Center on Budget and Policy Priorities

820 First Street NE, Suite 510
Washington, DC 20002

Tel: 202-408-1080
Fax: 202-408-1056

center@cbpp.org
www.cbpp.org

Special Series: Health Reform Issues

Updated March 3, 2010

# USING RECONCILIATION PROCESS TO ENACT HEALTH REFORM WOULD BE FULLY CONSISTENT WITH PAST PRACTICE

by Paul N. Van de Water and James R. Horney

The President and Democratic congressional leaders have determined that the best way to enact comprehensive health reform in the face of solid Republican opposition is to use the congressional reconciliation process to make a limited number of changes to the health reform bill that the Senate passed in December.[1] Despite charges by congressional Republicans and conservative pundits to the contrary, this use of reconciliation to help enact health reform legislation would not be unprecedented or a misuse of the reconciliation process.

Reconciliation is a process set forth in the Congressional Budget Act that allows for expedited consideration of legislation affecting mandatory spending programs or taxes. In particular, it does not allow a minority of senators to thwart the will of the majority by endlessly debating and thereby blocking a Senate vote on legislation that most members of the House and Senate support. A review of the past use of reconciliation demonstrates that using the process to facilitate passage of health reform this year — in particular, using the process to make a modest number of changes to the spending and tax policies in the Senate-passed bill — is not inconsistent with past practice.

- **Congress has employed reconciliation many times to make major policy shifts.** These include sweeping welfare reform enacted in 1996, massive tax cuts in 2001 and 2003, and creation or expansion of several health coverage programs. Using reconciliation to help enact health reform would be consistent with past congressional practice, as Thomas Mann and Molly Reynolds of the Brookings Institution and Norman Ornstein of the American Enterprise Institute have explained.[2]

- **The sharp break with past practice took place in 2001, when Congress used reconciliation to enact a large tax cut that greatly increased federal deficits and debt.** Prior to 2001, every major reconciliation package enacted into law *reduced* the deficit. In 2003 Congress used reconciliation to pass another round of deficit-increasing tax cuts.

---

[1] The plan apparently is for the House to approve the Senate-passed bill — clearing the legislation for the President's signature — and for the House and Senate then to pass a reconciliation bill that would modify some of the mandatory spending and tax policies in the Senate-passed bill to reflect a compromise between the House and Senate.

[2] Thomas Mann, Molly Reynolds, and Norman Ornstein, "Truth and Reconciliation: Are Democrats making an egregious power grab by sidestepping the filibuster? Hardly," *The New Republic*, April 20, 2009.

- **If health reform is enacted in part through use of the reconciliation process, the reconciliation legislation will have to be designed so it does not add to the deficit.** In 2007, the House and Senate adopted rules preventing Congress from using reconciliation to increase deficits and debt as was done in 2001 and 2003.

- **Since rising health costs are the single largest reason for projected long-run deficits, it is appropriate that health reform be considered through the reconciliation process.**

### Planned Use of Reconciliation Differs From Earlier Proposal To Use It to Pass Entire Health Bill

The use of the reconciliation process that congressional leaders are now planning differs significantly from an approach discussed last year, when some commentators suggested that Congress use reconciliation to pass the *entire* health reform package. One concern about that earlier approach was that Senate rules prohibit the inclusion in a reconciliation bill of provisions that would not directly affect mandatory spending or revenues. If Congress had considered the entire health reform package under reconciliation rules, this requirement would have prevented the inclusion of several provisions that are in the House- and Senate-passed bills — for instance, authorizations of future appropriations for new preventive care efforts and some health insurance regulations that might not affect federal spending or taxes.

Under the current plan, the vast bulk of health reform will be enacted when President Obama signs the Senate-passed reform bill, which it considered outside the reconciliation process. Reconciliation will be used only to make a limited set of changes to the Senate bill, all of which directly affect mandatory spending and revenues.

## The Budget Reconciliation Process

Each year Congress adopts a budget resolution, which outlines its priorities for federal spending and taxes for the next five or more fiscal years. Reconciliation is an optional procedure that the Congress may use to help achieve its budgetary priorities. If Congress decides to use reconciliation, the budget resolution includes reconciliation instructions that direct certain congressional committees to produce legislation by a specified date that meets a targeted change in spending, revenues, or the deficit.[3] "The chief purpose of the reconciliation process," according to the Congressional Research Service, "is to enhance Congress's ability to change current law in order to bring revenue, spending, and debt-limit levels into conformity with the policies of the budget resolution. Accordingly, reconciliation can be a potent budget enforcement tool for a large portion of the budget."[4]

The fiscal year 2010 budget resolution, which Congress adopted last spring, includes reconciliation instructions directing three committees in the House (Energy and Commerce, Ways and Means, and Education and Labor) and two committees in the Senate (Finance and Health, Education, Labor, and Pensions) to report reconciliation legislation. The full House and Senate would then consider this legislation under certain procedures, the most important of which is a limit on the time allowed for debate in the Senate.[5] Under the Senate's regular rules, 60 votes are needed to prevent a

[3] Center on Budget and Policy Priorities, *Policy Basics: Introduction to the Federal Budget Process*, December 17, 2008.

[4] Robert Keith and Bill Heniff, Jr., *The Budget Reconciliation Process: House and Senate Procedures*, Congressional Research Service, Report RL33030, August 10, 2005.

[5] Time limits for reconciliation also apply in the House, but the House generally imposes time limits on the consideration of important legislation, anyway.

minority of senators from blocking legislation through a filibuster (that is, blocking legislation by refusing to stop debating the measure), but reconciliation legislation *cannot* be filibustered. A reconciliation bill thus needs 51 votes to pass in the Senate (if 100 senators are present and voting), while other legislation effectively needs 60 votes.

A health reform bill considered under the reconciliation process may not add to the federal deficit. Several different tests apply. The budget resolution requires this year's reconciliation legislation to reduce the deficit by a minimum of $1 billion over the 2009-2014 period (the years the budget resolution covers).[6] Senate rules adopted in 2007 also establish a point of order against considering any reconciliation bill that increases the deficit over the period that includes the current fiscal year and the next five fiscal years or the period that includes the current year and the next ten years.[7] In addition, the so-called Byrd Rule prohibits Senate consideration of certain provisions in a reconciliation bill if the bill would increase the deficit in any year *after* the years the budget resolution covers.[8] (Note: A widespread belief that provisions in a reconciliation bill must expire after five or ten years is incorrect. If a reconciliation bill does not increase deficits in subsequent years, all of its provisions may be permanent.) Waiving these points of order requires 60 votes.

Throughout 2009, Democratic leaders in Congress stated their preference for moving health reform legislation through the normal legislative process without using reconciliation. It now seems likely, however, that comprehensive health reform legislation can make it across the finish line only if the reconciliation process is employed.

## Major Policy Changes Enacted Through Reconciliation

The House and Senate first used the budget reconciliation process in 1980. Since then, 19 reconciliation bills have been enacted into law, and three have been vetoed.[9]

Contrary to claims that it would be a break with past practice to use the reconciliation process to enact legislation — like health reform — that makes major changes in policy, reconciliation bills have been used in the past to do just that.

- *Welfare Reform.* In 1996, a Republican Congress used the reconciliation process to enact sweeping welfare reform legislation making the most dramatic changes in the safety net in decades. Upon Senate passage, Pete V. Domenici (R-NM), chair of the Budget Committee, stated, "A system that has failed in every aspect will now be thrown away. We'll start over with a new system."[10]

---

[6] A budget resolution cannot require a committee to use reconciliation for a specific purpose, but the fiscal year 2010 budget resolution makes clear that the reconciliation process is intended to be available this year for legislation concerning health reform and/or student financial aid. Depending on the interpretation of House and Senate rules, $1 billion in deficit reduction may be required for each of these two purposes.

[7] Section 202, S. Con. Res. 21, 110th Congress, "Setting forth the congressional budget for the United States Government for fiscal year 2008," adopted May 27, 2007.

[8] Section 313 of the Congressional Budget and Impoundment Control Act. In this case, the restriction applies to provisions that would increase the deficit in any year after 2014.

[9] Robert Keith, *The Budget Reconciliation Process: The Senate's Byrd Rule*, Congressional Research Service, Report RL30862, March 20, 2008. Available at http://budget.house.gov/crs-reports/RL30862.pdf.

[10] Robert Pear, "Senate Approves Sweeping Change in Welfare Policy," *New York Times*, July 24, 1996.

- *2001 Tax Cuts.* In 2001, another Republican Congress used the reconciliation process to enact the largest and most sweeping tax cuts in 20 years.[11] That reconciliation bill, which featured dramatic reductions in both income and estate taxes, swelled the federal budget deficit by an estimated $1.35 trillion over the 2001-2011 period (and actually by much more than that, since hundreds of billions of dollars in costs were masked through sunsets and timing gimmicks).[12] President George W. Bush, who had proposed the tax cuts during the 2000 campaign, called the signing of the bill an "historic moment" that "does not come often."[13]

- *2003 Tax Cuts.* In 2003, despite the return of large deficits, Congress used the reconciliation process to enact still another round of massive tax cuts. Although the "official" cost of the Jobs and Growth Tax Relief Reconciliation Act was held down through the extensive further use of budget gimmicks, its actual price tag approached $1 trillion over ten years.[14]

Congress also has used reconciliation in the past to establish entirely new health coverage programs or to substantially expand existing ones.

- *Children's Health Insurance Program.* Reconciliation legislation enacted in 1997 created the Children's Health Insurance Program, which now provides subsidized coverage to 7 million children.

- *Medicare Advantage.* The 1997 reconciliation law also established the Medicare+Choice program, now termed Medicare Advantage. The Medicare Advantage program currently serves 10.4 million Medicare beneficiaries.

- *Continuation of Employer-Sponsored Coverage.* The Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 established new rules under which workers leaving employment with a firm that offers health insurance can remain enrolled in the employer's health plan for a specified period of time if the worker pays the premiums. COBRA also makes continuation of coverage available to spouses and children of workers upon the death of the worker, loss of dependent status, or other specified circumstances.

As Thomas Mann, Molly Reynolds, and Norman Ornstein have written, "[T]he precedent for using reconciliation to enact major policy changes [is] much more extensive . . . than Senate Republicans are willing to admit these days." They point out that "many of the [past] reconciliation bills made major changes in policy. Health insurance portability (COBRA), nursing home standards, expanded Medicaid eligibility, increases in the earned income tax credit, welfare reform, the State Children's Health Insurance Program, major tax cuts, and student aid reform were all enacted under reconciliation procedures." While use of reconciliation to enact comprehensive health reform legislation would be ambitious, they conclude, "it fits a pattern used over three decades by both

---

[11] Peter R. Orszag, *The Bush Tax Cut Is Now About the Same Size as the Reagan Tax Cuts,* Center on Budget and Policy Priorities, April 19, 2001.

[12] Congressional Budget Office, *Pay-as-You-Go Estimate, H.R. 1836, Economic Growth and Tax Relief Reconciliation Act of 2001*, June 4, 2001. As noted above, the rules prohibiting reconciliation bills from increasing the deficit during the budget window were not adopted until 2007.

[13] George W. Bush, "Remarks on Signing the Economic Growth and Tax Relief Reconciliation Act of 2001," June 7, 2001.

[14] Robert Greenstein, Richard Kogan, and Joel Friedman, *New Tax Cut Law Uses Gimmicks to Mask Costs; Ultimate Price Tag Likely to be $800 Billion to $1Trillion*, Center on Budget and Policy Priorities, June 1, 2003.

parties to avoid the strictures of Senate filibusters."[15] Using it to make some changes in the mandatory spending and revenue policies contained in the Senate-passed health reform bill is well within the boundaries of past practice.

### Use of the Reconciliation Process for Unprecedented Purposes

As these examples demonstrate, using the reconciliation process now for health care reform would not represent a dramatic break with the past. The sharp break with past practice occurred in 2001, when reconciliation was used for the first time to pass legislation that was *not* paid for and greatly worsened the nation's fiscal position.

Prior to 2001, every major reconciliation package enacted into law reduced the federal deficit.[16] Until then, reconciliation had been reserved for legislation that met this standard of fiscal discipline. But the standard was tossed aside in 2001. In both 2001 and 2003, the reconciliation process was used to pass costly tax cuts that were not paid for and that have substantially increased deficits and debt.

In response, at the start of the new Congress in 2007, the House and Senate formally adopted rules to restore a fiscal discipline standard to the reconciliation process by barring the process from being used for bills that would increase deficits and debt. If the reconciliation process is used in coming weeks for health reform legislation, that legislation will need to adhere to this standard — rather than to continue the sharp departure from it that the 2001 and 2003 reconciliation bills made.

### Conclusion

Because rising health care costs represent the single largest cause of the federal government's long-term budget problems, fundamental health care reform must be part of any budget solution.[17] The foregoing examples indicate that using the budget reconciliation process to help enact health reform in 2010 would be consistent with the ways in which Congress has used reconciliation in the past. Many major policy changes, including welfare reform, large tax cuts, and new health programs, have been included in past reconciliation bills. Moreover, if health reform is pursued through the reconciliation process this year, the resulting legislation — unlike the tax cuts of 2001 and 2003 — will need to be designed so it does not add to the deficit.

---

[15] Mann, Reynolds, and Ornstein. The article also contains a table describing the budget reconciliation bills signed into law since 1980. Available at http://www.tnr.com/article/politics/truth-and-reconciliation.

[16] In 1997, two reconciliation bills were signed into law (on the same day). The Taxpayer Relief Act of 1997 would, by itself, have increased the deficit. But taken together, the two reconciliation bills (the other was The Balanced Budget Act of 1997) reduced the deficit by nearly $120 billion over five years and $500 billion over ten years.

[17] Kathy Ruffing, Kris Cox, and James Horney, *The Right Target: Stabilize the Federal Debt,* Center on Budget and Policy Priorities, January 12, 2010.