ZOMBIE TRUMPCARE AWAKENS

This thing keeps hurtling forward, apparently towards a vote in the House today. At this minute, nobody, not the press or the leadership of the House knows if it will pass – or even come up for a vote. I know there are a lot of pieces already out there on Trumpcare. But despite an almost complete lack of bona fides, some still choose to get their health policy news from LobbySeven. So, I'll run through the lay of the land as I see it. for posterity's sake, this is being written around 9am on May 4th; some of my predictions will probably be proven wrong in a matter of hours. We'll split this into three parts: what's in the bill; will it pass; if it passes, what happens next.

What's in the bill?

First, it is not yet clear to me that the bill's final language is in place. I'm not following the Rules Committee closely, but I think there are possibilities of further amendments before the final vote. With that aside, we'll talk a bit more about the two major amendments of recent days.

The first amendment is the so-called "MacArthur Amendment," named after the New Jersey representative who proposed it. In theory, this was an agreement between the less ultra-conservative wing of the GOP House Caucus and the most ultra-conservative House Freedom Caucus. In practice, the moderates – who claim to care about increasing and improving insurance coverage – got nothing out of this agreement.

One of the big GOP fallacious complaints about Obamacare is that its insurance regulations are driving up the cost of care. And yes, if there were no regulations insurers could offer whatever they wanted as insurance. For instance, a plan that didn't cover doctors' visits, hospital stays or prescription drugs, and capped benefits at $2,000 per year would have very low premiums. But, it also wouldn't be worth anything.

Republicans say – let insurance companies offer a variety of plans, let people have the choice. Maybe some people want the "ultra-mini-med" plan described above. But there are two problems with this.

First problem – somebody buys a mini-med and then has an unexpected major medical problem, say a car accident. That person is going to receive care, and that care will be paid for by somebody. That somebody is you and me – either through higher taxes (Governments reimburses hospitals for some uncompensated care) or through higher prices and higher insurance premiums. Hospitals need to do this to make up the money lost from uncompensated care. So, giving other people a choice costs you more money. This choice is an illusion.

Second problem. Remember for the 1000th time the Fundamental Theorem of Health Insurance:

If it's not required for everybody, it will not be available for everybody. If everybody has the choice, then nobody will have a choice.

What this means is that because of adverse selection, all health plans in a jurisdiction will tend towards the minimum benefits required. Any incremental services will be priced at a level that make no sense for anybody to afford. I've explained why this is the case a few times.

Worse, Trumpcare allows states to waive protections against pre-existing conditions. We go back to medical underwriting – insurance companies sending massive questionnaires to see if you, individually, can get coverage. If you have pre-existing conditions, such as being a 1-day-old baby born pre-maturely, you can't get covered any more. Now, if states take no actions, then these provisions won't be waived; several GOP governors have said they don't plan to seek waivers. But, again, this is an illusion of protection. I've again written about one problem – but the WSJ found a much bigger problem.

I'm not an expert about pension law, but basically the ERISA law says states are limited in the extent to which they can regulate self-insured plans, such as those run by large employers. What does that mean? Right now – you work for a big company – and maybe you think this is a bad law, but will mainly affect those on Medicaid or in the individual market. Wrong. Your company (the way I understand this) can base their plan on any state's regulations. Let's say Kansas guts their insurance regulations (seems like a good example). Your company sets up a 1-person office in Wichita and uses a Kansas-approved plan nationwide. If you get insurance through your employer you were basically unaffected by the ACA. The same is **not true** for Trumpcare.

Pretty bad bill right? So, some Reps started to balk at it. On the list of No's was one name that struck everybody as odd: Fred Upton of Michigan. Upton is a very senior member of the caucus, a former chair of Ways and Means. He is the definition of a reliable vote for Leadership. How could he be against it?

Well, in order to bring him back into the fold, leadership put $8 billion over 5 years in to a slush fund (no – it is not designated for high-risk pools, it can go anywhere). Theoretically, this money is supposed to go to support those with pre-existing conditions who can't get insured under Trumpcare (note: isn't this an admission that they will no longer be protected, against the statements of Trump and Ryan?)

Unfortunately, analyses show that the cost of high-risk pools to cover this huge and expensive group of people is somewhere between $15 and $200 billion per year (depending on a lot of factors). So, putting $8 billion into this is a joke. So why do it?

Will it pass?

Around Monday night or Tuesday, the vote count on the bill looked bad. A few conservatives came over with the House Freedom Caucus, but for each vote gained, two others were lost. Something needed to happen. Call me crazy, but here's my theory:

Fred Upton, a de-facto member of Leadership, never on anybody's list as a potential No vote, comes out against the bill. Leadership makes a big show of negotiating with him and coming up with an Amendment, which appeared to address his concerns. Unfortunately, as we said, the Amendment was around 100x too small for what was needed. Despite the obvious shortfall, Upton comes back into the fold. "Moderates" now have cover to say that the bill has been fixed – Fred Upton said so.

Upton isn't a fool – he knows enough about health policy to know that the $8 billion is meaninglessly small. Isn't there a chance – just a chance – that this whole thing was a charade? A big splash moves to No – Leadership looks seriously into the issue, and finds a Solution – everybody can say the Problem is solved and comes back into the fold? I'm not the only one to say this. And I know it sounds crazy, but Upton and others being bought off for such a paltry sum seems crazier.

In any case, this thing is likely to pass. But it is not certain. There are not 216 or so Members who have said yes. Sure Leadership is confident – but they would say they were confident either way. These things have a momentum. Many members will vote for the bill conditional on it passing. They know it

will be unpopular, why vote for it if it is going nowhere?

When it comes up, I expect a lot of Members to hang back, wait to see what is happening. Leadership will "release" their most vulnerable members to vote against it if they can. But, if the many (40+) wavering Reps don't see the vote going the right way, there is still the possibility of a tidal wave against Trumpcare. Despite the vote counts I'm seeing and Leaderships confidence, I put the probability of passing the House only around 70%. For what it's worth, 24 hours ago I would have said 40%.

What happens next?

If it is brought up for a vote and fails (or maybe even if it is just not brought up for a vote), I don't think Ryan can hold on to his speakership. I'm not sure where this would leave the GOP; if you recall, after Boehner gave up the gavel, there was a scramble to find a Member who could get a majority of the Speakership votes. Not clear to me who else could. If this thing goes down in flames, well, that will be a fun article to write. But that's not the most likely outcome.

If it passes the House today, the first thing that is likely to happen is a score of the bill from the CBO. The fact that Ryan is forcing a vote before the score means he expects it to be awful; for once, we agree.

Recall that a previous version of the bill was scored at reducing the insured population by 24 million over ten years and increasing premiums for a given policy by around 15%. It would also have increased deductibles and reduced subsides, meaning out of pocket costs would have been higher for a significant majority. Younger people in some locations would see lower costs.

I see no reason to think that the headline 24 million number will get better in this bill; if the CBO thinks the employer market could be disrupted (as I do), the number could be much higher. The last version reduced the deficit by around $150 billion over 10 years; with the various small increases since this scoring, I would expect this number to approach zero. Also, the previous scoring made the qualitative statement that the CBO expected insurance markets to still be stable under Trumpcare; I would expect them to highly qualify this, for example "significant probability of market instability in many states."

So – this will come out – it is guaranteed to look awful. But 220 of so GOP House Members have already voted for it. Saying "oh, I voted for it, I didn't think it would be quite this bad" is unlikely to be a winning argument. In other words, voting for the bill before a CBO score seems exceptionally short-sighted to me.

Political anchor or not, the bill then goes to the Senate. As you know, legislation needs 60 votes (and hence some Democrats) to pass the Senate, unless one of two things happen. First, nothing prevents 51 Senators from ending the legislative filibuster, allowing legislation to pass with this same 51 votes. However, a number of GOP Senators have said they are opposed to this; let's ignore that possibility. The other way to get a bill through the Senate with 51 votes is reconciliation.

One day, I'll write about reconciliation, but not today. To be very brief, only certain types of items can be passed through reconciliation – generally those that primarily affect the budget. Theoretically, this would mean that to pass via reconciliation, the House bill would require enough changes to be unrecognizable. A provision such as these state-based waivers to gut insurance regulation would seem to not be permitted via reconciliation. Nor the new continuous coverage provision, which forces insurance companies to charge you more if you were without insurance for a period. However, it's important to note that the rulings about what is allowed are made by a somewhat obscure official, the Senate Parliamentarian. The Parliamentarian, hired by the Republican majority, at least in theory and so far as

I understand, could say on her own that the current House bill is ok from a reconciliation perspective.

Now, this would be a completely unprecedented break with procedure and tradition. But so is holding a vote on a bill affecting 18% of the economy without any idea of what it would do. Not only do we lack a CBO score, but with the vote three hours away, I don't think the final bill text is released.

Stay tuned…