Insight

The American Rescue Plan and Health Policy

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Executive Summary

- Many of the health provisions included in the American Rescue Plan are, at best, only indirectly related to combatting COVID-19 pandemic, even as that is the justification for the $1.9 trillion package.
- Using the reconciliation process makes it substantially easier for the majority party in Congress to achieve long-held health policy objectives, which is why so many ancillary provisions are being included.
- Key health provisions involve significant changes to the Affordable Care Act, COBRA, Medicaid, and a variety of federal public health programs.

Introduction

House Democrats are currently working to assemble the Fiscal Year 2021 budget reconciliation package, with hopes of sending it to the Senate within the next two weeks. This reconciliation bill will serve as the legislative vehicle for President Biden's American Rescue Plan. House and Senate Democrats are seeking to pass this latest package of pandemic relief—totaling $1.9 trillion—using reconciliation in order to bypass the threat of a filibuster in the Senate. Reconciliation does complicate the process, because there are limits on the types of policies that can be enacted using the procedure, as explained in this American Action Forum (AAF) primer. Although it is not clear that everything currently included will ultimately be allowed under reconciliation, as currently drafted the legislation is massive in scope with 12 House committees and 11 Senate committees receiving reconciliation instructions.

What follows is a review of the health policy provisions currently included in the

reconciliation bill. These provisions can be generally divided into two categories: (1) provisions that seem generally aimed at responding to the ongoing COVID-19 pandemic, and (2) long-sought liberal policy priorities masquerading as pandemic response.

Affordable Care Act Provisions

Recognizing that legislating in a divided Senate could prove challenging, Democrats are packing Affordable Care Act (ACA) related policy initiatives into the reconciliation bill. Democrats are seeking four significant changes to the ACA's premium tax credits, two of which are unrelated to the pandemic, one of which is related—and which makes a fair amount of sense—and one of which is completely absurd. Additionally, the legislation provides new funding for the maintenance of state-based exchanges.

Increasing the generosity of the premium tax credit: Under the ACA, an individual or family's subsidy is adjusted based on their household income and the cost of the second-lowest cost Silver plan in their rating area. An individual's subsidy must be large enough to ensure that he or she does not pay more than a specified percentage of income, based on household income relative to the federal poverty level (FPL). The reconciliation bill would reduce these percentages to increase the size of the premium subsidy for 2021 and 2022, supposedly to mitigate the financial hardship of pandemic-related job loss. The current 2021 percentages and the proposed 2021 and 2022 percentages are detailed in the following table:

Income	2021 (current law)	2021 & 2022 (proposed)
< 133% FPL	2.07%	0%
< 150% FPL	3.1% – 4.14%	0%
< 200% FPL	4.14% – 6.52%	0% – 2%
< 250% FPL	6.52% – 8.33%	2% – 4%
< 300% FPL	8.33% – 9.83%	4% – 6%
< 400% FPL	9.83%	6% – 8.5%
> 400% FPL	N/A	8.5%

While this provision is being presented as a response to the financial hardships face by families who have lost employment due to COVID-19, that justification makes little sense. If it were reasonable for a household making 150 percent of FPL to pay 4.14 percent of their income toward their insurance premium before the pandemic, there is no reason that 4.14

percent of household income is now unreasonable because of the pandemic. The ACA premium tax credits are already progressive, meaning they become more generous as income decreases, regardless of why the income decreases. In reality, many progressives would prefer a fully government funded single-payer health system and are simply using the pandemic as an excuse to increase the federal government's share of ACA premiums and move incrementally toward an increased federal role in providing health care.

Lifting the cap on subsidy eligibility: Also noticeable in the table above is that the legislation would allow households with income above 400 percent of FPL to receive ACA subsidies in 2021 and 2022 that are more generous than what current law would provide to those making less than 400 percent of FPL. Again, in this instance it is unclear why a household with income above 400 percent of FPL did not need insurance subsidies prior to the pandemic but would now at the same income level. Like the changes to the subsidy generosity, this provision is not really a response to the pandemic, but simply an opportunity to enact a policy many progressives have been clamoring for in recent years. Democrats' eagerness to subsidize health care for more affluent Americans might seem confusing, but it is consistent with a broader push to increase the federal role in the provision of health care.

Restricting Excess Subsidy Recapture: Under current law, if a household, for whatever reason, receives a more generous subsidy for coverage through the ACA marketplace than their ultimate income merited, those excess subsidy dollars are subject to recapture when taxes are filed. The reconciliation bill would exempt all excess premium subsidies from recapture for the 2020 tax year. This policy makes some sense, and directly addresses a potential pandemic-related hardship. A household that experienced job loss, resulting in loss of insurance, that then procured subsidized coverage through the ACA, might easily have miscalculated their ultimate household income. Clawing back excess subsidy dollars from families already struggling with unemployment seems excessive under the circumstances.

Changes in calculation of premium tax credits in cases of households receiving unemployment: Under the legislation, a household's income would be assumed to be 133 percent of FPL regardless of their actual income if an individual in the household qualifies for a week or more of unemployment compensation in 2021. In other words, if a household of four has total household income of $500,000 in 2021, but the head of household was unemployed and eligible for unemployment for even one week, that household will be considered to have had an income of 133 percent FPL and will be eligible for a 100 percent subsidy for a benchmark Silver ACA plan in their rating area. Alternatively, imagine two households with income of 250 percent of FPL, one that did not experience job loss, and one that did. The first family would owe 4 percent of their household income on their ACA

insurance premium, while the second family with the same income level would owe nothing because they had experienced job loss.

State-based exchange grant program: The legislation provides $20 million in grants for state-based exchanges to modernize information technology.

COBRA Subsidy Provision

Establishes a temporary federal subsidy for COBRA premiums: The reconciliation bill includes language that would provide an 85 percent federal subsidy for individuals and households that elect to receive COBRA coverage through September 2021. COBRA is a transitional insurance program dating back to 1985 that allows employees to continue with their existing employer-sponsored insurance (ESI) plan for between 18 and 36 months in most cases, provided they pay both the employee and employer shares of the premium. COBRA provides continuity, but it also can be prohibitively expensive. As explained here and here, a COBRA subsidy might have made sense early in the pandemic, but it is not clear what the purpose would be now, when job loss is notably reduced. The provision would not allow subsidies for those who are eligible for either Medicaid or another ESI plan but would provide them to those who are eligible for ACA premium subsidies. This means the objective does not appear to be to maintain stability of provider networks. Further, the subsidy for COBRA is likely to exceed the subsidy for ACA coverage in at least some cases, so it is unclear why the subsidy was not instead designed to match the household's ACA subsidy. Ultimately it is not clear what problem this policy is aiming to solve.

Medicaid Provisions

The reconciliation package contains a host of provisions related to Medicaid that run the gamut from pandemic-related to longstanding items on the progressive wish list.

Increased FMAP for States that expand Medicaid eligibility: Ever since the Supreme Court ruled that the federal government could not force states to expand income eligibility for Medicaid as part of the ACA's Medicaid expansion, Democratic lawmakers and activists have been working to force or cajole states that have not expanded eligibility to do so. Under current law, the federal share for the costs of the expansion population in a state is 90 percent. As an incitive for states to expand their Medicaid programs, under the reconciliation bill any state that expands—or has recently expanded—its Medicaid program will receive a 5 percent increase in the federal contribution for both its existing Medicaid population and its expansion population for two-years. This increase would be in addition to the 6.2 percent increase in the federal contribution to state Medicaid costs included in the Coronavirus Aid, Relief, and Economic Security (CARES) Act for the duration of the public

health emergency declaration. AAF has previously estimated that the increase included in CARES would increase federal Medicaid costs by $11 billion per quarter, and any increases included in the final reconciliation package would increase spending over and above that amount.

Eliminates the limitations on Medicaid drug rebates: As part of the Medicaid Prescription Drug Rebate Program, drug manufactures must pay additional rebates to state Medicaid plans on their drugs if a drug's price has increased faster than the rate of inflation. It is possible for these rebates to compound quickly such that the manufacturer would be required to pay more to the state in rebates than the state paid for the drug, in effect requiring the manufacturer to pay the state for using its drug. Since 2009, the program's rebates have been capped at 100 percent of the cost of the drug to prevent that outcome. The reconciliation bill would remove this cap beginning in 2023, allowing manufacturers to be forced to pay Medicaid programs to use their drugs. This provision in no way addresses the pandemic but is apparently being used to generate savings—as well as penalize drug makers—because the legislation's new spending exceeded the $1.9 trillion in new deficit spending authorized by the FY2021 budget agreement.

Medicaid coverage for COVID-19 vaccines and treatments: In the clearly COVID-19 related bucket, the reconciliation bill would establish mandatory coverage of COVID-19 vaccinations and administration, as well as treatment under the Medicaid program without cost to the beneficiary or the state until one year after the end of the public health emergency has ended. States are also allowed to provide COVID-19 vaccinations and treatment at their discretion to non-Medicaid eligible, uninsured individuals with the federal government covering 100 percent of the cost.

Extended postpartum Medicaid coverage: Under current law, pregnant woman with income up to 133 percent of FPL are eligible for Medicaid coverage regardless of whether they otherwise qualify, and that coverage extends 60 days postpartum. The reconciliation bill includes a provision that would allow states to extend postpartum coverage for up to 12 months. The policy, however, would revert to current law after five years. While there has long been support for extending postpartum Medicaid coverage, this provision is arguably unrelated to the ongoing pandemic.

Medicaid coverage of prison inmates: Under current law, Medicaid does not cover health care for individuals who are incarcerated, though an inmate can be enrolled in Medicaid while incarcerated to allow for a smoother transition back to Medicaid upon release. The reconciliation bill would allow Medicaid coverage of inmates within 30 days of their release. This policy would also terminate after five years.

Increased federal Medicaid support for mobile crisis intervention services: The reconciliation bill would increase, to 85 percent, the federal share of Medicaid spending on mobile crisis intervention services for individuals experiencing a mental-health or substance-use disorder crisis. Many have argued that the pandemic has exacerbated existing mental-health and substance-use challenges, given job loss, anxiety over personal health, and increased isolation, which this provision would aim to address. This increased federal payment would last for five years.

Extension of 100 percent federal share for care provided through Urban Indian Health Organizations and Native Hawaiian Health Centers: Under current law, the federal government covers 100 percent of the cost of care for Medicaid-enrolled American Indian and Alaska Natives at Indian Health Service (IHS) and tribal facilities. Urban Indian Health Organizations and Native Hawaiian Health Centers do not, however, receive the same 100 percent federal contribution. As part of the reconciliation bill, the 100 percent federal share would be extended to these facilities for two years.

Increased federal funding for Home and Community Based Services: The reconciliation bill would increase the federal share of Medicaid program costs for Home and Community Based Services by 7.35 percent for the duration of the public health emergency declaration.

Funding for states to establish "strike teams" for nursing homes and skilled nursing facilities: The legislation provides $250 million until expended for distribution to states to fund the establishment of "strike teams" that can be deployed to nursing homes and skilled nursing facilities (SNFs) with diagnosed or suspected cases of COVID-19 to assist with clinical care, infection control, or supplemental staffing.

Funding for infection control at SNFs: The legislation would provide $200 million for infection control activities related to COVID-19 at SNFs.

Public Health Provisions

As would be expected as part of legislation responding to a global pandemic, the reconciliation bill also includes several policies related to public health. Here as well, however, the direct connection between the policies and the public health emergency are not always clear.

Funding for vaccines and therapeutics: The legislation provides $7.5 billion in funding for the Centers for Disease Control and Prevention (CDC) to prepare, promote, administer, monitor, and track COVID-19 vaccines as well as $1 billion to the CDC for the purpose of increasing vaccine confidence and improving vaccination rates. This funding for the CDC is on top of the $4.3 billion included in the CARES Act in 2020. $5.2 billion is also allocated to

the Department of Health and Human Services (HHS) to support research, development, manufacturing, production, and purchase of vaccines, therapeutics, and ancillary equipment for the prevention and treatment of COVID-19. Last, the Food and Drug Administration is allocated $500 million for the development and post-market surveillance of COVID-19 vaccines and therapeutics, and to address drug shortages.

Funding to enhance testing: The legislation allocates $45 billion to HHS to detect, diagnose, trace, and monitor COVID-19. Activities are to include development of a national strategy for testing and contact tracing; assisting state and local governments in implementing that strategy; developing, manufacturing, and distributing tests; procuring personal protective equipment and other necessary supplies; and expanding state and local testing capabilities. An additional $1.75 billion is directed to the CDC for identifying COVID-19 mutations and assisting state and local governments in understanding and responding to new strands. $500 million is also allocated to establish a CDC surveillance and analytics infrastructure to forecast and track COVID-19 outbreaks. Finally, the CDC would receive $750 million to combat COVID-19 globally.

Establishing a public health workforce: The legislation would provide $7.6 billion to HHS to stand up a permanent, expanded public health workforce, and to provide funds to state, local, and territorial health departments.

Public Health Funding: The reconciliation bill makes the following public health spending allocations:

- $7.6 billion for Community Health Centers (CHCs), in addition to the $1.32 billion CHCs received in the CARES Act;
- $800 million for the National Health Service Corps;
- $200 million for the Nurse Corps Loan Repayment Program;
- $331 million to expand Teaching Health Centers and Graduate Medical Education sites;
- $1.8 billion to HHS to purchase and distribute personal protective equipment, testing supplies and vaccines for congregate settings such as prisons, and to provide grants to states and localities to undertake similar activities;
- $50 million for family planning services, apparently critical to defeating COVID-19; and
- $425 million to bolster COVID-19 detection, prevention, and treatment among children under the care of HHS.

Other Provisions

Indian Health Funding: The legislation provides a total of $6.09 billion for tribal health programs, including:

- $2 billion to cover lost revenue to the IHS;
- $140 million to upgrade IHS information technology and electronic health records infrastructure;
- $84 million for Urban Indian Health Programs;.
- Only $600 million is designated for vaccine-related activities;
- $1.5 billion for testing and contract tracing;
- $240 million to bolster tribal public health workforces;
- $420 million for mental and behavioral health services;
- $600 million for tribal health care facilities and infrastructure; and
- $10 million for potable water delivery.

Mental-health and substance-abuse funding: The legislation provides substantial new funding for mental health and substance-abuse programs, including:

- $3.5 billion for the Substance Abuse Prevention and Treatment and Community Mental Health block grant programs;
- $80 million for mental and behavioral health training for health professionals;
- $80 million to develop a new grant program for community-based and behavioral health organizations supporting mental-health and substance-use disorder services;
- $10 million for the National Childhood Traumatic Stress Network;
- $50 million for existing youth mental health services and suicide prevention programs; and
- $100 million to the Behavioral Health Workforce and Education and Training Program in order to train additional behavioral health workers.

Children's Health Insurance Program (CHIP) coverage for COVID-19 vaccines and treatments: The legislation mandates that CHIP cover COVID-19 treatment and vaccines and their administration at no cost to the beneficiary and with the federal government covering 100 percent of the cost for one year after the end of the public health emergency.

Extended postpartum coverage under CHIP: The legislation would allow states, under specific circumstances, to extend postpartum coverage for up to 12 months. The allowance would remain in effect for five years.

Conclusion

While some of the reconciliation bill's provisions are directly aimed at addressing the COVID-19 pandemic—and many of those build on funding already allocated in the CARES Act—the preponderance of the health policy initiatives included in the legislation are at best indirectly related to the pandemic. While the legislation is being presented as a necessary response to the current crisis, like most large spending bills, it has quickly morphed into an opportunity to attach a host of unrelated provisions and policies long sought by those on the left.

Because the legislation is utilizing the reconciliation process and is therefore immune to any threat of Republican filibuster, Democrats are attempting to pass as much of President Biden's broader health policy agenda as they can, particularly with regard to the ACA. While it remains uncertain how many of these provisions will ultimately be allowable under reconciliation, Democrats are seizing the opportunity to pass as much of their policy agenda as they can, whether or not each provision is related to the pandemic.