Implementing Health Reform. On December 3, 2015 the Senate voted 52 to 47 to repeal large parts of the Affordable Care Act. The House has voted over fifty times to repeal the ACA since the Republicans took control in 2011, but this is the first time the Senate has passed an ACA repeal bill. Because the vote was taken under the congressional budget reconciliation process, the legislation could be passed with a simple majority vote rather than the 60-vote majority that is usually necessary in the Senate to avoid a filibuster.

The vote came at the end of a long day in which 46amendments to the legislation were offered from both sides of the aisle, most of which were ruled out of order, defeated, or withdrawn. All Republicans voted for the repeal except for Senators Collins (Maine) and Kirk (Illinois). All Democrats voted against repeal except Senator Sanders, who did not vote.

The Senate amended reconciliation legislation already passed by the House. That legislation had targeted particular provisions such as the employer and individual mandates, the high-cost employer-sponsored health plan (Cadillac plan) excise tax, and funding for Planned Parenthood.

A Broad Approach

The Senate amendment is much more comprehensive. Like the House bill, it would effectively repeal the individual and employer mandate. However, because the Senate Parliamentarian decided that outright mandate repeals could not be included in a budget reconciliation bill under the Senate rules, the legislation did not eliminate the mandates but simply amended them to provide that there would be no penalty for noncompliance. Curiously, the bill does not repeal the ACA's reporting requirements that apply to large employers and insurers, which are subject to their own penalty. Thus employers would have to continue to report compliance with the mandate even though they faced no penalties for noncompliance.

As mentioned, the Senate bill goes much further than the House, however. Specifically, it would end the premium tax credits, the cost-sharing reduction payments, the Medicaid expansion, and the small business tax credits—that is, all of the assistance that the ACA gives to low and moderate-income Americans. It would hold off repeal until 2018, however, reportedly to give the Republicans until after the 2016 elections to find a replacement.

The Senate bill would also remove current caps that limit the amount of premium tax credit overpayments that the IRS can claw back at the time individuals who receive advance tax credits file their taxes. These caps currently provide some protection for low-income individuals who underestimate their income for a year and thus must pay back excess credits.

The bill would provide that the ACA's reinsurance program would be unable to make payments or collect contributions as of January 1, 2016. This program would end as of

2017 in any event, but insurers have already set their premiums for 2016 based on the existence of these programs, so this repeal promises further problems for insurers. A provision that would have ended the risk corridor program was stricken on a point of order.

Fiscal and Coverage Effects

The Congressional Budget Office report on the Senate reconciliation measure concludes that the coverage repeals would reduce budget outlays by about $1.5 trillion over the 2016 to 2025 period. The CBO has not provided a final estimate as to how many Americans would lose insurance coverage under the Senate bill. It has noted, however, that the bill does not repeal the provisions of the ACA that require insurers to offer coverage and to set premiums without regard to health status or preexisting conditions. In its review of the bill, the CBO stated that:

> repealing the subsidies and mandates established by the ACA while leaving in place the insurance market reforms would result in a less healthy population in the nongroup market and correspondingly higher average premiums. In addition, the market for nongroup insurance, particularly in smaller states, could become unstable, leading to very low to no participation by insurers and consumers.

It is reported that in a preliminary review, the CBO projected that the Senate reconciliation act would increase the number of uninsured by 22 million over where we would be under the ACA in 2018, to 57 million.

The Senate Republicans, as noted above, have delayed the repeal for two years to give themselves time to come up with a replacement for the coverage expansions. While Republicans have put forward a number of proposals for replacing the ACA since it was passed, the proposals they have presented to date would leave many of those helped by the ACA without coverage. A recent analysis, for example, of premium support proposals like those made by Republicans, found that they would offer far less assistance to low-income and older Americans, and would increase the total number of the uninsured.

The Senate bill also repeals the ACA's revenue provisions that paid for its coverage expansion. These repeals would cut government revenues by $1,197 trillion over 10 years, resulting in a net reduction in the deficit of $295.6 billion after the tax cuts are offset against the cuts in Medicaid, premium tax credits, and cost-sharing reduction payments. Of course, if Republicans in fact offer replacements for these programs, these budget savings would quickly disappear.

Included in the tax repeals is the employer-sponsored health insurance (Cadillac plan) excise tax. The bill had originally only postponed this tax, but Democrats joined with Republicans in voting for total repeal, which may signal this tax's death knell. The bill would also repeal the medical device tax and the insurance premium taxes, both of which have been subject to intensive lobbying.

Overall, the legislation includes more than a dozen revenue repeals, including the tanning tax and an ACA provision that eliminated tax subsidies for the purchase of over-the-counter drugs from HSAs and FLEX accounts. Among the biggest tax cuts in the bill are repeals of the increased Medicare payroll and capital gains taxes imposed by the ACA on individuals earning more than $200,000 and families with incomes of more than $250,000. This would give upper income taxpayers tax cuts in worth $346 billion over 10 years.

The legislation also terminates the ACA's prevention and public health fund and restores the money left in the fund to the Treasury. It increases slightly funding for the Community Health Center Program. It would appropriate $250 million in each of 2016 and 2017 for grants to the states to deal with substance abuse and mental health needs. It would also, like the House bill, terminate federal funding for Planned Parenthood. Finally, it would repeal the ACA's reduction in hospital disproportionate share Medicaid payments.

What's Next?

Since the Senate legislation is significantly different from the House bill, it must now return for a vote in the House, which will almost certainly pass it. It then must go to the President, who will certainly veto it. Since the Republicans do not have enough votes to override a veto that will be the end of the effort as a matter of legislation, although we may see some of the bill's provisions again in proposed appropriations riders as Congress moves 2016 appropriations bills forward, and we will certainly see further efforts to repeal the Cadillac excise tax.

The Republicans' achievement is significant, however. They have finally succeeded in getting a Senate vote to repeal the ACA and they have laid down a marker as to what parts of the ACA they would try to eliminate if they gained the White House in 2016. What we have yet to see is what they would replace the ACA with.