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# ACA Repeal and Replace through Reconciliation

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# What is Budget Reconciliation?

Congressional Budget Act of 1974 allows for legislation that changes:

- **Spending**
  - **Revenues**
  - **Federal Debt Limit**
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- Filibuster not permitted: only 51 votes needed to pass
  - Debate on the bill limited to 20 hours by Senate and 10 hours for debate between House and Senate
  - Each aspect of reconciliation may only be considered once per year



# The Senate Byrd Rule

- Scope of reconciliation provisions limited to items having a direct budgetary impact
- Senate prohibited from considering extraneous matters during reconciliation

## Provisions

1. Every item must affect levels of revenue or spending.
2. Provisions within each title must, on net, bring a title into compliance with reconciliation instructions.
3. Policy changes cannot be outside of the jurisdiction of the House or Senate committee that submitted them.
4. Any provision must not be “merely incidental” to its budgetary effect.
5. A provision cannot raise the federal deficit beyond the budget window (typically ten years).
6. It cannot affect Social Security spending.

## Caveats

*Items in violation of Rule can still stand if:*

1. The item helps offset the negative effects of a tax hike or spending cut.
2. The provision leads to a reduction of the deficit outside the budget window.
3. The provision will probably raise revenue or cut spending, but is not scored by the Congressional Budget Office (CBO).\*
4. The exact effects of the provision are impossible to predict, but will definitely lead to a net deficit reduction.

# Parts of the ACA that CAN be Repealed:

- Premium Tax Credits
- Small Business Tax Credits
- Cost Sharing Reduction payments
- Individual Mandate Penalty\*
- Employer Mandate Penalty\*
- Medicaid Expansion
- Medicaid presumptive eligibility, maintenance of effort requirements and benchmark/alternative benefit plans
- Taxes: medical device tax, health insurance tax, Cadillac tax, Medicare Payroll tax, capital gains (NIIT) tax, tanning tax
- Penalties and restrictions on HSAs, HRAs, flexible spending accounts
- Caps limiting the amount taxpayers must pay back from premium tax credit overpayments
- Prevention and Public Health Fund (Obamacare Slush Fund)

\*In 2015 the Senate Parliamentarian decided that mandate repeals could not be included in the budget reconciliation bill under Senate rules. Instead of eliminating these mandates, the penalty for non compliance was eliminated.



# Parts of the ACA that (Probably) CANNOT be Repealed:

## Insurance reform provisions:

- Ban on denial of coverage for preexisting conditions
- Medical underwriting ban
- Annual and lifetime benefit limit bans
- Actuarial Value requirements
- Essential Health Benefits
- Age underwriting restrictions
- Coverage of dependents up to age 26
- Insurance market reforms/regulations were not included in the 2015 reconciliation bill, because Congress decided not to petition the Senate Parliamentarian to consider them as having a direct budgetary impact
- It is possible they may be included in this year's version

## Stabilizing the Market During the Transition

- Continuation of subsidies/tax credits
- Tightening up Special Enrollment Periods
- Aligning grace periods on- and off-exchange
- Relaxing Essential Health Benefit requirements
- Continuation (possible modification) of Risk Adjustment program for insurers
- Other forms of temporary risk mitigation



# Replacement Proposals

- Age-based tax credits
- Changes to community rating restrictions
  - Age Bands: return to previous state standards or set at 5-1
- Continuous coverage incentives
  - Conditional prohibition on medical underwriting
  - Guaranteed renewability
- Maintain ban on denial of coverage based on pre-existing conditions
- Maintain coverage for dependents up to age 26
- Expanded use of HSAs
- Insurance sales across state lines
- Eliminate age limits on catastrophic plans
- High-risk pools
- State Flexibility
- Medicaid Block Grants or Per Capita Caps

