIRA.

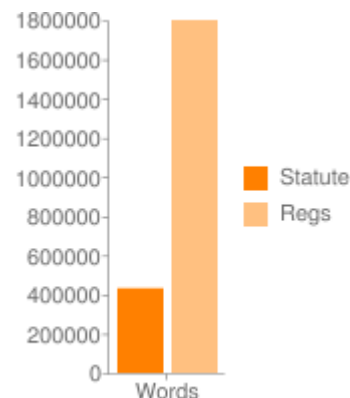
Elimination of the Requirement for Termination of Non-Random Prepayment Complex Medical Review

RIN: 0938-AQ83

Agency: HHS-CMS

Status: Under review by OIRA.

Length of Obamacare Regulatory Documents



OBAMACARE REG WATCHER

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