



THE SYCAMORE INSTITUTE

BUDGET RECONCILIATION AND THE AFFORDABLE CARE ACT

PART 1 OF 2 - PROCESS AND SCOPE OF CHANGE

BOTTOM LINE

Over the last three and a half decades, the budget reconciliation process has been used by federal lawmakers of both parties to pass significant initiatives. Now, federal Republicans are eyeing it as a way to swiftly deliver on their campaign promise to repeal the Affordable Care Act (ACA). Although the process can't be used to fully repeal the law, it can be used to dismantle key provisions that were designed to address affordability and market stability in the individual health insurance market.

H.R. 3762, a reconciliation bill that passed in 2015, provides the most insight into the type of bill that will be introduced early in 2017. This brief describes the budget reconciliation process, key provisions of H.R. 3762, and how budget reconciliation can alter the ACA.

BUDGET RECONCILIATION IS...

- **A complicated, uniquely Federal process with state-level impacts.**
- **One of many steps that will be taken to reform health insurance.**

WHAT IS BUDGET RECONCILIATION?

Budget reconciliation is a multi-stage process (see Figure 1) that allows Congress to make changes more swiftly than under regular rules. The Congressional Budget and Impoundment Control Act of 1974 (or the Budget Act) requires the U.S. House and Senate to adopt an **annual budget resolution**. The resolution is Congress's statement regarding revenue, expenditures, and debt limits. In the resolution, Congress sets federal spending goals for the upcoming federal fiscal year and at least four additional years. The goals in the resolution predominantly guide the annual appropriations process, which dictates "discretionary" spending. However, when additional legislation that affects revenues and spending beyond annual appropriations bills is needed to meet these goals, Congress may use a process known as budget reconciliation.⁽¹⁾

WHAT CAN BE ADDRESSED THROUGH RECONCILIATION?

Budget reconciliation can only be used to make changes to **"mandatory" spending (i.e. direct spending or entitlements), revenue, and debt limits**. Mandatory spending is spending controlled by laws other than annual appropriation acts and includes funds for things like Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), unemployment insurance, Medicare, Medicaid, and the Supplemental Nutrition Assistance Program (SNAP).⁽²⁾ Although Social Security is considered mandatory spending, Section 310(g)

of the Budget Act⁽³⁾ prohibits using budget reconciliation to make budgetary changes to Social Security.

Reconciliation legislation must achieve one or more of the following goals:⁽⁴⁾

- Increase or decrease spending by a specific amount for a specific time period
- Increase or decrease revenues by a specific amount for a specific time period
- Raise or lower the debt limit by a specific amount.

WHAT IS THE PROCESS?

The budget reconciliation process begins when **reconciliation instructions** are included in the annual budget resolution. The instructions define which committees are being asked to develop legislation, the date the legislation must be reported, the dollar amount of budgetary change the legislation should address, and the time period over which the budgetary changes should be measured. For example, the FY 2016 budget resolution included instructions for the House Education and Workforce, Energy and Commerce, and Ways and Means Committees to each report a measure by July 24, 2015 that would reduce the deficit by at least \$1 billion each between 2016-2025.

Only committees with jurisdiction over spending, revenues, or debt limits can be directed to report reconciliation legislation. For example, only the House Ways & Means Committee could report a reconciliation bill that impacts federal tax revenues. The Committees use the parameters defined in the resolution to develop legislation. Once the legislation is complete, the committees report the legislation, and it is considered by the House and Senate.⁽¹⁾

The reconciliation process is considered **accelerated** largely because of its special treatment under Senate rules. Under normal Senate rules, there is no defined amount of time for debate for each bill. 60 votes are required to end debate and move into an up or down vote on legislation. This 60-vote requirement is also known as **cloture**. This means that any single Senator can **filibuster** a bill – that is, speak on and on without end – to keep debate from ending in order to prevent an up or down vote. Unless there are 60 votes to end debate (and a filibuster), the legislation essentially dies without ever receiving a final vote. Although it's strictly procedural, in political terms, a vote to end debate is often considered a vote in favor of the legislation under consideration.

However, the Budget Act limits Senate debate on reconciliation measures to 20 hours – including debate on any amendments – at which time debate automatically ends without the need for cloture. Once the 20-hour debate period has ended, all other amendments are considered under a process called **"vote-a-rama."** During "vote-a-rama," amendments are introduced and explained for a short amount of time and voting is limited to a 10-minute period.

This means that achieving budgetary goals through budget reconciliation is advantageous in the Senate because only 51 votes are needed for passage and the **bills cannot be filibustered**. The U.S. Senate is currently made up of 52 Republicans and 48 Democrats. Under regular rules, at least 9 Senate Democrats would need to vote to prevent a filibuster and end debate on any ACA repeal measure, which – in political terms – would be the same as voting in favor of the measure. **Under budget reconciliation rules, Senate Republicans would not need any Democrats' votes to pass a reconciliation bill that repeals parts of the ACA.**

In addition to time limits, the Senate operates under the Byrd Rule which places limits on the subject matter of the reconciliation measure and any amendments. The Byrd Rule is discussed in more detail below.

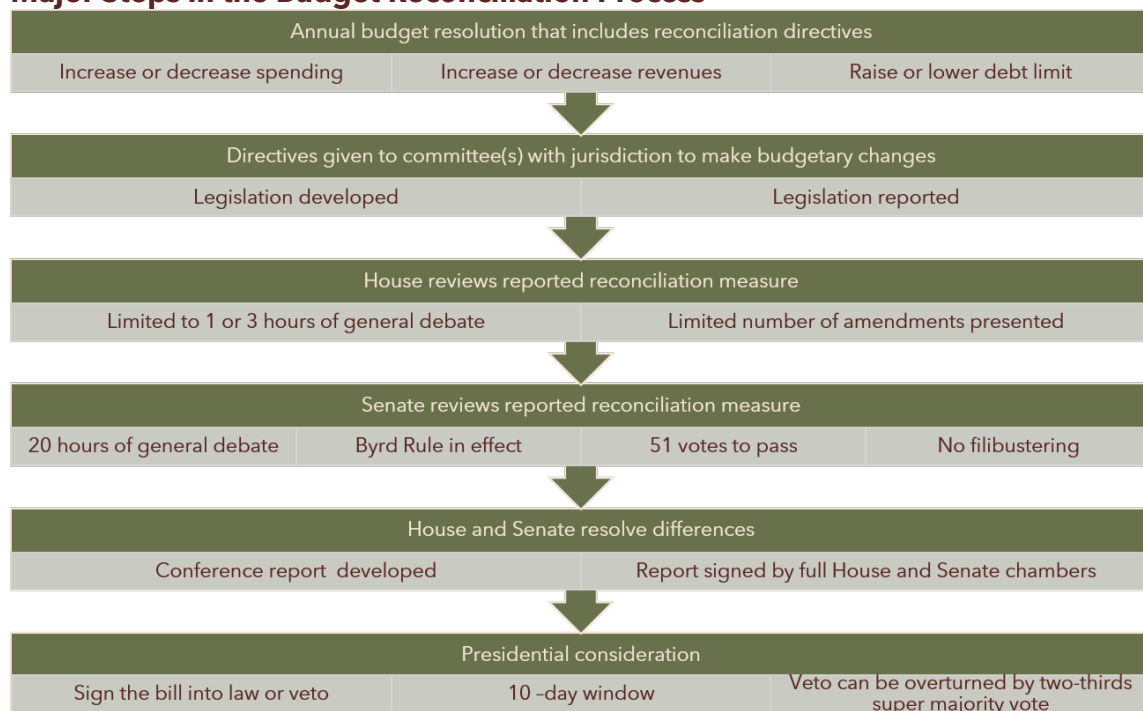
51 VOTES

Achieving budgetary goals through budget reconciliation is very advantageous in the Senate because only 51 votes are needed to pass and the bills cannot be filibustered.

Any differences between the House and Senate-passed measures are usually resolved through a **conference committee**. The same rules around extraneous provisions apply to the conference report as well. The Senate limits conference report debate to 10 hours.

Once the same bill has been approved by the House and Senate, it is passed on to the President. The President has a **10-day window** (excluding Sundays) to sign the bill into law or veto and return it to Congress. Congress can override the President's veto with a two-thirds supermajority vote. Historically, Congress has never successfully overridden the President's veto on a reconciliation measure.

FIGURE 1
Major Steps in the Budget Reconciliation Process



Source: *The Sycamore Institute*

WHAT CAN'T BE ADDRESSED THROUGH RECONCILIATION?

Reconciliation legislation cannot include **"extraneous" provisions** that are not relevant to the goals of the reconciliation instructions. In 1985, Senator Robert C. Byrd noticed that many reconciliation bills included extraneous provisions and proposed an amendment to protect the reconciliation process. The amendment was adopted and became known as the **Byrd Rule**. A provision is considered extraneous if:⁽⁵⁾

- It does not produce a change in expenditures or revenues.
- The net effect of the provisions reported by the committee fails to achieve the reconciliation instructions.
- It is outside the instructed committee's jurisdiction.
- It produces changes in expenditures or revenues that are only incidental to the non-budgetary components of the provision.
- It increases or decreases net expenditures or revenues during a fiscal year that is not covered by the reconciliation instructions.
- It recommends changes to Social Security.

BYRD RULE

The Byrd Rule limits the scope of what budget reconciliation can be used to change.

Under the Byrd Rule, a Senator can object to an extraneous provision in order to amend or remove the provision.

It is important to note that the Byrd Rule **only applies in the Senate**. However, it also can be invoked by a Senator during a conference report when the House and Senate are compromising on a reconciliation bill.⁽⁶⁾

HOW MANY BUDGET RECONCILIATION BILLS CAN BE PASSED FOR EACH BUDGET RESOLUTION?

If a committee is instructed to achieve multiple goals (e.g. increase revenue and decrease spending), the committee can respond with two separate pieces of legislation - one increasing revenue and one decreasing spending - or achieve both goals with one piece of legislation.⁽⁷⁾ The Senate interpretation of the Budget Act allows no more than three reconciliation bills for each fiscal year's budget resolution. Each bill must address a different goal - one spending, one revenues, and one debt limit. After the first reconciliation bill, any subsequent reconciliation bills may not address the goals that were completed in the first bill.

HOW HAS IT BEEN USED IN THE PAST?

Budget reconciliation was first used in 1980. Over the years, reconciliation measures have been used by both parties to make changes to a variety of programs such as federal civilian employee pay, Medicare, Medicaid, unemployment insurance, TANF, and the Bush tax cuts in 2001 and 2003.⁽⁸⁾ In 2010, reconciliation was used to pass a handful of changes to the ACA, which allowed the Senate-passed ACA to pass the House. **In 2015, the Restoring Americans' Healthcare Freedom Reconciliation Act of 2015 (H.R. 3762) was passed by Congress in an effort to repeal many of the coverage-related provisions of the ACA.** The bill originated in the House, and the Senate added several more ACA repeal provisions to the legislation. The reconciliation bill was passed by Congress but ultimately **vetoed by President Barack Obama**.⁽⁹⁾

WHAT ACA PROVISIONS CAN BUDGET RECONCILIATION ADDRESS?

Because of the Byrd Rule, budget reconciliation cannot be used to repeal the entire Affordable Care Act, but it can be used to eliminate some key provisions of the law. The 2015 reconciliation measure provides insight into how the ACA could largely be dismantled through this process. The following are some of the provisions included in the 2015 measure ultimately vetoed by the President:⁽¹⁰⁾

- Repeal of the individual mandate and penalty fee (which is considered a tax)
- Repeal of the employer mandate and tax penalty
- Repeal of premium tax credits and cost-sharing subsidies available in the health insurance marketplaces
- Repeal of the optional Medicaid eligibility expansion for adults with income above 138% of federal poverty level
- Elimination of funding for the Prevention and Public Health Fund (PPHF)
- Repeal of several sources of federal revenue that were included in the ACA to offset the costs of the insurance and Medicaid provisions (i.e. Hospital Insurance payroll tax for high-income earners, surtax on high-income earners' net investment income, annual fees on health insurers and medical devices)

The majority of the provisions were set to go into effect in 2018, with two exceptions. The individual and employer mandates were to be repealed immediately upon passage.

If a similar budget reconciliation plan is passed in early 2017, the majority of the changes would not go into effect until January 1, 2019. However, if the bill is similar to H.R 3762, the repeal of the individual and employer mandates could go into effect immediately.

WHAT ACA PROVISIONS CAN'T BE ADDRESSED THROUGH BUDGET RECONCILIATION?

Budget reconciliation can only be used to address budget-related issues. Therefore, **many of the popular provisions of the ACA will have to be addressed through the regular legislative process.** Here are some of the provisions that would still be in place once a budget reconciliation bill is passed:

- Family coverage for children up to the age of 26
- Banning coverage denials for individuals with preexisting conditions
- Requirement for insurance companies to offer essential health benefits
- No annual dollar limits on yearly spending for covered benefits
- No cost sharing for preventative services

PARTING WORDS

The Affordable Care Act is a large, complex piece of legislation that has many moving parts. Supporters are proud of its successes (even if imperfect), and opponents are eager to dismantle it or at least remove the most offensive parts. The authors of the ACA wrote it so that each provision is dependent on the presence of the other provisions. Using the budget reconciliation process to dismantle key provisions of the ACA, while keeping other provisions intact, will effectively make it difficult for the remaining provisions to function as intended. Due to this fact, recent debate has centered on whether these reconciliation measures should be done alone or passed in conjunction with a replacement plan. Decisions at the federal level will have an impact on Tennessee's health insurance market, health care providers, and Tennesseans' access to care. The next brief will discuss the potential impact of budget reconciliation and implications for Tennessee.

ACA REPEAL

Because of the Byrd Rule, budget reconciliation cannot be used to repeal the entire Affordable Care Act, but it can be used to eliminate some key provisions of the law.



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