



## H.R. 2192 – To amend the Public Health Service Act to eliminate the non-application of certain State waiver provisions to Members of Congress and congressional staff (Rep. McSally, R-AZ)

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### FLOOR SCHEDULE:

Expected to be considered May 6, 2017 under a closed rule.

### TOPLINE SUMMARY:

The [MacArthur amendment](#) to [H.R. 1628](#) provides states with an option to waive certain provisions in the Affordable Care Act (ACA), but is carefully drafted in an attempt to maintain privilege of the reconciliation bill in the Senate, which allows the bill to be considered at a 51-vote threshold rather than the 60 votes typically required. The MacArthur amendment thus does not apply to ACA provisions that, if included, could cause the bill to run afoul of Senate rules governing reconciliation, including the requirement that Members of Congress and their staff obtain health insurance on the ACA Exchange. [H.R. 2129](#) would ensure that the MacArthur amendment applies to this requirement. It will require 60 votes for Senate passage.

### COST:

A Congressional Budget Office (CBO) score is not yet available.

### CONSERVATIVE CONCERNS:

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

### DETAILED SUMMARY AND ANALYSIS:

The MacArthur amendment to H.R. 1628 would provide states the option to waive certain provisions in the Affordable Care Act (ACA) in order to achieve state goals of lowering premiums, stabilizing insurance markets, increasing enrollment, or increasing consumer choice. The amendment does not apply to certain ACA provisions that, if included, could cause the bill to run afoul of the Senate rules governing reconciliation and thus jeopardize privilege of the bill in the Senate, which is required to ensure a 51-vote threshold for approval. These provisions include the

ACA requirement that Members of Congress and their staff obtain health insurance on the ACA Exchange, which may violate the rules because it is in the jurisdiction of a committee that did not receive reconciliation instructions as part of the FY2017 budget. H.R. 2192 would ensure that if H.R. 1628 is enacted, this non-application provision would not apply.

Reconciliation measures are intended to implement budget resolutions, and the Byrd rule allows Senators to raise a point of order against any provision that is “extraneous” to reconciliation legislation. Among other things, this includes measures that do not have a budgetary effect, measures where the budgetary effects are “merely incidental” to the policy objective, or measures that involve the jurisdictions of committees without reconciliation instructions. Points of order against non-budgetary provisions make those provisions severable from the bill and may be adjudicated on a case-by-case basis without jeopardizing privilege. However, involving the jurisdiction of a non-reconciled committee is automatically fatal to the privilege of full bill, regardless of the size or scope of the provision.

The Senate requires 60 votes to waive a point of order, as compared to the 51-vote threshold for a reconciliation bill. Moreover, the Senate Parliamentarian may determine that a base bill that contains a substantial number of Byrd violations is not privileged and thus must be considered under a 60-vote threshold. The Senate Parliamentarian does not rule on the parliamentary inquiries of Members of the House, but the House has attempted to comply with the Byrd rule based on guidance from the Senate Budget Committee, among others.

**COMMITTEE ACTION:**

H.R. 1628 was introduced on April 27 and referred to the Committee on Energy and Commerce and the Committee on Administration.

**ADMINISTRATION POSITION:**

A Statement of Administration Policy is not yet available.

**CONSTITUTIONAL AUTHORITY:**

According to the Sponsor, Congress has the power to enact this legislation pursuant to the following: Article 1, Section 8, Clause 3 and Article 1, Section 8, Clause 18 of the United States Constitution.

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