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The House Budget Committee this week approved legislation that merges separate proposals from the Ways and Means Committee and the Energy and Commerce Committee to repeal and replace key pieces of the Patient Protection and Affordable Care Act of 2010 (PPACA). The Budget Committee’s action sets the stage for a House floor vote on the combined bill – formally known as the American Health Care Act (AHCA) – as early as the week of March 20. (Some late-breaking press reports suggest the vote could take place on March 23.)

But doubts remain as to whether the legislation can pass both chambers of Congress in its current form. Opposition from conservative Republicans, who see the AHCA as a watered-down version of present law, appears to continue unabated; and the release this week of an official revenue estimate from the Congressional Budget Office (CBO) has stiffened opposition from more moderate lawmakers who are concerned about the impact of the bill on older and less affluent individuals.

Overview

The revenue title of the American Health Care Act, which the Ways and Means Committee approved in a party-line vote on March 9, calls for reducing the penalties under the PPACA’s individual and insurer mandates to zero, repealing most of its tax offsets targeted at businesses and wealthier individuals, and eliminating its income-based tax credits to subsidize the purchase of health insurance coverage for lower-income individuals. Those provisions would be replaced with a system aimed at facilitating the purchase of health insurance on the individual market through age-adjusted

refundable tax credits and liberalized rules for tax-favored health savings accounts. (For prior coverage of the Ways and Means mark-up, see *Tax News & Views*, Vol. 18, No. 9, Mar. 10, 2017. An updated side-by-side comparison of tax provisions in the PPACA and the AHCA is available from Deloitte Tax LLP.)

URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170310_1.html

URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170317_1suppA.pdf

The nonpartisan CBO's official revenue score for the bill, which was released March 13, indicates that it would, on net, trim deficits by \$337 billion over the next decade (the 2017-2026 budget window) due mainly to the plan's significant reductions in Medicaid spending and its repeal of the PPACA's premium assistance tax credits. The CBO report also estimates that the legislation would increase the number of uninsured individuals by 24 million by 2026, and that average premiums would rise significantly in 2018 and 2019 but decline thereafter. According to the CBO, older individuals likely would see the greatest spike in premiums, thanks to changes in age-rating rules in the House bill that generally would permit insurers to charge five times more for older enrollees than younger ones (rather than three times more under current law).

URL: <https://www.cbo.gov/publication/52486>

House Republicans scrambling for a majority

The tax and nontax titles cleared their respective committees (Ways and Means and Energy and Commerce) with unanimous Republican support. The first official indication of Republican resistance to the combined bill came during the March 16 Budget Committee mark-up, when three conservatives – Reps. Dave Brat of Virginia, Gary Palmer of Alabama, and Mark Sanford of South Carolina – joined all the panel's Democrats to vote against advancing the measure. The final vote count was 19-17.

Brat was outspoken in the days leading up the mark-up about his dissatisfaction with the leadership-backed measure, and he has emerged as one of the unofficial spokesmen for the 30-member-strong House Freedom Caucus, calling for changes to the legislation.

Dueling concerns: Budget Chairman Diane Black of Tennessee addressed divisions within the GOP head-on in her opening statement at the mark-up: "To my Republican colleagues who have doubts today, I encourage you: Don't cut off discussion. Stay in this effort and help us enhance this proposal by advancing it out of committee and pushing for further conservative reforms," she said.

With a margin of error of just 21 votes when the bill comes to the House floor – and with no Democrats expected to support it – the GOP leadership can't afford to move forward with large groups of Republicans not on board. And the concerns that Black alluded to at the Budget Committee mark-up are mirrored in the larger House Republican Conference.

Many House Freedom Caucus members object to replacing the PPACA's tax subsidies with refundable tax credits, arguing that it simply would create a new tax entitlement. Freedom Caucus Chairman Mark Meadows of North Carolina recently told reporters that 21 of its members are prepared to vote "no" on the bill in its current form.

Elsewhere along the political spectrum, a number of more moderate House Republicans have expressed reservations about the AHCA's proposal to cap the Affordable Care Act's Medicaid expansion beginning in 2020 – concerns that were exacerbated with the release of the CBO report.

According to *The Hill's* health care "Whip List," for example, Rep. Ileana Ros-Lehtinen of Florida has come out against the measure, citing its potential impact on insurance coverage levels in her district; Rep. Tom MacArthur of New Jersey is leaning towards voting no, saying "if we pull the rug out from under the most vulnerable, I can't support that"; and Rep. Charlie Dent of Pennsylvania remains undecided but adds that he "remain[s] concerned . . . about the impact of the Medicaid changes on vulnerable populations, as well as the overall effect of the bill on access to affordable care."

Changes ahead of the floor vote?: House Speaker Paul Ryan, R-Wis., attempted to use the findings in the CBO report to close – or at least narrow – the breach within his conference. In a March 13 press release, he touted the CBO's conclusion that the legislation would reduce the deficit, lower taxes, and make what he called "the most fundamental entitlement reform in more than a generation."

Addressing CBO's estimates of insurance coverage levels, Ryan contended that the legislation would "[give] people more choices and better access to a plan they want and can afford. When people have more choices, costs go down. That's what this report shows. And, as we have long said, there will be a stable transition so that no one has the rug pulled out from under them."

Ryan also reminded his conference that passage of the AHCA is only the first of a three-step process in health care reform. The other two phases include regulatory reforms to stabilize the insurance market and the passage of additional legislation – likely outside of reconciliation – to address GOP priorities such as permitting sales of insurance across state lines and reforming medical liability rules.

But after initially telling his House Republican colleagues that the legislation as first introduced was the only feasible option for moving health care reform through the chamber, Ryan conceded March 16 that there would need to be changes made to garner enough votes. The leadership's challenge now is in determining *which* changes, as those that could sway the more conservative in the party – for example, accelerating the rollback of the PPACA's Medicaid expansion to 2018 (rather than 2020), a proposal backed by the Freedom Caucus – would risk driving more centrist Republicans to vote no; likewise, modifications intended to assuage the concerns of moderates – such as proposals aimed at increasing coverage levels – could alienate conservatives.

Under the rules governing the reconciliation process, the Budget Committee could not make substantive changes to the legislation it received from the Ways and Means and Energy and Commerce committees. Instead, after voting to move the combined bill forward, the committee considered a number of "motions" indicating modifications members would like to see adopted at the next stage in the process, before the bill reaches the House floor.

Several of these motions passed, including recommendations to:

- Allow states to opt for Medicaid "block grants" over "per capita caps," which provide a more limited funding stream;
- Add a work requirement for "able-bodied" Medicaid recipients;
- Modify the proposal's tax credits to provide greater financial assistance to low-income, older Americans that the CBO report says would face higher insurance premiums under the new bill. This motion garnered support from five Democrats in addition to all the committee's Republicans. A similar idea is being floated in the Senate (see additional discussion below).

While not binding, the recommendations are a signal to the Republican leadership and the Rules Committee – which is the final stop for the measure before a floor vote – of potential areas for change.

A narrower margin for error in the Senate

Even if the bill passes the House, it still faces challenges in the Senate, where a similar conservative-versus-moderate dynamic is playing out among Republicans and the margin for error is only two votes. (Because the bill will move under reconciliation protections, it can clear the chamber with only a 51-vote majority rather than the 60-vote threshold that would be required under regular order.)

Conservative Sens. Mike Lee of Utah and Ted Cruz of Texas continue to argue that the "replacement" component in the House bill looks too much like the health care system that Republicans want to repeal. Cruz, along with Republican Sen. Rand Paul of Kentucky, also contends that the optimal approach for Republicans would be to repeal the entire PPACA now and develop a replacement package later.

Conservative Sen. Tom Cotton of Arkansas, who has stated that the House bill cannot clear the Senate without "major changes" and has urged House leaders not to act so quickly, told radio talk show host Hugh Hewitt this week that Speaker Paul Ryan's vision of a three-phase health care reform process is "just political talk."

According to Cotton, any proposed regulatory reforms to the insurance market likely would "be subject to court challenge, and therefore, perhaps the whims of the most liberal judge in America." He also dismissed the notion of "some mythical legislation in the future" to enact additional health care reforms, arguing that any such legislation would likely be moved without reconciliation protections and would never win the level of Democratic support that would be required for the 60-vote supermajority it would need to clear the Senate.

"If we had those Democratic votes, we wouldn't need three steps. We would just be doing that right now on this legislation altogether. That's why it's so important that we get this legislation right....," he said.

For their part, moderate Republican Sens. Rob Portman of Ohio, Dean Heller of Nevada, Lisa Murkowski of Alaska, and Shelley Moore Capito, W. Va., all have spoken out against the proposed timetable for rolling back Medicaid expansion.

Maine Republican Susan Collins, who has previously criticized the House bill's proposed cuts to Planned Parenthood, this week cited the insurance coverage projections in the CBO report as a "cause for alarm" that "should prompt the House to slow down and reconsider certain provisions of the bill."

Possible accord over tax credits?: Another source of disagreement between moderate and more conservative Republicans is the AHCA's proposed transition to a system with refundable tax credits to purchase health coverage based on age rather than income. While the bill includes an income-based phase-out to prevent high-income taxpayers from receiving the credits, some worry the credits do not offer sufficient financial assistance to lower-income taxpayers.

Senate Finance Committee member John Thune of South Dakota told the news site Axios this week that he is working on a proposal that would means-test the credit plans as a way to avoid "creating a new middle-class entitlement" and make the benefit "more progressive."

Conservative lawmakers in both chambers have expressed interest in the proposal. Rep. Mark Meadows of the House Freedom Caucus told reporters March 15 that "it's a prudent thing to take the advanced, refundable tax credit and give it to more of the working poor. ...If they're going to have advanced refundables, that's something I would support."

Trump the dealmaker?

A handful of Senate Republicans have met with House leadership regarding changes they believe are necessary for the bill to get the requisite votes. Sen. John Hoeven of North Dakota said House leadership and the Trump administration both seemed open to the idea of making changes to improve the CBO score during a March 14 closed-door meeting that included House Ways and Means Chairman Kevin Brady, R-Texas, as well as Vice President Mike Pence and Health and Human Services Secretary Tom Price.

Sen. Rand Paul was less optimistic after the meeting, telling reporters "I don't think they'll have any changes or any compromise until they lose a vote."

But in an effort to bring wary Republicans on board, President Trump indicated in various statements over the past week that the bill is open for negotiation. In a March 15 interview with Tucker Carlson on Fox News, Trump characterized the House bill as "very preliminary." When asked about provisions in the measure that appeared inconsistent with his earlier pledge that health care reform would provide "insurance for everybody," Trump replied that "a lot of things aren't consistent. But these are going to be negotiated. We've got to go to the Senate." (For prior coverage of Trump's position on health care reform, see *Tax News & Views*, Vol. 18, No. 3, Jan. 20, 2017.)

[URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170120_1.html](http://newsletters.usdbriefs.com/2017/Tax/TNV/170120_1.html)

House Republican Dave Brat and others have seized on that opportunity.

"We're not stopping it," Brat said to *USA Today* the day before the Budget Committee mark-up. "We're just negotiating. ...Trump's a negotiator, he said go negotiate, so that's what we're going to do."

Two possible modifications being eyed by Trump and House Republican leaders according to March 17 press reports include adjusting the premium tax credits to increase benefits to low-income and elderly individuals and allowing states to impose work requirements on Medicaid recipients.

Byrd in hand: CBO score boosts 'budget reconciliation' plans

On the procedural front, the CBO's estimate that the AHCA would reduce federal deficits by \$337 billion over the next decade provides a boost to Republican plans to move the legislation through Congress under fast-track budget reconciliation protections. (Budget reconciliation, as already noted, generally provides that legislation the follows certain strict budgetary and procedural rules can be approved by a simple majority in both chambers, making it a

potentially powerful tool for Republicans, who control 52 seats in the Senate, 8 shy of the 60 votes normally required to advance legislation in that chamber under regular order.)

Among the procedural and budgetary rules governing the reconciliation process – sometimes collectively referred to as “Byrd Rules,” named after the late Sen. Robert Byrd, D-W.Va. – are a prohibition against legislation that would increase the deficit in any year beyond the budget window (which is typically 10 years) and a separate rule designed to block provisions that are deemed to have no effect on the federal budget, or whose effect is “merely incidental” to the underlying policy. These two budgetary restrictions on the reconciliation process have been codified into law and apply on a provision-by-provision basis. They are enforced through points of order, which can be waived in the Senate with a three-fifths majority (that is, generally 60 votes); but because Democrats are not expected to lend any support to the PPACA repeal-and-replace effort, compliance with these rules is in essence a prerequisite for passage of the AHCA.

With respect to the Byrd Rule against long-term deficit increases, the AHCA appears to be in the clear. In addition to noting that the bill would reduce deficits over the 10-year budget window, the CBO analysis states that the bill “would not increase on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2027” – a potentially good sign for Republicans in their drive to avoid a Democratic filibuster.

Implications for amendments: It is worth noting, however, that the Byrd Rule restrictions will apply throughout Congress’s consideration of the bill. Thus, if the AHCA is amended in a way that increases its costs – for example, by relaxing the plan’s Medicaid cuts to mollify the concerns of certain moderate Republicans – the rule prohibiting long-term deficit increases could theoretically come back into play. Also to be seen is whether the Senate parliamentarian exposes any provisions of the AHCA to a point of order on the grounds that the provision has no impact or only an incidental impact on the budget. That process will unfold once the Senate takes up a House-passed bill.

White House spending plan calls for IRS cuts

In other developments this week, President Trump released a preliminary fiscal year 2018 spending plan on March 16 that, among other provisions, calls for a \$239 million cut in funding for the Internal Revenue Service (compared to the annualized levels in the fiscal 2017 continuing resolution).

URL: https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/amendment_03_16_18.pdf

The proposed reduction appears to stand in contrast to the position of Treasury Secretary Steven Mnuchin, who stated during his confirmation hearing before the Senate Finance Committee in January that beefing up the Internal Revenue Service budget for staffing and information technology could enhance the agency’s revenue collection efforts and address the so-called “tax gap,” that is, the difference between the amount of taxes owed to the government and the amount actually collected.

In a statement provided to *Politico*, however, Ways and Means Committee Chairman Kevin Brady suggested that the House’s proposed health care reform legislation would help blunt the impact of the funding cut by dismantling PPACA initiatives that the agency currently administers.

“Our health care bill actually takes responsibilities off the IRS’s plate. Not only do we eliminate the individual and employer mandate penalties, we also designed our tax credit based on age and family size – qualifications that are much easier to verify. Additionally, our tax reform blueprint will help ensure the IRS finally focuses on the right priorities,” Brady said.

The budget release does not include tax policy proposals. Those will be addressed in the comprehensive budget blueprint that the administration expects to send to Capitol Hill later in the spring.

— Alex Brosseau, Michael DeHoff, Jacob Puhl, and Storme Sixeas
Tax Policy Group
Deloitte Tax LLP

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