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The Effects of Congressional Budget Reconciliation on Health Care Reform

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Joyce PG. Congressional budget reform: the unanticipated implications for federal policy making. *Public Adm Rev.* 1996;56(4):317-325.

As we approach the 2012 congressional elections, there are few issues more polarizing than federal spending. It is perhaps surprising then, that the process with which federal spending is determined, remains relatively unfamiliar to many Americans. In the article “Congressional Budget Reform: The Unanticipated Implications for Federal Policy Making,” Joyce examines the evolution of the congressional budget process, revealing several profound and unintended consequences of changes to the rules governing the process [1]. These changes played a crucial role in shaping the Patient Protection and Affordable Care Act of 2010.

In the article, Joyce inspects three underappreciated aspects of budget reform. He begins with a discussion of the importance of the introduction of the budget reconciliation process in the 1974 Congressional Budget and Impoundment Act. Second, he contrasts the originally politically-neutral process to its current politicized form, focusing on the impact of Gramm-Rudman-Hollings in 1985 and the Budget Enforcement Act in 1990. Third, he examines the increasingly common use of short-term fiscal “scorekeeping” as a substitute for long-term economic considerations.

The 1974 Congressional Budget and Impoundment Act

For the first several hundred years of U.S. history, the federal budget was a poorly defined and opaquely created entity [2]. In 1921, the Budget and Accounting Act introduced the previously unheard-of requirement that the executive branch submit a unified budget to Congress annually. Although a monumental addition of responsibility (and power) to the presidency, the act did not much change the state of affairs on the congressional side, and budgets submitted by the president were considered and voted on piecemeal by the various committees who claimed responsibility for individual provisions within. Further adding to the confusion, the president could refuse to spend congressionally appropriated money on programs he did not agree with, a power known as impoundment.

Some members of Congress agreed that failing to consider the budget as a whole made keeping track of total expenditures and balance impossible. It was not until President Nixon began using his power of impoundment at previously unseen levels

that Congress decided to overhaul the budget process. With the passage of the Congressional Budget and Impoundment Control Act of 1974, Congress created a politically neutral process, cleared of the usual parliamentary roadblocks such as supermajority requirements for points of order. They also specifically denied the president the right of impoundment [3].

The 1974 Budget Enforcement Act (BEA) also created the process of reconciliation. In broad strokes, reconciliation is a process through which members of the congressional chamber that originally passes a bill (the Senate, for example) may vote on changes made to their bill while it was being debated in the other chamber. The reconciliation bill (the vote by the Senate on the bill first passed in the Senate and then modified in the House) is subject to limited amendments and no more than 20 hours of debate before an up or down vote must be undertaken [4].

The original framers of the 1974 BEA did not anticipate that the reconciliation process would be particularly important except to accommodate specific economic or legal changes since passage of the first bill [5]. This proved to be incorrect. Concerned with the fate of his budget in Congress, President Reagan used large spending cuts in the first passage of the budget as proof that large tax cuts were indeed affordable and should be added into the budget via reconciliation and subjected to a single up or down vote. Although the tax cuts were not eventually enacted through reconciliation, Pandora's box had been opened.

Reconciliation is so politically potent because it allows for the consideration of legislative actions on a two-part basis. The initial vote on a budget is fraught with parliamentary obstacles and can easily be held up by the minority party. With reconciliation, the party in power can pass a budget with favorable terms for the minority party (spending cuts, for example), with the express understanding that the majority party's *quid pro quo* items will be added in during reconciliation (tax cuts to match the spending cuts). This communicates to both politicians and the public they serve that the budget is being considered as part of the larger picture.

The Politicization of the Process

The budget process created in 1974 could be used to increase or decrease spending and deficits, making it truly politically neutral (meaning it doesn't particularly encourage limiting or increasing either one). In 1985, amid fears of an expanding deficit, Gramm-Rudman-Hollings (GRH) created a series of automatic spending cuts (known as sequesters) that would be triggered if deficits exceeded fixed targets. This allowed for political blame-shifting, for when cuts or new taxes occurred that were objectionable to voters, a congressman now had the excuse that the law mandated the changes. It also created a political, although generally inoffensive, slant to the budget process, encouraging Congress to limit deficits. Lastly, by only including sequesters on spending (and not, for example, by mandating increased taxes), GRH implied a ceiling on congressional expenditures [2, 6].

Challenges to the constitutionality of the sequesters proposed in GRH resulted in several reworkings of the law, eventually resulting in the Budget Enforcement Act (BEA) of 1990. This BEA eliminated annual deficit targets and limited spending. The most important change was the creation of Pay As You Go (PAYGO), which mandated that any tax or spending changes were deficit neutral for the next five years. The Congressional Budget Office (CBO) increased monumentally in importance, as suddenly their projection of costs determined whether a new bill could pass muster with the BEA [1].

Enforcement and Short-Term “Scorekeeping”

The passage of Gramm-Rudman-Hollings and the Budget Enforcement Act of 1990 made cost estimation and the question of how a bill will be funded vital. President Clinton, for example, included caps on insurance premiums in his health plan not because he agreed with them but because they would decrease the cost projections of the CBO. Similarly, a 1994 trade agreement forced the Senate to waive its rules because the decreased tariffs in pursuit of free trade would unacceptably decrease revenues [1].

This emphasis on 5-year deficit neutrality, however, creates an extremely narrow focus. Health care reform has implications extending beyond congressional spending for 5 years, including long-term effects on national health and the economy as a whole. In Joyce’s opinion, focusing on a bill’s impact on deficits for half a decade is simply the wrong question. Further, by limiting the timeline, the creators of PAYGO ensured that the system could be duped with accounting tricks and the pushing of costs beyond the five-year enforcement window. The CBO does on occasion attempt to answer broader questions, including the 10- or 20-year costs of bills (most recently with health care reform), but these projections are not scorable, and therefore carry little political weight [1].

Implications for Current Policy Making

Joyce’s article makes great strides in clarifying the political forces that influence the budget. It is worth noting that it was published in 1996, however, and that much has occurred since then. Pay As You Go was extended several times before expiring at the end of 2002. Accompanying this, a federal surplus of \$128.2 billion in 2001 dwindled to a deficit of \$377.6 billion in 2003 [7], largely due to the institution of Medicare prescription drug benefits and the 2003 Bush tax cuts, neither of which would have been permissible under PAYGO. The 110th Congress briefly resurrected PAYGO in Jan 2007 [8] but it has been waived a number of times for a variety of reasons including reforming the Alternative Minimum Tax (2007), updating farm subsidies (2008), and passing multiple economic stimulus plans (2008, 2009), among others [9-12]. Congress, it has been made clear, does not well tolerate limits on its spending capacity.

Unlike the easily circumvented Pay As You Go rules, reconciliation remains one of the most potent tools available to today’s legislators. Since the Reagan era, however,

reconciliation has been used to pass omnibus spending bills, tax reform bills, and the Bush tax cuts in 2001 and 2003.

The Health Care and Education Reconciliation Act of 2010 (HCERA) was passed using reconciliation to bring the Patient Protection and Affordable Care Act (ACA) into its current form [13]. The idea of using the budget reconciliation process to pass health reform was discussed soon after President Obama took office and green-lighted after the Democrats lost their filibuster-proof Senate with the death of Massachusetts Senator Ted Kennedy and the election of Senator Scott Brown to replace him [14, 15]. The Senate approved the ACA in December 2009, and the House was strongly encouraged to pass this legislation in early 2010 because its ratified version, the Affordable Health Care for America Act, faced an almost certain filibuster in the Senate [16, 17].

In March, the House passed the ACA, but Congress used the budget reconciliation process to add amendments to the bill and prevent filibusters in the Senate in the process. By March 25, 2010, both chambers of Congress approved HCERA, which, among other things, altered the penalty for not buying insurance, closed the Medicare “doughnut hole,” delayed and lessened the tax on high-end insurance plans while expanding the number of plans that will eventually be affected, and altered higher education assistance financing [18].

President Obama signed the bill into law on March 30, 2010, achieving two goals set during his election campaign, health reform and improving higher education assistance. The CBO estimated that this legislation will reduce the federal budget by \$143 billion over 10 years, providing coverage for an additional 32 million people, and requiring more Americans to have health insurance [16].

CBO’s scoring of HCERA has been disputed, and this bill has been considered a factor in the Republican party’s major victories in the 2010 elections, which resulted in their majority in the House [19]. Beginning early in the 112th Congress, the Republican-controlled House passed their repeal of health reform, The Repealing the Job-Killing Health Care Law Act (HR 2). The Senate took up this bill but it was quickly defeated [17].

The congressional budget may only intrude on the public psyche during election season when it appears in countless sound bites, but it is of vital importance to the country. Although the budget is submitted by the president, and despite recent analysis indicating that the president’s party affiliation may be the most important determinant of where the money flows [20], it is in the halls of Congress that the budget takes its final shape. Joyce describes in his article how relatively small changes in the rules governing the budget process have had far-reaching implications. As the budget process is reformed and the rules surrounding filibuster and congressional procedure are revised, it would be wise to remember his point.

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