

The Fiscal Cliff & The Patient Protection & Affordable Care Act

Written by Marilyn M. Singleton, MD, JD
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It's doubtful that the country will be popping bottles of champagne on January 1, 2013—we can't afford it. But we will be throwing confetti printed by the Federal Reserve over a cliff.

As of November 27, 2012, the country's debt was \$16.279 trillion—just \$115 billion below the \$16.394 trillion statutory ceiling. The Treasury predicts that borrowing will reach the current limit near the end of December 2012. Right around the Mayan calendar “end date” of 12-21-12.

Apocalyptic prophecies aside, there are a number of things that are scheduled to expire at the end of 2012. One is the Medicare “Doc Fix,” which postponed until Dec 31 the day that the rates at which Medicare pays physicians will decrease by 27 percent. Another is the “Bush tax cuts.” On January 1, all income tax, estate, and capital gains tax rates will go up substantially, and millions more people will be subject to the Alternative Minimum Tax.

Then there are new taxes, compliments of the Patient Protection and Affordable Care Act (PPACA or ObamaCare), some of which take effect in 2013. These include the Medicare surtax on so-called millionaires and billionaires, i.e., individuals making more than \$200,000 a year (\$250,000 if married), and a new 3.8% tax on capital gains and dividends, interest, and other passive income. The now infamous penalty-that-is-really-a-tax kicks in for those who don't buy government-approved health insurance in 2014. Another revenue-raising measure is a cap of \$2,500 on previously unlimited Flexible Spending Accounts. This discourages Americans from taking personal responsibility for medical spending instead of relying on third-party payments.

And January 2 could ring in sequestration, that is, automatic budget cuts. The Budget Control Act of 2011 (BCA) authorized the President to increase the debt ceiling by \$2.1 trillion in exchange for some \$917 billion in cuts, from 2012 to 2021, in “discretionary”—that is, nonentitlement—programs such as defense, education, national parks, the FBI, the EPA, low-income housing assistance, medical research, and many others. Unless Congress and the President agree to modify or repeal the BCA, spending reductions of some \$109 billion per year with half coming from defense budget and half from nondefense are triggered. Sequestration for Medicare payments to health care providers and health plans is limited to 2%.

The President does not want cuts to his signature law, the inappropriately named Patient Protection and Affordable Care Act (PPACA). It is, however, a financial disaster. The

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Congressional Budget Office (CBO) has projected a cost of \$1.4 trillion over 10 years, but if we look at history, such projections are meaningless. In 1967, the House Ways and Means Committee said Medicare would only cost \$12 billion in 1990. The actual cost was \$110 billion. In 2010, total Medicare expenditures were \$523 billion. Medicare spending has been forecasted by the CBO to increase to \$922 billion in 2020.

Just the IRS and HHS costs to implement the PPACA, \$20 billion over 10 years, exceed the House's initial estimate for all Medicare spending. And how can we afford a vast new entitlement when the CBO admits in an Oct 1 report, CRS Report R41390, that "even maintaining current funding levels for existing programs with an established appropriations history may prove a challenge under growing pressure to reduce federal discretionary spending."

In the PPACA, there are about 100 new programs with noble-sounding names or goals: for example, the program to facilitate shared decision making, culture change (to patient-centered care), the Elder Justice Coordinating Council, the Offices of Minority Health, and the Offices on Women's Health. But none have been evaluated for effectiveness before we start pouring money into them. Under the circumstances, I think we should add more funds to the newly minted Centers of Excellence for Depression.

Fortunately, the PPACA's discretionary provisions are subject to the congressional appropriations process, which can potentially defund a program. Additionally, appropriations are needed for administrative costs associated with even exempt programs. Thus, Congress has the power to back off from the PPACA contribution to the cliff, if it has the will to do so.

The cliff, however, is not going away. Cliff diving, anyone?

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