Veto Override for H.R. 3762: Restoring Americans' Healthcare Freedom Reconciliation Act (Rep. Price, R-GA)

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FLOOR SCHEDULE:

The House is expected to consider a motion to override the President's veto of H.R. 3762 on February 2, 2016.

A vetoed bill becomes law if two-thirds of the members voting in both the House and the Senate agree to repass the bill, often referred to as a veto override vote. Assuming all members of both chambers vote, 290 Members of the House and 67 Senators must support the veto override. The chamber that originated a bill acts on a veto first. The Senate will not take up a veto override on H.R. 3762 unless the veto override vote receives a two-thirds vote in the House. Additional background on the veto override process from CRS can be found here.

The Legislative Bulletin describing the Congressionally-passed H.R. 3762 is included below.

TOPLINE SUMMARY:

The Senate amendment to H.R. 3762 would repeal major provisions of Obamacare and would place a moratorium on federal Medicaid funding for Planned Parenthood.

COST:

The Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT) estimate that enacting the Senate amendment H.R. 3762 would reduce the deficit by a total of $516 billion over the FY 2016 – 2025 period. The reconciliation bill would reduce outlays by $1.349 trillion and reduce revenues by $833 billion over this period. This estimate takes into account the macroeconomic effects of the bill.

CONSERVATIVE VIEWPOINTS:

Repealing Obamacare: Conservatives will be pleased that the reconciliation bill, as amended by the Senate, would repeal major provisions of Obamacare, advancing efforts to fully repeal and replace the law.

Defunding Planned Parenthood: Conservatives will be pleased that the bill would place a one year moratorium on mandatory taxpayer funding for the nation's largest abortion provider.

- **Expand the Size and Scope of the Federal Government?** No, this bill would repeal major provisions of Obamacare as well as prohibit taxpayer funding for Planned Parenthood, reducing the size and scope of the federal government.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

The Senate amendment to H.R. 3762 would repeal major provisions of Obamacare and would place a moratorium on federal Medicaid funding for Planned Parenthood. A more detailed description of the bill follows below.

Health, Education, Labor, and Pensions Title:

Repeal of the Prevention and Public Health Fund: Obamacare includes a slush fund that allows the Secretary of Health and Human Services to transfer funds without Congressional oversight. The fund is provided $1 billion per year between 2016 – 2021 and $2 billion per year in 2022 and each year thereafter. With these funds, the Obama administration has funded wasteful projects such as lobbying for a soda tax, urban gardening, and free pet spaying and neutering.

The reconciliation bill would repeal the Prevention and Public Health slush fund and rescind all unobligated balances, saving $12.7 billion over the 2016 – 2025 period.

Community Health Center Program: Community health centers provide a range of health services in medically underserved areas, including primary care family planning services, cancer screenings, and women's health exams. According to the Alliance Defending Freedom and the Charlotte Lozier Institute, "there are currently 13,540 clinics providing comprehensive health care for women, versus 665 Planned Parenthood locations."

The reconciliation bill would provide $235 million in mandatory funding for the Community Health Center Program in both FY 2016 and FY 2017. CBO Estimates that the Planned Parenthood moratorium provision would reduce Medicaid expenditures in FY 2016 by $235 million, but does not estimate any further reduction in expenditures in FY 2017 or beyond. Therefore, on net, the combined moratorium and community health funding provisions would increase federal health care funding by $235 million over the ten-year window.

Territories: Obamacare provides $1 billion to for premium assistance U.S. territories that establish insurance exchanges.

The reconciliation bill would repeal this provision effective 2018.

Reinsurance Program: Obamacare created three programs to subsidize private insurance companies that choose to participate in the insurance exchanges. One of these, the Reinsurance program, is in effect through 2016 and requires the federal government to make payments to insurance plans whose enrollees incur high-cost claims. The government collects a per-enrollee assessment on covered plans to fund the Reinsurance program. The Reinsurance program is meant to be budget neutral.

The reconciliation bill would repeal the Reinsurance program.

State Substance Abuse Funding: The reconciliation bill would provide $750 million in mandatory funding in both FY 2016 and 2017 for grants to states "to address the substance abuse public health crisis or to respond to urgent mental health needs". The bill would provide broad discretion for the Secretary of HHS to make grants to states for these purposes.

Finance Title:

Recapture Excess Advance Payments Of Premium Tax Credits: Obamacare pays tax credits to offset health insurance premium costs in advance based on an individual's estimated income. This means that some beneficiaries will receive overpayments in excess of what they should actually have received. The law requires repayment of the overpayments, but caps the amount of repayment required by those below 400 percent of the federal poverty level.

The reconciliation bill would require repayment of all overpayments for tax years 2016 and 2017 (all premium credits are repealed beginning in 2018 by the next section).

Premium Tax Credit and Cost-Sharing Subsidies: Obamacare provides subsidies for individuals under 400 percent of the federal poverty level who purchase insurance plans on the exchanges.

The reconciliation bill would repeal the subsidies beginning in 2018.

Small Business Tax Credits: Obamacare provides tax credits for certain small businesses that provide government-approved health insurance for their employees.

The reconciliation bill would repeal the small business tax credits beginning in 2018.

Repeal of the Individual Mandate: Under Obamacare, most American citizens are required to obtain government approved health insurance or be subject to a penalty in the form of a tax. In tax year 2015, the penalty is the higher of 2 percent of income or $325 per person.

The reconciliation bill would set the penalty for the individual mandate at $0, effectively repealing the mandate.

Repeal of the Employer Mandate: Under Obamacare, most employers with over 50 full-time equivalent employees are required to provide government approved health insurance for their employees or be subject to a penalty in the form of a tax if their employees receive subsidies to purchase insurance in the health care exchanges.

The reconciliation bill would set the penalty for the employer mandate at $0, effectively repealing the mandate.

Planned Parenthood Funding: The reconciliation bill would place a one-year moratorium on federal mandatory funding for any 501(c)(3) nonprofit organization primarily engaged in providing family planning and reproductive health services that provides abortions and that received over $350 million in Medicaid funding in Fiscal Year 2014. This provision blocks federal funding for Planned Parenthood under Medicaid, CHIP, Social Services Block Grant (SSBG), and the Maternal and Child Health Block Grant program.

Repeal of Medicaid Expansion: Obamacare allows states to expand the eligible population for Medicaid up to 138 percent of the federal poverty level. For the newly eligible populations in these states, the federal government would cover between 90 – 100 percent of the cost, significantly above the normal federal medical assistance percentage (FMAP) rate. The law originally required states to make this expansion, but this requirement was found to be unconstitutional. Thirty-one states (including D.C.) have expanded Medicaid.

The reconciliation bill would repeal the Medicaid expansion beginning in 2018.

Repeal of DSH Allotment Reductions: Obamacare reduced federal Medicaid Disproportionate Share Hospital (DSH) allotments.

The reconciliation bill would repeal this provision beginning in 2018. This would increase outlays by $37.5 billion over the FY 2016 – 2025 period.

Repeal of the "Cadillac Tax": Beginning in 2018, Obamacare imposes an excise tax on certain high-cost, employment-based health insurance plans.

The reconciliation bill repeals the so-called Cadillac tax.

Repeal of the Tax on Over-the-Counter Medications: Obamacare prohibited the reimbursement for over-the-counter medications without a prescription from tax-advantaged Flexible Spending Accounts (FSA), health savings accounts (HSA), or health reimbursement accounts (HRA).

The reconciliation bill would repeal this prohibition. This would reduce revenues by $6.7 billion over the FY 2016 – 2025 period.

Repeal of the Tax on Health Savings Accounts (HSAs): Obamacare increased the tax penalty on non-qualified purchases using HSA funds to 20 percent (from 10 percent).

The reconciliation bill would reduce the penalty back down to 10 percent. This would reduce revenues by $100 million over the FY 2016 – 2025 period.

Repeal of Limitations on Contributions to Flexible Spending Accounts (FSAs): Obamacare imposed a $2,500 annual limit on contributions to a FSA.

The reconciliation bill would repeal the contribution limit. This would reduce revenues by $32 billion over the FY 2016 – 2025 period.

Repeal of Tax on Prescription Medications: Obamacare imposed a tax on manufacturers and importers of prescription drugs.

The reconciliation bill would repeal the tax. This would reduce revenues by $29.6 billion over the FY 2016 – 2025 period.

Repeal of the Medical Device Tax: Obamacare imposes a 2.3 percent excise tax on medical devices.

The reconciliation bill would repeal the medical device tax, reducing revenues by $23.9 billion over the FY 2016 – 2025 period.

Repeal of Health Insurance Tax: Obamacare imposed a tax on health insurers.

The reconciliation bill would repeal the tax, reducing revenues by $142.2 billion over the FY 2016 – 2025 period.

Repeal of Elimination of Deduction for Expenses Allocable to Medicare Part D Subsidy: Obamacare limited the deductibility of prescription drug coverage for retirees when the employer also receives a Medicare Part D subsidy.

The reconciliation bill would repeal this provision. This would reduce revenues by $1.8 billion over the FY 2016 – 2025 period.

Repeal of Chronic Care Tax: Obamacare increased the threshold for the portion of a person's adjusted gross income that must be spent on health care costs before they may be deducted from their taxes from 7.5 percent to 10 percent.

The reconciliation bill would reduce the threshold back down to 7.5 percent. This would reduce revenues by $40 billion over the FY 2016 – 2025 period.

Repeal of Medicare Tax Increase: Obamacare imposed an additional 0.9 percent Medicare payroll tax on taxpayers with incomes over $200,000 ($250,000 married filing jointly).

The reconciliation bill would repeal the tax. This would reduce revenues by $123 billion over the FY 2016 – 2025 period.

Repeal of Tanning Tax: Obamacare places a 10 percent excise tax on indoor tanning services.

The reconciliation bill would repeal this tax. This would reduce revenues by $800 million over the FY 2016 – 2025 period.

Repeal of Net Investment Tax: Obamacare imposed a 3.8 percent tax on investment income on taxpayers with incomes over $200,000 ($250,000 married filing jointly).

The reconciliation bill would repeal the net investment tax. This would reduce revenues by $222.8 billion over the FY 2016 – 2025 period.

Remuneration: Obamacare limits the deductibility of compensation of employees for health insurance companies that exceeds $500,000.

The reconciliation bill would repeal this provision. This would reduce revenues by $600 million over the FY 2016 – 2025 period.

Economic Substance Doctrine: Obamacare codified "economic substance doctrine", a judicial doctrine that denies tax benefits when the transaction does not have economic substance or lacks a business purpose.

The reconciliation bill would repeal this provision. This would reduce revenues by $5.8 billion over the FY 2016 – 2025 period.

Budgetary Savings for Extending Medicare Solvency: The reconciliation bill would transfer $379.3 billion to the Medicare Trust Fund. This represents the amount of on-budget savings included in the bill. This transfer would help restore solvency of the Hospital Insurance Trust Fund by paying back part of Obamacare's raid of Medicare.

Overview of The Reconciliation Process: The Budget Act of 1974 includes a special expedited procedure for consideration of certain legislation intended to reduce the budget deficit known as reconciliation. To initiate this process, a concurrent resolution on the budget may include reconciliation instructions to committees of the House and Senate to recommend changes in programs within their jurisdictions that would reduce the deficit by at least the amount specified by the budget.

The chief procedural benefits of a budget reconciliation process are that it is protected from filibuster in the Senate, limits amendments, and reduces the margin for final passage to a simple majority (51 votes). Reconciliation limits debate on a bill to 20 hours in the Senate and amendments must be germane. Beyond the procedural benefits, reconciliation also allows the Congress to highlight and consolidate major budgetary legislation into one bill.

Budget reconciliation may be used to make changes to mandatory spending programs and revenues except for changes related to Social Security. Committees can fulfill their spending reconciliation targets with a mix of policies that increase and decrease spending within their jurisdiction, but the net budgetary effect of all policies must meet or exceed the numerical instructions.

In the Senate, the Budget Act provides a procedure, known as the "Byrd Rule," to strike extraneous provisions from reconciliation bills. The definition of "extraneous" is complex. As a general matter, it applies to provisions that do not have a budgetary impact, provisions that increase the deficit and the relevant committee failed to meet its instructions, or provisions that increase the deficit in the year beyond the traditional ten-year budget scoring window. A Senator must raise a point of order against the offending provision. If sustained, the provision violating the Byrd Rule is removed from the underlying bill. The Byrd Rule is a powerful mechanism because it takes 60 votes to waive in the Senate. The Byrd Rule does not apply in the House.

Further information on the reconciliation process by CRS can be found here.

OUTSIDE GROUPS:

Americans for Prosperity: Key Vote Yes

Family Research Council: Key Vote Yes

COMMITTEE ACTION:

The Concurrent Resolution on the Budget for Fiscal Year 2016 included reconciliation instructions to the House committees on Education and the Workforce, Energy and Commerce, and Ways and Means. Each committee was instructed to report recommended changes to programs within their respective jurisdictions that would reduce the deficit by at least $1 billion over the budget window by July 24, 2015.

The Education and the Workforce Committee marked up and reported its reconciliation recommendations on September, 30, 2015, by a 22 – 15 vote.

The Energy and Commerce Committee marked up and reported its reconciliation recommendations on September, 29, 2015, by a 32 – 20 vote.

The Ways and Means Committee marked up and reported its reconciliation recommendations on September, 29, 2015, by a 23 – 14 vote.

The House Budget Committee merged the recommendations of the three committees together into H.R. 3762 without substantive revision (as required by the Budget Act) on October, 9, 2015, by a 21 – 11 vote. The committee also adopted a motion to instruct the Chairman of the Budget Committee that he be allowed to request the Committee on Rules report a rule that would make in order an amendment by a 21 – 13 vote. The Committee Report can be found here.

The House passed H.R. 3762 on October 23, 2015, by a 240 – 189 vote.

The Senate passed H.R. 3762, as amended, on December 3, 2015, by a 52 – 47 vote.

The House passed the Senate Amendment to H.R. 3762 on January 6, 2016, by a 240 – 181 vote.

The President vetoed H.R. 3762 on January 8, 2016.

On January 8, 2016, the House adopted a motion to consider the veto message on January 26 by a voice vote.

On January 25, 2016, the House adopted a unanimous consent agreement to postpone consideration of the veto message until February 2, 2016.

ADMINISTRATION POSITION:

According to the statement of administration policy "If the President were presented with H.R. 3762, as amended by the Senate amendment, he would veto the bill." The President vetoed H.R. 3762 on January 8, 2016.

CONSTITUTIONAL AUTHORITY:

The Committee on the Budget finds the Constitutional authority for this legislation in Article I of the Constitution, Sections 5 and 8.

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