Budget Reconciliation: An Updated Toolkit

Alliance for Health Reform
Compiled by Bill Erwin. Research assistance by Aaron Charniak.
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www.allhealth.org

Key Facts

- Reconciliation is a fast-track procedure by which Congress can affect federal spending and revenue programs.
- Reconciliation has been used most often to reduce the federal deficit through spending reductions, revenue increases, or a combination of the two.
- Passage of a reconciliation bill requires only a majority vote in the House and Senate. Debate is limited.
- Presidents Ronald Reagan and Bill Clinton used reconciliation to win deficit reduction. Reconciliation was also used during the Clinton Administration for welfare reform and the Children's Health Insurance Program. President George W. Bush used the technique for passage of his signature tax cuts.
- The Senate's Byrd rule (named after its chief sponsor, Sen. Robert Byrd of West Virginia) prohibits items in reconciliation legislation that are "extraneous."
- Any of six situations makes a provision extraneous under the Byrd rule. One is that the provision does not produce a change in federal outlays or revenue.
- A motion to waive the Byrd rule requires agreement of three-fifths of the Senate (60 votes if no seats are vacant).

Background

Since Democrats no longer have a filibuster-proof majority in the Senate, some have talked of passing elements of health reform through budget reconciliation. Originally used as a device for easing passage of deficit reduction legislation, reconciliation may also be used to speed approval of other priority legislation calling for tax cuts or tax increases, or funding changes in mandatory entitlement programs, such as Medicare and Medicaid.

Reconciliation is a powerful tool in the Senate, in part because it is not subject to the requirement for a supermajority of 60 votes to end debate (the so-called "cloture" rule). Only 51 votes are needed to pass a reconciliation bill. There is no possibility of a filibuster.

Reconciliation instructions are contained in a concurrent budget resolution, specifying certain spending and revenue targets. Development of legislative language to meet these targets is within the province of the authorizing committees. For entitlement programs such as Medicare, policy changes to meet the resolution's targets are

informed by the Congressional Budget Office's baseline, or current-law, assumptions. In preparing their legislation, authorizing committees ask the Congressional Budget Office for projections of how policy changes they are contemplating would affect projected spending over a period of five or 10 years.

Reconciliation directives that apply to only one committee, or which focus only on revenue changes, sometimes call for the resulting legislation to be brought directly to the floor for a vote following committee approval. This occurred, for example, with the "Tax Relief Extension Reconciliation Act of 2005," which extended capital gains and dividend tax cut legislation until 2010. But more often, the work of several committees is involved, and their instructions require them to report their recommendations to the Budget Committee, which then assembles an omnibus bill for consideration by the Senate or House.

In either circumstance, the Budget Committee cannot make "substantive" revisions to the legislation that is recommended by the authorizing committees – even if the proposed recommendations fall short of the changes that were called for in the concurrent budget resolution. In practice, if an authorizing committee approves legislation that fails to meet the resolution's targets, the Budget Committee works with the authorizing committee on possible amendments that can be offered on the floor.

Prior to floor consideration, a reconciliation package that combines the work of various authorizing committees is assembled by the House Rules Committee, which sets parameters for the length of floor debate and for any amendments that will be considered. In the Senate, overall debate time on reconciliation legislation is always limited to 20 hours; any senator may propose amendments.

A budgetary point of order for violating what is known as the "Byrd rule" can be raised against any amendment considered in the Senate that proposes to change existing law if the amendment cannot be shown to result in a change in outlays or revenues, as determined by Congressional Budget Office. As with other points of order, a 60-vote supermajority is required to waive this rule.

Adapted from Anne Montgomery, "The Congressional Budget Process," in "Covering Health Issues, 5th Edition," Alliance for Health Reform (www.allhealth.org/sourcebookcontent.asp?CHID=76)

UPDATES as of March 2

Date Night in the Senate: A Primer on Budget Reconciliation, Feb. 24, 2010
David M. Herszenhorn, *New York Times*
http://prescriptions.blogs.nytimes.com/2010/02/24/date-night-in-the-senate-a-primer-on-budget-reconciliation/?src=twr
This is a short, easy-to-understand overview of the reconciliation process. "Budget reconciliation relies on policy changes to 'even out' federal spending and revenues, so

that the government can meet goals set in the annual budget resolution adopted by Congress.... The policy involved could be related to health care, education, energy or virtually anything else. But to qualify for expedited consideration... the policies must be directly related to meeting the fiscal objectives." Democrats face political and practical hurdles to passing health reform this way, the author notes.

Health Care No Stranger To Reconciliation Process, Feb. 24, 2010
Julie Rover, *NPR*
www.npr.org/templates/story/story.php?storyId=124009985
Health care and reconciliation have a lengthy history. Among the health measures passed through reconciliation: COBRA continuation coverage for employees leaving a job; the Emergency Medical Treatment and Active Labor Act (EMTALA) which requires hospital to at least screen patients arriving for emergency treatment; Medicaid expansion beginning in 1984; the Children's Health Insurance Program; the Medicare hospice benefit; Medicare HMO benefits; protections for patients in nursing homes; and changes in payments to physicians and other health professionals.

Reconciliation Won't Be Smooth Ride For Health Bill, March 1, 2010
Liz Halloran, *NPR*
www.npr.org/templates/story/story.php?storyId=124196402&sc=emaf
Former Senate Parliamentarian Robert Dove says Democrats face many procedural hurdles if they try to pass health reform through budget reconciliation. For instance, debate on a reconciliation bill in the Senate is restricted to 20 hours. But that restriction doesn't apply to amendments to the bill. "There is no limit to how many you can send," Mr. Dove said. "And you can send amendments of whatever length and have them read....I can remember Sen. Dole sending up, attached to an amendment, the United States Code. [The code is the compilation of every Unites States law.] That got peoples' attention. After he had gotten what he wanted, he asked for unanimous consent to dispense with the reading."

RECONCILIATION: Not What the Doctor Ordered
U.S. Senate Budget Committee, Republican staff
http://budget.senate.gov/republican/pressarchive/2009/PressRecon.pdf
"Reconciliation is the wrong vehicle for sweeping health care reform," this document begins. Some reasons cited: reconciliation is a fiscal policy tool designed to reduce deficits, and health care reform is not primarily fiscal policy; the 2010 budget resolution doesn't include a reserve fund needed to "adjust away 5 of the budgetary hurdles a health care reconciliation bill would have to overcome;" reconciliation would limit debate to 20 hours on "huge policy changes that would affect the lives of every American." Includes a list of points of order that a reconciliation bill and any amendments would have to clear.

The real story on health-care 'reconciliation,' Feb. 26, 2010
E.J. Dionne, *Washington Post*
http://voices.washingtonpost.com/postpartisan/2010/02/the_real_story_on_health-care.html
Democrats aren't proposing to pass a health care bill under the reconciliation process, says Mr. Dionne, citing Chuck Todd of NBC. "Chuck's point is that *the* health care bill has *already passed* the Senate....Democrats would use reconciliation only for a series of rather modest amendments to the original bill, including amendments that Republicans have called for."

For Senate Parliamentarian, Great Power but a Sensitive Constituency, May 31, 2003
Sheryl Gay Stolberg, *New York Times*
www.nytimes.com/2003/05/31/us/for-senate-parliamentarian-great-power-but-a-sensitive-constituency.html?pagewanted=1&pagewanted=print
A behind-the-scenes look at the work of the person who, through his rulings, decides what can be included in a reconciliation bill, and what can't.

Can reconciliation save the health-care bill?, Feb. 25, 2010
Ezra Klein, *Washington Post*
http://voices.washingtonpost.com/ezra-klein/2010/01/can_reconciliation_save_the_he.html
Mr. Klein writes: "There are four major compromises that the health-care bill probably needs in order to move forward: The excise tax has to be softened, the subsidies need to be increased, the exchanges need to become federally-regulated, and the abortion language needs to be tweaked. The experts I spoke to said that the subsidies and the excise tax were no problem for reconciliation. Abortion and exchanges are less clear."

RESOURCES

Concurrent Resolution on the Budget for Fiscal Year 2010
111th Congress, 1st Session
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:sc13enr.txt.pdf
This is the type of concurrent budget resolution referred to in the background section above. This bill sets the stage for the use of budget reconciliation by the 111th Congress. Sections 201 and 202 of this bill, passed in April 2009, laid out instructions to six House and Senate committees on deficit reduction. The instructions call for the committees to come up with changes to laws within their jurisdiction that would reduce the federal deficit by $1 billion during FY 2009 through FY 2014. Under Title III – Reserve Funds, the chairmen of the Senate and House Budget Committees are empowered to make budgetary changes to other bills in support of specified health care reform goals. Section 301 is addressed to the Senate Budget Committee chairman and Section 321 is directed to the House Budget Committee chairman.

Budget Reconciliation Legislation: Development and Consideration, Dec. 8, 2006
Bill Heniff Jr., *Congressional Research Service*
www.rules.house.gov/archives/98-814.pdf
This two-page fact sheet explains how budget reconciliation legislation is put together and the rules for debating and voting on such legislation.

The Budget Reconciliation Process: The Senate's "Byrd Rule," April 7, 2005
Robert Keith, *Congressional Research Service*
www.rules.house.gov/archives/RL30862.pdf
This 37-page paper describes the history of the Byrd rule and how it has been applied over the years. As noted in the paper, a legislative provision is considered "extraneous" under the Byrd rule if any of the following six conditions apply:

- it does not produce a change in outlays or revenue,
- it produces an outlay increase or revenue decrease when the instructed committee is not in compliance with its instructions,
- it is outside the jurisdiction of the committee that submitted the title or provision for inclusion in the reconciliation measure,
- it produces a change in outlays or revenues which is merely incidental to the non-budgetary components of the provision,
- it would increase the deficit for a fiscal year beyond those covered by the reconciliation measure, or
- it recommends changes in Social Security.

The Budget Reconciliation Process: House and Senate Procedures, Aug. 10, 2005
Robert Keith and Bill Heniff Jr., *Congressional Research Service*
http://assets.opencrs.com/rpts/RL33030_20050810.pdf
This long document (113 pages) goes into detail about exactly what can and can't be done through reconciliation legislation.

Truth and Reconciliation: Sidestepping the Filibuster, April 20, 2009
Thomas E. Mann, Norman J. Ornstein, and Molly Reynolds, *The Brookings Institution*
www.brookings.edu/articles/2009/0420_budget_mann.aspx
This paper includes a chart showing the 19 budget reconciliation bills signed into law between 1980 and 2008, with changes each bill made in federal revenue and/or outlays. (Three more reconciliation bills were passed by Congress but were vetoed.) While calling reconciliation "an act of war," the authors go on to say that "it is perfectly reasonable for Democrats to use the process for health care reform that both parties have used regularly for other major initiatives." To go directly to the chart -- www.brookings.edu/~/media/Files/rc/articles/2009/0420_budget_mann/0420_budget_mann.pdf

Using Reconciliation Process to Enact Health Reform Would Be Fully Consistent With Past Practice, Jan. 27, 2010
Paul N. Van de Water and James R. Horney, *Center on Budget and Policy Priorities*
www.cbpp.org/cms/index.cfm?fa=view&id=3059
The authors state that using reconciliation to help enact health reform "would be consistent with past congressional practice." Several major policy changes have been enacted via reconciliation, they note, including continuation of employer-sponsored coverage (COBRA) in 1985, welfare reform in 1996, the Children's Health Insurance Program in 1997, Medicare+Choice in 1997 (now called Medicare Advantage) and tax cuts of 2001 and 2003.

Reconciliation is not representative, Feb. 4, 2010
Sen. Judd Gregg (R-NH), *Politico*
www.politico.com/news/stories/0210/32470.html
Sen. Gregg says: "To reform health care, we must proceed carefully, deliberately and cooperatively; we must listen to all sides so that we can replace practices that result in waste and inefficiency with more affordable and effective solutions. Reconciliation is not the right path to achieve this goal."

No easy rescue plan for health care, Jan. 18, 2010
Carrie Budoff Brown and Patrick O'Connor, *Politico*
www.politico.com/news/stories/0110/31635.html
Ron Pollack of Families USA has proposed that the House could pass the Senate health reform bill, with differences on items such as taxes and subsidies to purchase insurance worked out in a budget reconciliation bill. However, this would leave out any language on abortion and perhaps even the proposed health insurance exchange(s).

Forging Ahead — Embracing the "Reconciliation" Option for Reform, Feb. 10, 2010
Henry Aaron, *New England Journal of Medicine*
http://healthcarereform.nejm.org/?p=2973&query=TOC
The author supports the use of reconciliation as described in the previous resource of Jan. 18, since the 2009 budget resolution instructed both houses of Congress to enact health care reform. "The idea of using reconciliation has raised concern among some supporters of health care reform. They fear that reform opponents would consider the use of reconciliation high-handed. But in fact Congress created reconciliation procedures to deal with precisely this sort of situation — its failure to implement provisions of the previous budget resolution."

Your Guide to Budget Reconciliation and Obamacare, Sept. 23, 2009
Brian Darling, *Heritage Foundation*
www.heritage.org/Press/Commentary/ed092309a.cfm
This paper quotes Republican policy advisor Mike Solon arguing that it would be hard for Democrats to push through health reform legislation using budget reconciliation

because of "the tight budgetary constraints imposed by the Budget Act, the budget resolution and the Byrd Rule."

Let's Make a Filibuster Deal, Jan. 11, 2010
Mark Schmitt, *American Prospect*
www.prospect.org/cs/articles?article=lets_make_a_filibuster_deal
Includes a section on reconciliation, which the author calls "a rough, nasty process in which a handful of party and committee leaders write a bill that can barely be debated or amended at all." The process is not well suited for big policy initiatives, he continues. Since provisions that don't directly affect the budget can't be included, "much of the fine detail of health-insurance regulation in the current bill would likely have been lost if pushed through reconciliation."

President's Budget Strategy Under Fire, March 18, 2009
Lori Montgomery, *Washington Post*
www.washingtonpost.com/wp-dyn/content/article/2009/03/17/AR2009031703798.html
Last spring, when Democrats in the Senate also lacked a 60-vote supermajority, members of the Obama Administration were pressing lawmakers to do health reform through budget reconciliation. Republicans and some moderate Democrats argued against using the tactic. One reason for opposition: measures enacted through reconciliation are temporary.

The 50-Vote Senate, March 23, 2009
Ezra Klein, *The American Prospect*
www.prospect.org/cs/articles?article=the_fifty_vote_senate
The Senate parliamentarian wields substantial power when budget reconciliation measures are proposed. If a provision is challenged by any senator on Byrd rule grounds, the parliamentarian decides what's allowed. The author notes that during the President George W. Bush years, "GOP leaders fired two successive Senate parliamentarians whose Byrd rule rulings angered them." Given that the parliamentarian's rulings are unpredictable, trying to pass legislation using reconciliation is "the legislative equivalent of deciding a bill on penalty kicks."

SELECTED EXPERTS

Brian Darling, Heritage Foundation........................ staff@heritage.org 202/675-1761
Robert B. Dove, George Washington Univ.............. bdove@gwu.edu 202/994-6290
Bill Heniff Jr., Congressional Research Service ....wheniff@crs.loc.gov
William Hoagland, CIGNA ...... G.William.Hoagland@CIGNA.com 202/778-8451
James R. Horney, Center on Budget & Policy Priorities................ horney@cpbb.org 202/408-1080
Robert Keith, Congressional Research Service.............................. rkeith@crs.loc.gov
Thomas E. Mann, Brookings Institution .... tmann@brookings.edu 202/797-6050
Norman J. Ornstein, AEI...................................... nornstein@aei.org 202/862-5893

Ron Pollack, Families USA .... rpollack@familiesusa.org 202/628-3030
Sara Rosenbaum, George Washington Univ. ....sarar@gwu.edu 202/530-2343
Michael Solon, Akin, Gump ....msolon@akingump.com 202/887-4122
Tricia Neuman, Kaiser Family Foundation .... tneuman@kff.org 202-347-5270
Paul N. Van de Water, Center on Budget & Policy Priorities vandewater@cpbb.org 202/408-1080