

## RECONCILIATION MYTH VS. FACT

May 9, 2012

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### Social Services Block Grant

**MYTH:** SSBG is a critical component of the federal government's safety net.

**FACT:** It is critical that the social safety net be strengthened and preserved for those truly in need. However, after conducting an oversight hearing on program duplication and reviewing related reports by the nonpartisan Government Accountability Office (GAO), the House Ways and Means Committee determined that the SSBG program's fundamental program flaws fail to deliver on its intended mission:

1. Lack of accountability: SSBG spends \$1.7 billion per year to support 29 overlapping types of government programs, including an unspecified category simply labeled "other." The program has no Federal eligibility requirements for persons receiving social services funded from the SSBG. The program demands no accountability for results, requires no state reporting beyond a simple headcount of recipients, and provides no means to measure the impact of the programs.
2. Crowds out Safety Net Programs: Since the creation of what is now known as SSBG, the federal government has created dozens of new programs that overlap with SSBG, spending more than \$446 billion per year on specific social services. SSBG – first conceived in the 1950s – has outlived its usefulness and crowds out higher priority safety net spending.

### Medical Liability Reform

**MYTH:** The caps on economic damages are not sufficient to adequately compensate victims of gross medical negligence.

**FACT:** Nothing in the medical liability reforms included in the Reconciliation bill denies injured plaintiffs the ability to obtain adequate redress, including compensation for 100% of their economic losses, including their medical costs, the costs of pain relief medication, their lost wages, their future lost wages, rehabilitation costs, and any other economic out-of-pocket loss suffered as the result of a health care injury. "Economic damages" include anything whose value can be quantified, such as lost wages or home services (including lost services provided by stay-at-home mothers), medical costs, the costs of pain reducing drugs and lifetime rehabilitation care, and anything to which a receipt can be attached. Indeed, the terms "noneconomic damages" and "pain and suffering damages" (which the federal legislation limits to \$250,000 unless a state law provides for a higher or lower limit) are misnomers: only "economic damages," which the federal legislation does not limit, can be used to pay for drugs and services that actually reduce pain.

That said, the American medical liability system is broken and needs to be repaired. According to a well-known Harvard study, 40 percent of lawsuits lack merit, in that either no injury or no error occurred in the case.<sup>1</sup> Attorneys' fees and administrative costs eat away 54% of the compensation that would otherwise be received by the actual victims of medical negligence. And completely meritless claims account for nearly a quarter of total administrative costs.<sup>2</sup>

Under current rules, health care workers seek to shift this risk by ordering many additional costly tests and procedures. The cost of this "defensive medicine," \$45.6 billion annually (in 2008 dollars), accounting for more than 80% of the \$55.6 billion total yearly cost of the medical liability system, is shifted to the taxpayer.<sup>3</sup>

Moreover, lawsuit abuse drives doctors out of practice. This problem has been particularly acute in the fields of OB/GYN and trauma care, as well as in rural areas.<sup>4</sup> The absence of doctors in vital practice areas is at best an inconvenience; at worst it can have deadly consequences.<sup>5</sup>

The bipartisan solution to the widespread and costly problems found in the current medical liability system is tort reform that restore balance between protecting victims, curbing health inflation, and preventing trial lawyers and health care bureaucrats from exploiting the serious challenges facing patients and health care providers<sup>6,7,8</sup>. The proposals offered by the committees of jurisdiction are modeled after California's decades-old and highly successful health care litigation reforms. These reforms have proved immensely successful in increasing access to affordable medical care in California where, according to the most recent data available from the National Association of Insurance Commissioners, the rate of increase in medical professional liability premiums in since 1976 has been a relatively modest 387%, whereas the rest of the United States have experienced a 1,089% rate of increase.

**MYTH:** Medical malpractice reform, prescribed at the federal level, is unconstitutional.

**FACT:** Doctors should feel free to practice medicine wherever they want in this country, and patients everywhere should be able to obtain the medical care they need.

The Congressional Research Service has concluded that "enactment of tort reform legislation generally would appear to be within Congress's power to regulate commerce, and would not appear to violate principles of due process or federalism . . . . In concluding that Congress has the authority to enact tort reform 'generally,' we refer to reforms that have been widely implemented at the state level, such as caps on damages and limitations

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<sup>1</sup> Available at <http://www.hsph.harvard.edu/faculty/articles/litigation.pdf>.

<sup>2</sup> Claims, Errors, and Compensation Payments in Medical Malpractice Litigation," David Studdert et al., *New England Journal of Medicine* (May 11, 2006).

<sup>3</sup> Katherine Hobson, "How Much Does Defensive medicine Cost? One Study Says \$46 Billion," *Wall Street Journal Health Blog* (September 7, 2010).

<sup>4</sup> For an extensive compilation of such instances see "Addressing the New Health Care Crisis: Reforming the Medical Litigation System to Improve the Quality of Care," U.S. Department of Health and Human Services (March 3, 2003).

<sup>5</sup> See Testimony of Theodore Frank, "Protecting Main Street from Lawsuit Abuse," Senate Republican Conference (March 16, 2009) ("The effect of the loss of productive doctors and the closing of emergency rooms ... is in the hundreds of lives a year, and perhaps as high as 1,000 deaths and many exacerbated injuries."); "Tort Reform and Accidental Deaths," Paul Rubin and Joanna Shepherd, Emory Law and Economics Research Paper No. 05-17H (finding tort reforms saved approximately 2,000 lives in the year 2000 and 24,000 over a 20-year period).

<sup>6</sup> Text: Obama's AMA Speech on Health Care (CBS News) (June 15, 2010).

<sup>7</sup> "Making Patient Safety the Centerpiece of Medical Liability Reform," Sen. Barack Obama and Sen. Hillary Clinton, *New England Journal of Medicine* (May 25, 2006).

<sup>8</sup> The National Commission on Fiscal Responsibility and Reform, "The Moment of Truth" (December 2010) at 34-35.

on joint and several liability and on the collateral source rule.”<sup>9</sup> Under this proposed reform, laws passed by States that have already provided for, or may in the future provide for, different limits on damages in health care lawsuits are preserved.

## Medicaid

**MYTH:** The Medicaid reforms in the reconciliation bill undermine the program.

**FACT:** The structural flaws in the current Medicaid program undermine care for those who need it most. Over the past decade, spending has increased roughly 150 percent, growing from \$182 billion in FY2004 to \$276 billion in FY2013. Over the next decade, CBO estimates federal spending will increase 225 percent, reaching \$622 billion by FY2022. This increase is due in large part to the massive expansions in the Medicaid and CHIP programs required under the President’s health care law. Under the new health care law, the eligible population for Medicaid will expand by *one-third*. CBO estimates these expansions will cost \$930 billion over the next ten years. The Medicaid provisions in the reconciliation legislation give states more freedom and flexibility to tailor Medicaid to the needs of their unique populations. Moreover, it prevents provisions of the health law from exacerbating problems with Medicaid’s current matching formula, which gives states and territories a perverse incentive to grow the program and little incentive to save.

Absent reform, Medicaid fails states, patients, and taxpayers. Fraud, waste, and abuse cost billions every year. This is money that does not go to patients or to help provide the critical medical care they need. For example, in 2011, OMB found that nearly \$22 billion in Medicaid spending went to improper payments. About ¾ of that was spent on eligibility errors – in other words, on people who were not even supposed to be on the program – and the other ¼ went towards billing errors. It also does not serve beneficiaries well. Increasingly, doctors are refusing to take Medicaid patients: a 2008 physicians’ survey revealed that only 53% of physicians were accepting all or most new Medicaid patients.<sup>10</sup> By contrast, the reconciliation legislation saves \$23.5 billion from the Medicaid program.

## Flood Insurance

**MYTH:** The claimed savings from the National Flood Insurance Program (NFIP) are “smoke and mirrors.” CBO reports the reforms in the House Financial Services bill would not decrease the deficit in their estimates.

**FACT:** CBO stated that the proposal to reauthorize and reform the National Flood Insurance Program (NFIP) would increase net income to the Federal government over 10 years by \$4.9 billion through increased premiums for targeted subsidized policyholders. In the absence of this new net income, the Federal Government would eventually have to borrow funds (increasing the deficit) to pay claims under the Flood Insurance program.

This program was originally intended to be a temporary incentive for unexpected flood risks. However, homeowners currently receive NFIP subsidies for new purchases of existing properties with high-flood risk, including for second and vacation homes, and for properties that realize repeated losses from flood damage. Due in part to this trend, while collections from policyholders should cover the costs associated with flood insurance activities, the NFIP owes a debt of almost \$18 billion to the Treasury, on which it must also pay debt service. Currently, on average, premium collections for both subsidized and unsubsidized policies under NFIP cover only 35 to 40 percent of the actuarial value of the insurance. The Financial Services proposal would help

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<sup>9</sup> Henry Cohen, Legislative Attorney, American Law Division, CRS Report to Congress, Federal Tort Reform Legislation: Constitutionality and Summaries of Selected Statutes (February 26, 2003) at 1.

<sup>10</sup> <http://www.hschange.com/CONTENT/1078/>

protect taxpayers from excessive and unwarranted exposure and level the playing field for private insurers to enter the market.

### **Orderly Liquidation Authority**

**MYTH:** Repealing Dodd-Frank’s Orderly Liquidation Authority (OLA) is phony savings, because it’s uncertain whether there will be any bailouts and if there are bailouts the government is supposed to recoup the cost by taxing the surviving financial sector.

**FACT:** The CBO scores the cost of the bailout authority by analyzing three scenarios of increasingly negative financial severity and calculating the probabilities and the likely average cash flows under each of those scenarios. Thus the CBO baseline (which assumes some probability of losses in every year) assumes there will be some net cost to the Federal government in each year from the use of this bailout authority. Repealing the authority to bailout the financial sector removes this estimated cost to the federal government.

Moreover, if a firm is bailed out, the spending would be *certtain*; but whether the government gets a return equal to this investment is *uncertain* and, in fact, highly unlikely. As CBO concluded in its [review of CBO’s cost estimate for the Dodd-Frank Wall Street reform and consumer Protection Act](#), “the cost of the program will depend on future economic and financial events that are inherently unpredictable.” In other words, another large-scale financial crisis in which creditors are guaranteed to get government bailouts could cost taxpayers much, much more than the current estimate. The OLA has increased the likelihood and magnitude of future bailouts, and unless the law is changed, taxpayers will be on the hook.

**MYTH:** The provisions related to the Consumer Financial Protection Bureau (CFPB) are just a shell game, shifting spending from one part of the budget to another with no real savings.

**FACT:** Savings from subjecting CFBP to annual appropriations are very real. The provision eliminates the CFBP’s ability to set its own budget and to spend up to \$5.4 billion over the next 10 years without any congressional control or approval. Moving the bureau’s funding into the annual appropriations process forces it to compete with other discretionary programs for funds. The maximum budget is set at \$200 million per year. This is lower than FY 2013’s funding of \$448 million, resulting in first-year savings of \$248 million.<sup>11</sup>

The reconciliation bill brings transparency and accountability to this agency. Beginning in FY 2013, the CFBP will have unaccountable authority to use up to 12 percent of the Federal Reserve’s income exceeding its operating costs to fund the bureau (thereafter adjusted for inflation). Without this draw, the Federal Reserve would remit these proceeds to the Treasury which would reduce the deficit.

**MYTH:** The Office of Financial Research (OFR) is necessary and its elimination will result in the same relaxed oversight that led to the current crisis.

**FACT:** OFR is yet another unaccountable bureaucracy the job of which overlaps with those of the Securities and Exchange Commission and the Commodities Futures Trading Commission. These duplicative efforts could be absorbed by these two entities at little or no cost and these agencies’ knowledge of their oversight failures leading up to the financial crisis could be leveraged to avoid making repeat mistakes.

In the event of another financial crisis, the OFR’s blank check budget authority would be greatly expanded with the mistaken notion that more money results in better performance. Without accountability or oversight with regards to its budget or performance, the agency’s budget is sure to grow for this same reason.

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<sup>11</sup> Office of Management and Budget, *FY 2013 Budget of the U.S. Government Appendix*, p. 1,295. February 2012.

**MYTH:** HAMP is necessary to help resolve the housing crisis.

**FACT:** HAMP has been good money thrown after bad. Originally set up to help 4 million homeowners, it has helped only 800,000 thus far.

The program has only a 50 percent success ratio to date. This rate will continue to decline as the program incentives expand (especially if offered by Fannie and Freddie). Offering incentives to some underwater borrowers creates adverse incentives for other borrowers to worsen their own situation in hopes of meeting HAMP's requirements to reap the reward. This is a large-scale moral hazard concern that would worsen, not help the housing market.

Private market solutions, like REO (real estate owned) actions, are already being implemented. Many private lenders have already begun to buy homeowners out of their mortgages to expedite the process which leads to REOs renting homes that would otherwise be vacated via foreclosure. This would increase unoccupied housing, further weakening the housing market.

### **Refundable Child Tax Credit**

**MYTH:** The reconciliation bill's child tax credit provision essentially takes away money from those who earned it.

**FACT:** This proposal simply adds a requirement that in order to claim the refundable portion of the Child Tax Credit (CTC), taxpayers must provide a valid Social Security number on their tax returns. Without this requirement, millions of individuals who are not authorized to work in the U.S. can claim these taxpayer funds. According to the U.S. Treasury Department, 2.3 million individuals without social security numbers claimed \$4.2 billion in refundable child tax credits in 2010, up from \$62 million in 2000. These sums are improper payments and this policy seeks to close this potential avenue for waste, fraud and abuse. Congress already enacted legislation in 1996 making those without social security numbers ineligible for a similar refundable tax credit, the earned income tax credit (EITC). This proposal would simply bring the rules for receiving the refundable portion of the CTC in line with those of the EITC.

**MYTH:** The child tax credit provision cuts the size of this credit in half?

**FACT:** The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) doubled the CTC from \$500 to \$1,000 per child and made it refundable for more families. Under current law, all of the EGTRRA and JGTRRA (Jobs and Growth Tax Relief Reconciliation Act of 2003) tax provisions are set to expire in 2013, which would entail a massive tax increase on the U.S. economy and a reduction in the value of the CTC from \$1,000 to \$500 per child. House Republicans want to extend the 2001/2003 tax provisions for all Americans.

**MYTH:** The Republican budget includes tax cuts for the rich while cutting the child care tax credit.

**FACT:** The Republican budget avoids a huge tax increase that will hit all taxpayers at the end of this year. Instead, the Republican budget proposes to reform the tax code by eliminating loopholes and other tax breaks as part of fundamental tax reform. Tax reform will make the U.S. more competitive and will generate economic growth, reduce unemployment, and increase family income. We don't need to raise taxes on the American people. We need to get spending under control. Under the Republican budget, revenues will nearly double over the next 10 years and will exceed their historical average as a share of the economy. The top 1% of taxpayers already pay 34% of income taxes. Increasing taxes will kill jobs and discourage economic growth and will just lead to higher taxes chasing spending that is out of control.

## Nutrition Assistance Reform

**MYTH:** This bill cuts 1.8 million individuals off of food assistance entirely.

**FACT:** The reconciliation bill would not adversely impact *a single individual* who currently qualifies for SNAP. Our reforms ensure that individuals who do *not* qualify under the existing rules are not unfairly abusing the system. For example, prisoners and lottery winners have collected food stamp benefits, exploiting loopholes in a program that should direct aid to those who need it most.

**MYTH:** This bill cuts 280,000 children off of school lunch programs.

**FACT:** The reconciliation bill would not adversely impact a *single child* who currently qualifies for school lunch programs. Our reforms ensure that resources are focused to individuals who actually qualify under the existing rules.

**MYTH:** Recent increases in SNAP spending are driven solely by the recession, and spending will return to more sustainable levels when the economy improves.

**FACT:** CBO projects that SNAP spending and participation will remain elevated for the foreseeable future. From a low of 17 million recipients in 2000, SNAP participation has increased to nearly 45 million recipients in 2011. Even after CBO's projection of a full economic recovery and unemployment below 6%, CBO still projects that 37 million individuals will still be eligible for SNAP, more than double the number of beneficiaries in 2000.

**MYTH:** The reconciliation bill has savage cuts to the SNAP program.

**FACT:** The Reconciliation bill would reduce SNAP spending by a modest 4% between 2012 and 2022. SNAP spending has increased by 270% since 2002, and is projected to remain elevated throughout the 10-year window. By putting in place common sense reforms, the Reconciliation bill reduces spending while ensuring that those who need food assistance the most continue to receive assistance. With these reforms, SNAP spending will still remain 260% higher in 2013 than it was in 2002.

**MYTH:** House Republicans protected agribusiness at the expense of food and nutrition programs.

**FACT:** The Sequester Replacement Reconciliation Act does not eliminate the estimated \$16 billion sequestration for mandatory farm programs. This represents an approximately 8% cut from the mandatory farm program baseline. Additionally, the House-passed budget calls for approximately \$30 billion in farm program reductions. Compared to these reductions, nutrition programs face an approximately 4% cut. It is important to note that farm program spending, unlike nutrition spending, has not exploded in recent years. Nutrition spending accounts for nearly 80% of Farm Bill spending, and has increased 270% since 2002.

## Discretionary Appropriations

**MYTH:** The Sequester Replacement Act alters the spending targets agreed to in the House-passed FY2013 budget.

**FACT:** Under currently law the statutory cap on discretionary spending is \$1,047 billion (\$546 billion for defense and \$501 billion for non-defense) until January 2, 2013 when it becomes \$949 billion. Under the Sequester Replacement Act, the statutory discretionary cap is \$1,047 billion until January 2, 2013 when it becomes \$1,028 billion the discretionary level set in the House-passed budget resolution. The timing of the change in the discretionary cap is exactly the same as in current law. Consideration of appropriations bills is governed by the

budget resolution's 302(a) allocation. This allocation remains at \$1,028 billion. Any appropriations bill that would cause discretionary spending to exceed that level is subject to a point of order under the rules of the House. The Sequester Replacement Act does not change that fact.