THE PUBLIC POLICY CENTER OF THE CONFERENCE BOARD

POLICY BRIEF
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HEALTH CARE PROVISIONS IN THE “BUILD BACK BETTER ACT”/RECONCILIATION BILL

The “Build Back Better Act” (BBB)/Reconciliation Bill, the administration’s spending and tax cut legislation that carries much of the president’s agenda, is very much a moving target. Although the congressional majority has pledged general assent in the interest of teamwork, a few Members, especially in the Senate, continue to express reservations. It seems clear that the bill that is likely to pass the House in the next few days will not have been “pre-conferenced” with the Senate, and will need to endure further change in that body before (and if) it then returns to the House for yet another difficult vote. Highly motivated swing Senators are far more fiscally cautious than highly motivated progressive Members of the House, making for a challenging process. And for that matter, Members do not yet have an official, comprehensive Congressional Budget Office (CBO) score of the bill.

Taking the current state of the bill as at least an imperfect snapshot of the likely outcome, however, health care will be an important part. As of this moment, and with great uncertainty about both the contents and the scoring of the bill, health care spending is about 15 percent of the total cost (including both spending increases and tax cuts), putting it just behind the energy and climate provisions, and the child care and family provisions, each of which comes to about 25 percent of the bill. However, although the price tag for the health care provisions is significant and proponents argue that these programs are much needed, you should not expect major restructuring or reform that would result in a more efficient, affordable, and high-quality of the health care system.

The health care-related provisions, as of this moment, can be thought of in six pieces—four that increase spending, and two that save money to pay for the package.

**Affordable Care Act insurance enhancements.** The American Rescue Plan Act (ARP), which was enacted into law in early 2021, increased the health insurance subsidies that had been made available under the Affordable Care Act (ACA), applicable for 2021 and 2022. The Build Back Better Act, as it now stands, would make those enhancements permanent. Those enhancements fall into three categories.

The first step would benefit the lowest-income purchasers of coverage under the ACA. The ACA required that everyone who obtained insurance would pay at least a small sum. So a family at the poverty line would be required to pay 2.07 percent of household income for coverage under the benchmark plan; a family at 150 percent of poverty would pay 4.14 percent of income. Under the stress of the pandemic, the ARP followed a different philosophy, that the lowest-income households should get coverage for free. The BBB would continue that approach, and families up to 150 percent of poverty would pay zero for the basic plan.

The second step would be to reduce premium payments even above that minimal income level. Payments at 200 percent of poverty would be reduced from $1,664 to $510. Payments at 400 percent of poverty would fall from $5,017 to $4,338.
The third step would extend smaller premium subsidies above the current 400-percent-of-poverty maximum, beyond which there was no subsidy at all.

There is an apparent motivation not only to reduce prices for families now purchasing insurance, but also to encourage those not purchasing insurance to do so. The White House cites estimates that 9 million people will enjoy lower premiums, and 3 million people will get coverage that they do not have today.

**Medicaid coverage expansions.** One awkward piece of fallout from the ACA was that some states availed themselves of the law’s expansion of Medicaid eligibility, but other states did not. In a difficult maneuver, the BBB would reach into the nonparticipating states’ Medicaid programs and provide coverage for the households that have not benefited from the ACA’s Medicaid expansion. There are no real precedents or models for the BBB to follow, because Medicaid in every other instance is administered by the states. Here the federal government must either find a third-party health insurance provider to create an insurance program from whole cloth, or contract with a state’s Medicaid managed care plan to cover those households that would have benefited from the Medicaid expansion if the state had taken it up. A further complication is that, at least theoretically, another state that had embraced the Medicaid expansion could now drop it and have the federal government take over the full cost of that coverage under this new BBB program. Therefore, the BBB must include a “maintenance of effort” provision such that any state that would drop the Medicaid expansion to game the system in this way would be required to pay a penalty. This is all extremely complex, and surely will take some time to come fully up to speed. The White House believes that this provision will provide new coverage for 4 million people.

**Medicaid home care expansions.** BBB would increase the eligibility for Medicaid in-home care for seniors and persons with disabilities, and would increase the pay of in-home care providers.

**Expand Medicare to provide hearing benefits.** After extensive argumentation over even broader expansion of Medicare benefits, negotiations whittled the ideas down to hearing coverage only. This is a relatively limited additional cost, but with Medicare now projected to exhaust its trust fund in 2026, just five years from now, any additional expense could be problematic. However, note below that there are projected Medicare savings in the BBB as well, and though the amount of the savings is estimated to be far larger than the additional cost of the hearing benefit, it is speculative. BBB would also reduce the maximum beneficiary cost sharing for prescription drugs under Medicare Part D.

**Allow Medicare prescription drug price negotiation.** After another fraught series of negotiations that apparently is still being adjudicated, the BBB would allow Medicare to negotiate over the prices of prescription drugs. To avoid some of the most contentious issues, the provision would concentrate on pharmaceuticals that are nine to twelve years old (depending on their characteristics) and would limit negotiations to ten drugs each year at the start, twenty later on. In other words, it would appear to focus on some of the controversial massive price increases for comparatively simple off-patent pharmaceuticals (such as those for epinephrin pens, insulin, or Daraprim) in recent years, rather than new breakthrough drugs that are the result of costly recent research. The estimated cost savings are likely to be much smaller than the earlier projections for more far-reaching negotiating authority, but
are still larger than the proposed Medicare cost expansion; however, the actual cost savings at the end of the day are hard to predict for such an untried policy.

**Repeal Medicare drug rebate rule.** As long as the BBB is already mired in controversy, it might as well dig in deeper and **repeal the not-yet-in-effect 2020 Medicare drug rebate rule**. That rule would have required that manufacturer rebates that have been implicitly reducing Medicare and private insurance premiums instead be delivered to Medicare enrollees. Estimates indicated that the net effect would be to reduce the rebates and therefore cost Medicare a significant sum of additional outlays, some of which was used to pay for the just-enacted infrastructure bill. The remainder of the estimated cost of the rule is set to be counted as an offset for the reconciliation bill, as the bill repeals the rule entirely.

**Summary.** Although the Build Back Better Act/Reconciliation Bill is clearly a work in progress, and is sure to change before it is enacted, there is every reason to expect health care to be an important part of the bill. That said, and acknowledging that several provisions are highly touted by many advocates, the BBB will not close the book on the health care system for any length of time. As currently configured, BBB will reduce the cost of insurance for many currently insured lower-wage workers, and will probably encourage many others to sign up for the first time. However, even though access is an important need, cost sustainability and quality are essential as well, and BBB will not address those needs. Expect the long-running US health care debate to continue for years to come.