CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

April 26, 2012

Help Efficient, Accessible, Low-cost, Timely Healthcare Act of 2011

As approved by the House Committee on the Judiciary on April 25, 2012

SUMMARY

H. Con. Res. 112, the Concurrent Budget Resolution for fiscal year 2013, as passed by the House of Representatives on March 29, 2012, instructed several committees of the House to recommend legislative changes that would reduce deficits over the 2012-2022 period. As part of that reconciliation process, the House Committee on the Judiciary has approved legislation that would impose limits on medical malpractice litigation in state and federal courts by capping awards and attorney fees, modifying the statute of limitations, and eliminating joint and several liability.

In total, CBO and the staff of the Joint Committee on Taxation (JCT) estimate that enacting the legislation would not have any budgetary effect in fiscal year 2012, and would reduce deficits by $0.1 billion over the 2012-2013 period, $13.6 billion over the 2012-2017 period, and $48.6 billion over the 2012-2022 period. (About $1.9 billion of that $48.6 billion total would be off-budget because of effects on revenues from Social Security payroll taxes).

CBO expects that those changes would, on balance, lower costs for health care both directly and indirectly: directly, by lowering premiums for medical liability insurance; and indirectly, by reducing the use of health care services prescribed by providers when faced with less pressure from potential malpractice suits. Those reductions in costs would, in turn, lead to lower spending in federal health programs and to lower private health insurance premiums.

Because employers would pay less for health insurance for employees, more of their employees' compensation would be in the form of taxable wages and other fringe benefits. As discussed below, the bill would also increase revenues because it would result in lower subsidies for health insurance. In total, CBO and JCT estimate that enacting the legislation would increase federal revenues by about $7 billion over the 2012-2022 period.

Enacting the legislation also would reduce direct spending for Medicare, Medicaid, the government's share of premiums for annuitants under the Federal Employees Health Benefits (FEHB) program, subsidies for individuals enrolled in health insurance through health insurance exchanges, and other federal health benefits programs. CBO and JCT estimate that direct spending would decline by about $41 billion over the 2012-2022 period.

Federal spending for active workers participating in the FEHB program is included in the appropriations for federal agencies, and is therefore discretionary. The legislation would also affect discretionary spending for health care services paid by the Departments of Defense (DoD) and Veterans Affairs (VA). CBO estimates that implementing the legislation would reduce discretionary costs by about $1 billion over the 2012-2022 period, assuming appropriation actions consistent with the legislation.

The legislation contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would preempt state laws that provide less protection for health care providers and organizations from liability, loss, or damages (other than caps on awards for damages). CBO estimates the cost of complying with the mandate would be small and would fall well below the threshold established in UMRA for intergovernmental mandates ($73 million in 2012, adjusted annually for inflation).

The legislation contains several mandates on the private sector, including caps on damages and on attorney fees, the statute of limitations, and the fair share rule. The cost of those mandates would exceed the threshold established in UMRA for private-sector mandates ($146 million in 2012, adjusted annually for inflation) in four of the first five years in which the mandates were effective.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of the legislation is shown in the following table. The spending effects of this legislation fall within multiple budget functions, primarily functions 550 (health) and 570 (Medicare).

These estimates are based on CBO’s assumption that the legislation will be enacted on or near October 1, 2012. Assuming an earlier enactment date would not change CBO’s estimate of the budgetary effects of the legislation.

	By Fiscal Year, in Millions of Dollars												
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2012-2017	2012-2022
CHANGES IN DIRECT SPENDING													
Estimated Budget Authority	0	-100	-650	-2,250	-3,850	-4,850	-5,200	-5,500	-5,900	-6,300	-6,700	-11,700	-41,300
Estimated Outlays	0	-100	-650	-2,250	-3,850	-4,850	-5,200	-5,500	-5,900	-6,300	-6,700	-11,700	-41,300
CHANGES IN REVENUES													
Estimated Revenues													
On-budget	0	4	54	231	411	651	731	760	802	850	900	1,352	5,394
Off-budget	0	4	29	93	167	231	255	266	280	295	310	524	1,929
Total	0	8	83	324	578	882	985	1,026	1,082	1,145	1,210	1,875	7,323
NET INCREASE OR DECREASE (-) IN THE DEFICIT FROM CHANGES IN DIRECT SPENDING AND RECEIPTS													
Impact on the Deficit													
On-budget	0	-104	704	-2,481	-4,261	-5,501	-5,931	-6,260	-6,702	-7,150	-7,600	-13,052	-46,694
Off-budget	0	-4	-29	-93	-167	-231	-255	-266	-280	-295	-310	-524	-1,929
Total	0	-108	-733	-2,574	-4,428	-5,732	-6,185	-6,526	-6,982	-7,445	-7,910	-13,575	-48,623
CHANGES IN SPENDING SUBJECT TO APPROPRIATION													
Estimated Authorization Level	0	0	-5	-40	-95	-140	-155	-165	-175	-180	-190	-280	-1,145
Estimated Outlays	0	0	-5	-40	-95	-140	-155	-165	-175	-180	-190	-280	-1,145

BASIS OF ESTIMATE

The legislation would establish:

- A three-year statute of limitations for medical malpractice claims, with certain exceptions, from the date of discovery of an injury;
- A cap of $250,000 on awards for noneconomic damages;
- A cap on awards for punitive damages that would be the larger of $250,000 or twice the economic damages, and restrictions on when punitive damages may be awarded;
- Replacement of joint-and-several liability with a fair-share rule, under which a defendant in a lawsuit would be liable only for the percentage of the final award that was equal to his or her share of responsibility for the injury;
- Sliding-scale limits on the contingency fees that lawyers can charge; and

- A safe harbor from punitive damages for products that meet applicable safety requirements established by the Food and Drug Administration.

Over the 2012-2022 period, CBO and the staff of the Joint Committee on Taxation estimate that enacting the legislation would reduce direct spending by about $41 billion and increase federal revenues by about $7 billion. The combined effect of those changes in direct spending and revenues would reduce federal deficits by almost $49 billion over that period, with changes in off-budget revenues accounting for nearly $2 billion of that reduction in deficits.

In addition, CBO estimates that implementing the legislation would reduce discretionary costs for the FEHB program, DoD, and VA by about $1 billion over the 2012-2022 period.

Effects on National Spending for Health Care

CBO reviewed recent research on the effects of proposals to limit costs related to medical malpractice ("tort reform"), and estimates that enacting the legislation would reduce national health spending by about 0.4 percent.[1] That figure comprises a direct reduction in spending for medical liability premiums and an additional indirect reduction from slightly less utilization of health care services. CBO's estimate takes into account the fact that, because many states have already implemented some elements of the legislation, a significant fraction of the potential cost savings has already been realized. Moreover, the estimate assumes that the spending reduction of about 0.4 percent would be realized over a period of four years, as providers gradually change their practice patterns.

Revenues

CBO estimates that private health spending would be reduced by about 0.4 percent. Much of private-sector health care is paid for through employment-based insurance that represents nontaxable compensation. In addition, beginning in 2014, refundable tax credits will be available to certain individuals and families to subsidize health insurance purchased through new health insurance exchanges. (The portion of those tax credits that exceed taxpayers' liabilities are classified as outlays, while the portions that reduce taxpayers' liabilities are recorded as reductions in revenues.)

Lower costs for health care arising from enactment of the legislation would lead to an increase in taxable compensation and a reduction in subsidies for health insurance

1. See Congressional Budget Office, letter to the Honorable Orrin G. Hatch regarding CBO's Analysis of the Effects of Proposals to Limit Costs Related to Medical Malpractice, (October 9, 2009). http://www.cbo.gov/ftpdocs/106xx/doc10641/10-09-Tort_Reform.pdf. The estimated effect on national health spending reported in that letter is different from the estimated effect for this legislation because the two proposals would impose different limits on medical malpractice litigation.

purchased through an exchange. Those changes would increase federal tax revenues by an estimated $7.3 billion over the 2012-2022 period, according to estimates by JCT. Social Security payroll taxes, which are off-budget, account for $1.9 billion of that increase in revenues.

Direct Spending

CBO estimates that enacting the legislation would reduce direct spending for Medicare, Medicaid, the Children's Health Insurance Program, the Federal Employees Health Benefits program, the Defense Department's TRICARE for Life program, and subsidies for enrollees in health insurance exchanges. We estimate those reductions would total roughly $41 billion over the 2012-2022 period.

For programs other than Parts A and B of Medicare, the estimate assumes that federal spending for acute care services would be reduced by about 0.4 percent, in line with the estimated reductions in the private sector.

CBO estimates that the reduction in federal spending for services covered under Parts A and B of Medicare would be larger—about 0.5 percent—than in the other programs or in national health spending in general. That estimate is based on empirical evidence showing that the impact of tort reform on the utilization of health care services is greater for Medicare than for the rest of the health care system.[2]

Spending Subject to Appropriation

CBO estimates that implementing the legislation would reduce federal costs for health insurance for federal employees covered through the FEHB program by about 0.4 percent—in line with the estimated reductions in the private sector—and would reduce costs for health insurance and health care services paid for by the Departments of Defense and Veterans Affairs by lesser amounts. CBO expects that the impact on those agencies would be proportionally smaller than the impact on overall health spending because medical malpractice costs are already lower than average for entities covered by the Federal Tort Claims Act. In CBO's estimation, the cost of health insurance and health care services funded through appropriation acts would be reduced by $1.1 billion over the 2012-2022 period, assuming appropriation actions consistent with the legislation.

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2. One possible explanation for that disparity is that the bulk of Medicare's spending is on a fee-for-service basis, whereas most private health care spending occurs through plans that manage care to some degree. Such plans limit the use of services that have marginal or no benefit to patients (some of which might otherwise be provided as "defensive" medicine), thus leaving less potential for savings from the reduction of utilization in those plans than in fee-for-service systems.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

The legislation contains an intergovernmental mandate as defined in UMRA because it would preempt state laws that provide less protection for health care providers and organizations from liability, loss, or damages (other than caps on awards for damages). CBO estimates the cost of complying with the mandate would be small and would fall well below the threshold established in UMRA for intergovernmental mandates ($73 million in 2012, adjusted annually for inflation).

ESTIMATED IMPACT ON THE PRIVATE SECTOR

The legislation contains several mandates on the private sector, including caps on damages and on attorney fees, the statute of limitations, and the fair share rule.[3] The cost of those mandates would exceed the threshold established in UMRA for private-sector mandates ($146 million in 2012, adjusted annually for inflation) in four of the first five years in which the mandates were effective.

PREVIOUS CBO ESTIMATE

On March 19, 2012, CBO transmitted a cost estimate for H.R. 5 as posted on the Web site of the House Committee on Rules on March 12, 2012. Title I of that bill was very similar to the reconciliation legislation, and CBO's cost estimates for this legislation and for title I of H.R. 5 are identical.

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3. Under the fair share rule, a defendant in a lawsuit would be liable only for the percentage of the final award that was equal to his or her share of responsibility for the injury.