

# **“Mr. Smith Goes to Washington”**

By  
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We all recall the 1939 movie featuring James Stewart, who played Jefferson Smith, an idealistic young and newly appointed US Senator. In this movie, Mr. Smith is initially mentored by Senator Joseph Paine who later attempts to discredit Smith and sabotage his efforts to build a boy's camp on a site where a more lucrative project could go. The movie depicts the backroom dealings, and political maneuvering that often takes place in the political realm. It also shows Mr. Smith's idealistic attempt to rally support for what is right, and to rebel against the majority in doing so. I mention this because this iconic movie may provide some context to my recent visit to Washington.

## **Background**

On May 4, 2017, The House of Representatives passed a massive health care reform bill reversing the almost seven years' experience with the Affordable Care Act (i.e., “Obamacare”). At the heart of the Republican proposal are three concepts:

- The need to reduce the role of the federal government in decisions around health insurance structure, and operations, thus increasing the role of the states in setting policy and administering health care coverage.
- The need to reduce federal spending on entitlements, such a Medicaid, to reduce the federal deficit and ultimately the national debt.
- Expecting the states to provide innovations that will lower the cost of health care and therefore insurance.

I was fortunate in that I was in Washington for another purpose and therefore immediately available to meet with Colorado Representative Mike Coffman who was deliberating how he might vote on the Republican bill (HR 1628).

## **How'd the Bill get to this point?**

The primary drafters of this legislation were a group of “moderate” Republicans lead by Paul Ryan (the Speaker), and Kevin McCarthy (R. California) who is the House Majority Leader. Their plan required a minimum of 216 votes to pass the House.

The Republicans have 237 members in the House, which appeared to cement passage. However, the Freedom Caucus, a group of very conservative Republicans lead by Mark Meadows (R. North Carolina) has 36 members. This group refused to accept the moderates' proposal because they felt it did not go far enough in repealing the ACA.

Meadow's Freedom Caucus took the position that the more moderate proposal from leadership needed major revisions. Their caucus' focus was to allow states to opt out of large parts of the ACA and establish their own rules on rating bands, and benefit plan design. Included in their proposal was a provision that allowed states who opted out of the ACA to establish their own rules regarding rating of the uninsured who have pre-existing conditions. Their hope was to get more premium from those who would cost the system more due to their health. They also hoped to send a

message to the uninsured that if you fail to enroll when you are healthy, and then get sick, your coverage will become a lot more expensive, thus motivating uninsured to seek coverage now.

It is important to note that the decision to apply surcharges for those uninsured with pre-existing conditions, the amount of any such surcharge, and how these might be applied, is left entirely to the states. The Freedom Caucus' proposal does not overtly address these issues because they did not want to limit a state's flexibility.

As an offset, the "Tuesday Group," a moderate Republican caucus lead by Tom Mac Arthur (R.NJ) produced a proposal which provides the requirement that states opting out of the ACA establish a "Reinsurance Pool" or a "High Risk Pool," or agree to participate in a Reinsurance Pool that will be created at the federal level. The initial proposal provided \$100 billion dollars over ten years to support the pool's creation. That was later raised to \$130 billion and then augmented by an Amendment from Representative Fred Upton (R Michigan) which added \$8 billion more.

The resulting bill passed the House by one vote (20 Republicans voting no or abstaining). It now moves to the Senate for approval. The Senate has several options to consider: 1), They can opt to take no action, in which case the House bill dies; 2). They can approve the House bill in which case it moves to the President for signature; 3). They can amend the House bill, in which case the amendments must meet the approval of a Conference Committee (a special Committee formed from the House and Senate sponsors), and then go back to the House and Senate for approval, or, 4). They can create a bill of their own, as an alternative, in which case their bill would go to a Conference Committee for negotiations between the House and Senate sponsors, with the resulting bill going back to each chamber for approval, and then on to the President for signature. If the Conferees cannot agree to a compromise the bill dies at that point. Furthermore, either Chamber can kill the compromise bill by failing to pass it

It is also important to note that the strategy for the bill was for it to fit into the Senate's rules for "Budget Reconciliation," which allows a bill to pass the Senate with 51 votes versus the traditional 60. The Republicans have 52 seats in the Senate, which would appear to ensure passage, but several Republican Senators have expressed concerns about the House bill's key provisions. Another complication is that the Senate Parliamentarian needs to review the Senate bill and verify that it meets the Senate's rules for Reconciliation. That is challenging because to pass this test the bill must not only deal exclusively with matters related to taxes or spending, but the resulting impact of the bill cannot add to the federal deficit, and if it passes this test the bill must sunset after ten years.

So, can this be done? Possibly but it appears to be a very difficult task to accomplish as long as the Freedom Caucus remains resolute on its tenants for health care reform.

### **What is in the bill, as it passed the House?**

The components of the bill are numerous. They include:

- Removal of the individual mandate
- Removal of the employer mandate (and thus the removal of the definition of full-time as being 30 hrs., and the required employer reporting)
- Removal of the enhanced funding for Medicaid expansion in states who elected to expand

- Revises the structure for Medicaid which then moves to either a “block grant” to each states or a “per capita” formula per state
- Moves the current 3:1 age rating bands to a 5:1 ratio
- Maintains the ability for parents to continue to cover their off spring up to age 26
- Maintains the guaranteed issue of policies
- Maintains the elimination of pre-existing condition limitations in policies
- Maintains guaranteed renewability of coverage
- Removes the subsidies for low income individuals and replaces that with an advance refundable tax credit
- Maintains the Medical Loss Ratios that now exist for insurers
- Adds a one time, 30% surcharge for those not currently insured who have a gap in coverage of at least 63 days and who seek coverage
- Continuation of the low-income benefit subsidies which lower deductibles, out-of-pocket limits, and copays for low income individuals
- Eliminates the additional Social Security and Medicare taxes imposed by the ACA
- Eliminates the tax on insurers
- Eliminates the tax on durable medical equipment

Under the MacArthur amendment, states will now be able to apply to the Secretary of HHS to be able to opt out of the ACA. Under this waiver states will be able to do any or all of the following:

- Create their own standards for benefit coverage (moving away from the “metal plans” and “essential health benefits”)
- Develop their own rating methodology and rating tiers
- Determine how coverage for pre-existing conditions will be handled for the uninsured (surcharge levels, length of the surcharge, etc.)
- Whether to create their own “High Risk Pool” or “Reinsurance Mechanism” or participate in the federal Reinsurance Plan for individual coverage

It is important to note that the speed with which the House bill moved precluded the Congressional Budget Office (CBO) from “scoring” the bill in terms of its cost and its effect on coverage. This evaluation is expected within the next two weeks.

At my suggestion, Representative Coffman decided to vote “no” on the House bill. He was one of twenty Republicans who withstood significant pressure from party leadership, and voted their conscience.

In my view, although well intentioned, the House bill was too heavily influenced by party factions who failed to compromise and in the process lost sight of the insurance principals that must be considered whenever the regulation of insurance is considered.

So, like Mr. Smith, all of us sit and wonder why politics has to be so wrong headed at times.