RSC Republican Study Committee
REP. TOM PRICE, M.D. (R-GA), CHAIRMAN
PAUL TELLER, EXECUTIVE DIRECTOR
424 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
rsc.price.house.gov
ph (202) 226-9717 / fax (202) 226-1633

March 21, 2010

Manager's Amendment and Rule for H.R. 4872—"Health Care and Education Affordability Reconciliation Act of 2010" and H.R. 3590 – "Patient Protection and Affordable Care Act"

Order of Business: The bill is scheduled to be considered on Sunday, March 21, 2010. The rule provides for two separate votes. The first vote would be on the motion to concur with the Senate amendments to the "Patient Protection and Affordable Care Act" (H.R. 3590) and the second would be a vote on the reconciliation bill, the "Health Care & Education Affordability Reconciliation Act of 2010" (H.R. 4872). The rule would provide for two hours of debate total for both bills.

If the Senate bill passes, it shall be in order to consider the reconciliation bill under a closed rule, waiving all points of order except those arising under clause 10 of Rule XXI (PAYGO). The rule includes a Manager's Amendment, which would be self-executed, waiving all points of order. Finally, the rule provides for one Motion to Recommit for the reconciliation bill.

Additionally, the rule specifies that until the completion of the first three sections of the resolution the Chair may decline to entertain any intervening motion, resolution, question, or notice as well as the question of consideration. The Chair may postpone proceedings until such time as determined by the Speaker. Finally, the second sentence of clause I (a) of rule XIX shall not apply.

If the Senate bill passes the House it will be sent straight to the President for signature with no assurances that the Senate would pass the reconciliation bill.

The Manager's Amendment to H.R. 4872 would make a number of changes to the bill that are highlighted below.

Manager's Amendment

The Manager's Amendment adds several "deals" in order to attain the needed votes as well as technical corrections, more Medicare cuts, and taxes.

Highlights and CBO Score of the Manager's Amendment

Medicare Part D: $5 billion in new spending

- Reduces the growth of out-of-pocket costs thresholds for seniors in Medicare Part D beginning in 2014 with a cliff in FY 2020 so that the out-of-pocket cost threshold will go back to what it would have otherwise been had this provision not occurred.

More Penalties to Medicare Advantage (MA) plans: $3.8 billion in new cuts

- In order to glean more savings, the Manager's Amendment modifies a provision added in reconciliation that gives the government the ability to cut payments for "unjustified" coding patterns in MA plans. The change would move up the date for increasing coding adjustment factors from 2019 to 2014.
- Removes language that would have required MA insurance revenues in excess of the newly established Medical Loss Ratios of 85% to go to the CMS Program Management Account. This is likely done in order to "improve" the score and use the money to offset the bill.

Medicare Payments to Hospitals and Doctors Based on Geographic Areas: $800 million in new spending

- Modifies the Practice Expense (PE) Geographic Adjustment for 2010 so that the employee wage and rent portions of the PE reflect 1/2 of the difference between the relative costs of employee wages and rents in the fee schedule area and the national average as opposed to the previous "3/4" in the underlying bill thus lowering it relative to the national average. CBO estimates this will **increase spending by $400 million.**
    - This "deal" helps rural areas as their overhead costs, compared to urban providers, are lower resulting in lower Medicare payments.
- **Adds $400 million in payments** for "qualifying hospitals" for FY 2011-2012. "Qualifying hospitals" are those that rank within the lowest quartile of counties in Medicare spending (ranked by risk adjusted spending per Medicare enrollee).
    - These new provisions appear to be the "deal" made with Rep. DeFazio who had threatened to **vote no** unless changes were made.

Funding for Territories

- Changes the language for the terms and conditions territories must comply with in order to qualify for funding when establishing an Exchange. Territories must now comply with all the same standards required in the Senate bill for states instead of "in a form and manner specified by the Secretary."

Reducing Waste Fraud and Abuse: Removes $300 million in savings

- The Reconciliation bill added to the definition of community mental health center that provides partial hospitalization services so that it must provide "a significant share" of its services to non-Medicare beneficiaries. The Manager's amendment changes this definition from "significant share" to "at least 40%."
- **Strikes** the new CMS-IRS Data Match to be used for identifying fraudulent providers. The provisions would have required the IRS to share data on Medicare providers that have serious delinquent debt and allow CMS to use the information to not renew their billing privileges and recoup unpaid taxes from their Medicare

reimbursement. CBO predicts that this provision would **remove $300 million in savings.**

Medicare Tax

- Strikes the provision that played lip service to placing the new Medicare payroll tax revenues in to the Supplemental Medical Insurance Trust Fund instead of what they are actually doing with it - using it to pay for the bill.

Tax on Pharmaceuticals

- Shifts around the taxes levied on pharmaceutical manufactures such that the tax is lowered by $200 million in 2012 and 2013, increased by $500 million in 2017, and then lowered by $100 million in 2018.

Tax on Medical Devices

- Lowers the excise tax medical devices from 2.9% to 2.3%. However, at the same time it picks up more medical devices that are eligible to be taxed by eliminating the exclusion for Class I medical devices (such as bandages).

Corporate Timing Tax Shift Gimmick

- Changes the provision that would have applied a 14.5 percentage point corporate tax timing shifts to corporations by increasing it to a "15.75 percentage points" in order to improve the score of the bill. However, this provision is merely a revenue timing shift, a gimmick used to comply with the House's PAYGO rule, yet would have real-world implications, as it forces certain companies to pay more of their tax payments earlier. Given the time value of money, earlier payments harm the bottom line of employers.

Social Security Trust Fund

- Strikes the provision that would require no net impact on the Social Security Trust Fund in order to address trust fund interactions that had arisen due to the new "Cadillac Tax."
    - According to CBO, "As originally introduced, the reconciliation proposal would require transfers from on-budget general funds to the off-budget Social Security trust funds to offset any reduction in the balances of those trust funds resulting from other provisions of the proposal. The effects of that provision were reflected in CBO's preliminary estimate. However, the manager's amendment to the reconciliation proposal strikes that provision, so its effects are not included in this estimate".

Education Grant Programs

- Amends the Community College and Career Training Grant Program by incorporating the funds into the Trade Act and strikes the provision that expands the grant use to individuals eligible for unemployment insurance.
- Moves $13.5 billion of new Pell Grant funding for fiscal year 2011 into section 401 of the Higher Education Act.

Removes Just One of Many Deals

- Strikes the extremely narrow carve-out (added in the reconciliation bill) that would have allowed state-owned banks to continue to participate in the FFEL program. The state-owned Bank of North Dakota is the only state-owned bank in the nation. Many are already beginning to call this the "Bismark Bank Job" or the "Bismark Buyout."

Information Requirements for the Exchange

- Under the requirement to provide information for helping to determine excess payments made for individuals' coverage in the exchange, the Manger's Amendment changes the language on who must report information from "who the secretary specifies" to "any person carrying out one or more responsibilities of an Exchange." This "person" or "eligible entity" is defined under a state flexibility provision as 1) an entity that is incorporated under state law and has demonstrated experience on a state or regional basis in the individual and small group health insurance markets and in benefits coverage (that is not a health insurance issuer or a member of the same controlled group of corporations as a health insurance issuer or 2) the State Medicaid agency.

RSC Staff Contact: Emily Murry, emily.murry@mail.house.gov, (202) 225-9286