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Budget Reconciliation Package: Healthcare, Retirement and Tax Provisions under Consideration

(As of November 16, 2021)

Negotiations over President Biden's Build Back Better plan continue in Congress as Democrats face increasing pressure to resolve differences between progressive and moderate members over various provisions in the budget reconciliation bill. At the center of these discussions are Senators Joe Manchin III (D-WV) and Kyrsten Sinema (D-AZ), who have rejected the bill's topline number and have expressed concerns and, in some cases, outright opposition to some of the plan's key financing mechanisms. Ultimately, both Senators are critical to the bill's passage in a 50-50 Senate.

While the reconciliation bill covers a broad range of industries and policy objectives, some of the most contentious provisions have involved health care, specifically proposals to expand the scope of Medicare benefits and grant Medicare the authority to negotiate prescription drug costs. The framework has also fluctuated in its treatment of retirement accounts, initially including auto-enrollment requirements on employers and new retirement plan options, but then removing those provisions altogether and instead focusing on more targeted retirement reforms for high net worth individuals. On the tax front, earlier provisions to increase the top marginal individual tax rate, raise the capital gains tax rate to 25%, and limit the 199A pass-through deduction are absent in the current House bill.

The House was scheduled to vote on the bill Nov. 5th but delayed doing so at the request of some Democratic members awaiting fiscal information from the CBO. Reports indicate the House now intends to vote on the legislation this Friday, Nov. 19th. In the interim, significant changes are expected on the Senate side, including efforts by some members to reduce the overall size of the package, citing rising inflation as a key concern.

The following chart outlines the specific healthcare, retirement, and tax provisions currently at play in the House version of the reconciliation bill.

POLICY	DESCRIPTION
HEALTHCARE PROVISIONS	
Medicare Hearing Benefits	Expands Medicare Part B to include hearing benefits beginning January 2024.[i]
Expansion of ACA Subsidies	Extends ACA subsidy enhancements under American Rescue Plan Act (ARPA) through 2025 for the following populations: • Individuals between 100 and 150% of the Federal Poverty Level (FPL) would be eligible coverage with no premium contribution. • Individuals 150% FPL and above • Individuals who receive unemployment compensation[ii]

POLICY	DESCRIPTION
	Would permanently eliminate the annual indexing of caps on premium contributions.
Closing Medicaid Coverage Gap	Provides premium tax credits and cost sharing reduction assistance for individuals in non-expansion states between 100-138% of FPL to enroll in ACA marketplace plans through 2025.[iii]
State reinsurance fund	Establishes a $10 billion/year fund from 2023 through 2025 to support states in setting up reinsurance programs or providing financial assistance to reduce out-of-pocket costs.[iv]
Reduce Affordability Threshold for Employer Plans	Permanently reduces the affordability threshold for employer premiums from 9.8% of income (2021) to 8.5% (2022-2025) and eliminates the annual indexing of this rate beginning 2026.[v]
Medicare Prescription Drug Provisions	Would grant HHS authority to negotiate the cost of up to 30 drugs covered by Medicare (10 by 2025, increasing to 20 by 2028). Eligible drugs would be limited to the those with the highest gross spending by Medicare Parts B and D that are outside their exclusivity periods, 9 years for single molecule drugs and 12 for biologics.[vi] Would also cap Medicare Part D beneficiary out of pocket spending to $2,000 annually and caps insulin copays at $35/month.[vii] Beginning 2023, requires drug manufacturers to provide a rebate for certain Medicare Part B and D drugs when their price increases faster than inflation, or pay a penalty.[viii]
PBM Disclosures	Beginning January 2023, requires issuers or other entity providing PBM services on behalf of group health plans to submit a disclosure report every 6 months to the plan sponsor including: • total amount of copayment assistance paid that was funded by manufacturer • total amount of rebates and discounts received by the plan • amounts paid (directly or in rebates/fees) to brokers or any other entity who referred the plan to the PBM • a list and categorization of each dispensed drug covered by the plan • total net spending and total gross spending (prior to rebates) on drugs by the plan[ix]

POLICY	DESCRIPTION
Mental Health Parity	Expands the authority of the Department of Labor to impose civil monetary penalties on a plan sponsor or administrator of a group health plan that fails to meet parity requirements for mental health and substance use disorder benefits. The provision would apply to plan years beginning one year after the bill's enactment.[x]
OTHER BENEFITS	
Paid Family Leave	Guarantees 4 weeks of paid leave annually for workers dedicating at least 4 caregiving hours per week to the following: • the birth of a child • the placement of a child for adoption or foster care • a family member with a serious health condition • a serious health condition making the employee unable to satisfy the requirements of their employment The provision applies to all workers, regardless of classification, with a minimum annual income of $2,000. The benefit would be paid out on a sliding scale formula based on the worker's average weekly earnings prior to the leave period and the amount of weekly caregiving hours credited. The proposal also authorizes grants for "legacy states" with existing paid leave programs. Employers who have already implemented an equivalent program would be eligible for reimbursement provided they satisfy certain thresholds.[xi]
RETIREMENT PROVISIONS	
Restrictions on IRA Investments for Large Account Balances	Limits individual retirement account (IRA) and defined contribution (DC) account holders with an aggregate account balance exceeding $10 million from further contributing to their account(s) if the contribution would cause the balance to exceed $10 million beginning Dec. 31, 2028.[xii] The rule does not apply to rollover contributions. Also requires the same individuals to reduce their combined balances by taking a distribution the following year of up to 50% of the excess amount. Individuals with balances of over $20 million in assets must take a Roth distribution of the amount required to reduce the account to under $20 million, then proceed with the 50% excess distribution for any account. The provision explicitly excludes employee stock ownership plans (ESOPs) from the distribution requirement, though they do count toward an individual's balance threshold.[xiii]

POLICY	DESCRIPTION
	Requires plan administrators to annually report to the IRS a list of employer DC accounts with a balance of more than $2.5 million.
Restrictions on Roth Contributions and Conversions	Beginning January 1, 2022, would prohibit post-tax qualified plan contributions and IRA contributions from converting to Roth, regardless of income level.[xiv] Would also prohibit Roth conversions for individuals earning over $400,000 ($450,000 jointly) beginning January 1, 2032.
TAX PROVISIONS	
Corporate/Foreign	
Limitations of Excess Business Losses	Would make permanent the current disallowance of net business deductions in excess of business income for non-corporate taxpayers. Any disallowed loss carried over to the next taxable year would be treated as a deduction subject to the excess business loss limitation, rather than as a net operating loss.[xv]
Corporate Alternative Minimum Tax	Would impose a 15% alternative minimum tax on corporations with a three-year average financial statement income in excess of $1 billion. Foreign-parented corporations are subject to a lower three-year average threshold of $100 million. [xvi]
Excise Tax on Repurchase of Corporate Stock	Would impose a 1% tax on publicly traded domestic corporation for the fair market value of any corporate stock that is repurchased by the corporation during the taxable year. [xvii]
Limitation on Interest Expense Deduction for Members of International Financial Reporting Groups	Would impose a new global interest limitation (section 163(n)) for certain domestic corporations who are members of an international financial reporting groups to an allowable percentage of 110% of the domestic corporation's net interest expense. This would apply in addition to the 163(j) limitation, which currently imposes a maximum business interest expense deduction to an amount based on 30% of earnings before interest, tax, depreciation and amortization (EBITDA), scheduled to be based on EBIT only beginning January 1, 2022. The provision further modifies section 163(j) for pass-through entities by applying the limitation to a partner or shareholder, rather than at the entity level. Would also limit the carryover period for amounts disallowed under either sections 163(j) or 163(n) to five years, in contrast to the indefinite carryover under existing law.[xviii]
GILTI and FDII Deduction Modifications	Would reduce the Section 250 deduction with respect to both foreign-derived intangible income (FDII) (to 24.8%) and global intangible low-taxed income (GILTI) (to 28.5%), which yields an effective 15% GILTI rate and 15.8% FDII rate. If the 250 deduction exceeds its taxable income, the deduction is reduced by the excess.[xix]

POLICY	DESCRIPTION
Individual	
State and Local Tax (SALT) Deduction	Effective January 1, 2022, would increase the limit on SALT deductions from $10,000/year to $80,00/year ($40,000 for married individuals filing separately) through December 31, 2030, upon which the limit will revert back to $10,000 for the 2031 taxable year. The $80,000 limit would be retroactive to the 2021 taxable year.[xx]
Surcharge on High Income Individuals, Estates, and Trusts	Would impose a new 5% surcharge on modified adjusted gross income (MAGI) of an individual that exceeds $10 million ($5 million for married filing separately) or a trust or estate that exceeds $200,000; would impose an additional 3% on MAGI of an individual that exceeds $25 million ($12.5 million for married filing separately) or a trust or estate that exceeds $500,000. MAGI equals adjusted grow income (AGI) minus any deductions allowed for investment or business interest expense, and in the case of a trust or estate, deductions allowed for charitable contributions. This amendment would apply to taxable years beginning after December 31, 2021.[xxi]
Expansion of Income Subject to Net Investment Income Tax	For taxable years beginning after December 31, 2021, would expand the 3.8% net investment income (NII) tax to all net investment income derived in ordinary course of trade or business for individuals earning more than $400,000 ($500,000 for married filing jointly). The provision would not apply to income already subject to FICA.[xxii]
SELECTED PROVISIONS EXCLUDED FROM CURRENT VERSION	
Top Marginal Tax Rate	Would have increased the top marginal tax rate from 37% to 39.6% for married individuals making $450,000 ($225,000 if married filing separately).
Capital Gains Rate	Would have increased the top long-term capital gains rate and qualified dividend rates from 20% to 25%.
Limit on 199A Deduction	Would have limited the Section 199A deduction on qualified business income by imposing a maximum annual deduction of $500,000 for married individuals ($250,000 if married filing separately).

[i] Rules Committee Print 117-18, Text of H.R. 5376, Build Back Better Act, Nov. 3, 2021, Section 30901, https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-117HR5376RH-RCP117-18.pdf. ("Nov. 3 Print")
[ii] *Id.* at 30605.
[iii] *Id.* at 30601.
[iv] *Id.* at 30602.

[v] *Id.* at 137302.
[vi] *Id.* at 139001.
[vii] *Id.* at 139201.
[viii] *Id.* at 139101-2.
[ix] *Id* at 27002 (amendment to ERISA) and 30606 (amendment to Public Health Services Act)
[x] *Id*. at 21005.
[xi] Id. at 130001.
[xii] *Id.* at 138301.
[xiii] *Id.* at 138302.
[xiv] *Id.* at 138311.
[xv] *Id.* at 138202.
[xvi] *Id.* at 138101.
[xvii] *Id.* at 138102.
[xviii] *Id.* at 138111.
[xix] *Id.* at 138121.
[xx] Amendment to Rules Committee Print, Nov. 4, 2021, Section 137601, https://amendments-rules.house.gov/amendments/YARMUT_024_xml211104220514322.pdf ("Nov. 4 Amendment").
[xxi] Nov. 3 Print at 138203.
[xxii] *Id.* at 138201.