



Cruz: We Can Repeal Insurance Mandates Through Reconciliation

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One of the conservative sticking points in judging the House GOP's health plan has been the measure's treatment of "non-budget"-related items. Under the legislative mechanism Republicans are using to move the American Health Care Act, the bill's particulars must have an impact on spending and revenues. This makes it uncertain if something like Obamacare's provisions for pre-existing conditions—which are mandates on insurance companies, but also affect the price of health coverage—would pass muster under the "reconciliation" process. Reconciliation is relevant because filibusters do not apply; it would allow Republicans to undo portions of Obamacare with just 51 votes in the Senate, instead of 60.

GOP leadership has actually bragged that its legislation retains the Affordable Care Act's pre-existing conditions regulations. Under Obamacare, "guaranteed issue" forces insurers to offer consumers coverage regardless of a preexisting condition. To keep insurance affordable to such individuals, the law also includes a "community rating" restriction, which prohibits insurers from charging people of varying risk but similar age different premiums. Some on the right are concerned that this tandem creates a market distortion, giving young or low-risk individuals an incentive to forgo insurance and wait to purchase it until they need it. Doing so leaves a larger proportion of higher-risk—and thus, more expensive—consumers in the market, driving up costs. A policy like Obamacare's individual mandate was designed partly to mitigate such price risk, compelling those who would rather skip insurance to buy it. But the AHCA effectively eliminates the individual mandate, and keeps the insurance regulations in place.

Amid internal party debate about the bill, Sen. Ted Cruz is the first Republican lawmaker in the upper chamber to call for repeal of the insurance mandates, and to do so through reconciliation. He writes with Rep. Mark Meadows, chairman of the House Freedom Caucus, in the Wall Street Journal:

“The single biggest factor causing frustration with ObamaCare is skyrocketing costs. The average family's annual premiums on employer-sponsored plans under the law have increased by more than \$5,000. The insurance mandates are a primary driver of these spikes. If we leave these mandates in place or delay their repeal, premiums will remain too high for too long, as studies by

the Congressional Budget Office and others have shown. If premiums continue to skyrocket, we will have failed, and Americans will rightly direct their frustration at the ballot box toward the Republican majority.

We cannot give voters a procedural excuse for why we couldn't get the job done. Some have argued, incorrectly, that the Senate's Byrd Rule precludes repealing these insurance mandates through the reconciliation process. That simply isn't true. The current version of the bill already repeals or modifies a few of the mandates. Why wouldn't we repeal all the major insurance mandates for the sake of truly lower health-care costs? How can modifying a mandate comply with Byrd, but repealing it not comply? Both have billions in budgetary effect, the central prerequisite for reconciliation.

We should follow the text of the Budget Act, which establishes the reconciliation process. Fully repealing the insurance mandates would comply with both the letter and the spirit of the statute. More important, the Senate parliamentarian does not ultimately determine what is allowable under reconciliation. That authority falls to the vice president, the chamber's presiding officer. As the former Senate parliamentarian Robert Dove once explained, the vice president is "the ultimate decider" on reconciliation: "The parliamentarian only can advise. It is the vice president who rules.""

The Cato Institute's Michael Cannon, a longtime Obamacare critic and detractor of the AHCA, recently provided a similar take to THE WEEKLY STANDARD, characterizing the insurance mandates "conditions on federal spending."

Despite Cruz's wishes, however, the senator would still run into another procedural roadblock. Should the AHCA pass the House, Senate Majority Leader Mitch McConnell plans to bring it directly to the floor for an amendment "vote-a-rama." Amendments to the bill would be subject to a 60-vote threshold—an insurmountable obstacle, given Democratic resistance. If the GOP wanted to undo the insurance mandates, the legislation's authors would have written it into the original language, or the matter would have been settled in the House.

Speaker Paul Ryan said Wednesday that the bill can now undergo "some necessary improvements and refinements," subsequent to the release of estimates from the Congressional Budget Office that have jolted Republicans off-course. He did not go into details. The AHCA goes to the budget committee for a vote on Thursday, but any substantive changes would have to be cleared next by the rules committee, prior to the legislation's presentation on the House floor.