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Legislative Reality vs. Political Reality

How Democrats game the Congressional Budget Office

Peter Suderman | December 10, 2009

"The budget," said Will Rodgers, "is like a mythical bean bag. Congress votes mythical beans into it, then reaches in and tries to pull real ones out." And the Congressional Budget Office (CBO), the non-partisan office tasked with generating official price tags for legislation, is the agency responsible for helping Congress count those mythical beans. But as the health care debate has progressed throughout the year, Congressional Democrats have become far more adept at getting the CBO to count the beans just the way they want.

Over the summer, some of the biggest setbacks faced by Congressional Democrats in their effort to overhaul the nation's health-care system came from the CBO. According to the CBO, bills put forth by the House and the Senate Finance Committee would cost $1 trillion and $1.6 trillion, respectively. The CBO also projected that the House bill would increase the federal deficit by $239 billion.

But after the August recess, scores for the various reform proposals improved markedly. Not only were they cheaper, requiring less total spending, they were judged by the CBO to result in net reductions to the deficit. What happened?

In large part, the answer is that Democrats became more skilled at manipulating the CBO's scoring process. Indeed, they have become so skilled at getting what they want out of the CBO that the office has taken to including strongly worded warnings that the various bills' real costs may not actually match their estimates.

In the House, Democrats shifted an expensive, unpaid-for "fix" to doctor's Medicare reimbursement rates over to a separate bill. And in the Senate, they backloaded the spending so that its full effects would not be felt in the 10-year window that CBO scores. In the latest Senate bill, 99 percent of the spending would occur in the last six years of the budget window.

Nor do the scores count the cost of state level Medicaid expansions—$25 billion in the Senate's bill—or of the private sector mandates it imposes, which, according to Michael Cannon, a health policy analyst at the Cato Institute, could add an additional $1.5 trillion to the total.

The bigger issue is that in budgeting, there are multiple realities available: The various scores put forth by the CBO are based on what might be called "legislative reality"—a fictional world in which there are no changes to current law except the bill under consideration, and new legislation is executed to the letter. That means CBO scores are not permitted to reflect political reality—the understanding that what a law says Congress will do in the future is not necessarily what Congress will actually do.

Knowing this, Democrats have concocted legislation that ignores the relevant facts of political reality and instead skews legislative reality, which is based not on honest expectations but on the promises made in legislation, in their favor.

For example, the most recent Senate reform bill counts $192 billion in savings from Medicare payment reductions and $118 billion in savings from reducing payment rates in Medicare Advantage programs. It attempts to guarantee these results by setting up a Medicare advisory board which would be required to recommend cuts should the savings not be achieved.

Yet it is highly unlikely that such changes will come to pass. In the past, despite passing laws that institute formulas requiring payment reductions, Congress has been loath to make such cuts, and has overturned those cuts at nearly every opportunity. As former CBO chief Douglas Holtz-Eakin recently told me, "They surrendered their budget authority to a formula, but they took it right back." To Congress, when it comes to cutting payments to powerful constituencies, there's little difference between a formula and a commission.

Analysts at the CBO are not blind to this, but they must score bills as if what is written is what will happen. However, they are not prohibited from issuing strong warnings about what might happen if the legislative reality they assumed for scoring purposes somehow does not come to pass—which is just what they've done.

For example, the CBO's September 16th scoring of the Senate Finance Committee health care bill ends with the caveat that its projections about cost and deficit reduction "assume that the proposals are enacted and remain unchanged throughout the next two decades, which is often not the case for major legislation. For example, the ... mechanism governing Medicare's payments to physicians has frequently been modified ... to avoid reductions in those payments."

Indeed, such caveats are a staple of the CBO's health care scores. A revised score of the Finance Committee's bill released on October 7th noted that "the projected savings for the proposal reflect the cumulative impact of a number of specifications that would constrain payment rates for providers of Medicare services. The long-term budgetary impact could be quite different if those provisions were ultimately changed or not fully implemented."

In an October 29th report on the House reform bill, CBO chief Doug Elmendorf wrote that "the bill would put into effect (or leave in effect) a number of procedures that might be difficult to maintain over a long period of time," including "the 21 percent reduction in the payment rates for physicians currently scheduled for 2010." And the CBO's November 18th score of the Senate's bill states that the projections cautions that the estimates of long-term deficit reduction are "subject to substantial uncertainty."

The language involved may sound reserved, but in the staid world of bureaucratic Washington, this is akin to hanging flashing neon signs all along Pennsylvania Avenue warning that deviations from legislative reality are highly likely. Indeed, Elemendorf, who has frequently noted that our nation's fiscal policy is "unsustainable," has become so concerned with this problem in overall budget projections that he recently gave a presentation noting that "the difference between current law (which underlies CBO's baseline projections) and current policy as perceived by many people... is very large."

In his presentation, Elemendorf was referring to tax rates. But it's essentially the same difference that Democrats have taken to exploiting in crafting health care legislation. There's an old proverb that says "a poor man's budget is full of schemes." But every time they release a new health care bill, Democrats prove that you need not be poor for that to be true.

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