The Arc

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NATIONAL POLICY MATTERS

What the New Tax Law Means for People with Disabilities

The House and Senate passed the Tax Cuts and Jobs Act on December 20, 2017 and President Trump signed it into law two days later. The Arc advocated against this legislation as it:

- Dramatically reduces federal revenue to provide tax cuts that disproportionately benefit the wealthiest Americans and corporations.
- Builds pressure to cut Medicaid, Medicare, Supplemental Security Income, and other critical programs for people with disabilities to make up for lost revenue stemming from the tax cuts.

The tax law will add $1.5 trillion to the deficit over 10 years because it does not pay for the tax cuts it creates. Increasing the deficit by this size is all but certain to result in future attacks on Medicaid and other critical "entitlement" programs. In fact, a few Members of Congress have recently indicated their intent to cut these programs. This is not surprising given that cuts of over $5 trillion to Medicaid, Medicare, Social Security, and many other critical programs are spelled out in Congress's Fiscal Year 2018 Budget Resolution, a planning document for the decade ahead.

The tax law also does little to help people with low incomes – including people with disabilities who are twice as likely to experience poverty as those without disabilities – but it does greatly benefit those at the top of the income scale. This is evidenced by the nonpartisan Congressional Joint Committee on Taxation analysis from December 18, 2017. The table below shows changes in federal taxes by income category. As can be clearly seen, those in the lower income categories begin to see tax increases (shown in positive numbers) as soon as 2021. Meanwhile, those in higher income brackets receive large tax cuts (shown in negative numbers) which begin immediately and continue for the next decade.[1]

Distribution of the Proposal

INCOME CATEGORY	CHANGE IN FEDERAL TAXES ($ millions)				
	2019	2021	2023	2025	2027
Less than $10,000.............	-$396	-$60	$278	$314	$383
$10,000 to $20,000............	-$1,792	$1,920	$3,044	$2,847	$6,487
$20,000 to $30,000............	-$2,982	$1,948	$2,416	$2,980	$8,359
$30,000 to $40,000............	-$5,416	-$1,956	-$202	$105	$4,864
$40,000 to $50,000............	-$6,728	-$3,522	-$2,127	-$1,701	$4,317
$50,000 to $75,000............	-$23,046	-$18,819	-$14,944	-$14,349	$4,060
$75,000 to $100,000..........	-$22,437	-$20,583	-$16,558	-$16,652	-$1,037
$100,000 to $200,000.........	-$70,372	-$64,835	-$49,535	-$48,439	-$5,993
$200,000 to $500,000.........	-$65,485	-$61,510	-$46,640	-$47,460	-$5,890
$500,000 to $1,000,000......	-$23,947	-$21,661	-$14,015	-$13,623	-$3,099
$1,000,000 and over...........	-$36,853	-$29,845	-$9,833	-$9,600	-$8,495
Total, All Taxpayers..........	**-$259,454**	**-$218,927**	**-$148,113**	**-$145,581**	**$3,958**

[1] While this chart shows changes by income group, this does not mean that everyone in these groups is affected equally. Individual filers have many unique circumstances, such as the number of credits and deductions that they may take, that determine whether they see tax cuts or increases in a given year.

Specific Provisions of Concern

There are also a number of specific provisions of the law that are expected to adversely affect people with disabilities and the nonprofit organizations that serve them. While The Arc was pleased that the final legislation removed several provisions that had been in earlier versions – repeal of the medical expense deduction, the work opportunity tax credit, and the disabled access credit, and a limitation of the low income housing tax credit – the ones described below remained.

Repeal of Individual Mandate for Health Insurance Coverage. The tax law repeals, starting in the beginning of 2019, the requirement in the Affordable Care Act (ACA) that individuals have health insurance or pay a penalty. The Congressional Budget Office estimates that this will result in 13 million more uninsured by 2027. This figure includes not just young healthy people, but also 5 million people who could get Medicaid coverage, and many others who will want insurance but won't be able to afford it anymore. Once the penalty is gone, there is less incentive for younger and healthier people to buy insurance and insurers will have a more expensive risk pool to cover. Since their costs are expected to rise, insurers will raise insurance premiums or withdraw from the individual market entirely. As a result, premiums for insurance obtained through the ACA's Marketplace are projected to go up about 10% in most years of the next decade.

Why this matters for people with disabilities: The individual mandate helps ensure that everyone purchases health care which in turn means that the health care market is not just people who need to use a lot of health care services. This helps keep costs reasonable because the risk is shared by healthy people. If healthy people are not purchasing health insurance, the insurer will likely need to raise the costs because it is more expensive to insure people with health conditions. If the costs go up it makes it harder for people to afford to purchase health insurance.

Reducing Incentives for Charitable Deductions. The tax law doubles the standard deduction that is expected to reduce the number of taxpayers who itemize deductions – including charitable donations – from the current 30% to 5%. Combined with a decrease in the top marginal tax rate, the disincentive to itemize would reduce charitable giving by $4.9 billion to $13.1 billion annually, according to a study commissioned by the Independent Sector.

Why this matters for people with disabilities: The charitable sector provides a very large portion of services for people with disabilities; and individual donations account for over 70% of charitable contributions. Individual donations supplement limited funding from programs such as Medicaid, helping to making possible greater quantity and quality of services.

Limitation of the State & Local Tax Deduction (SALT). Taxpayers have lost the ability to fully deduct their state and local taxes from their federal taxes, a break used by about 44 million people (or 30% of tax filers.) Limiting the SALT deduction to $10,000 will disproportionately affect people living in certain states such as Connecticut, New Jersey, New York, and California.

Why this matters for people with disabilities: People in these states will end up with tax increases, and these states may lose public support for investing in their public programs (such as Medicaid, special education, supportive housing, & paratransit) that benefit constituents with disabilities. (See 50 state analysis of how much Medicaid spending is derived from state and local tax revenue here).

Limitation of the Orphan Drugs Credit. The tax law limits the credit that businesses can get for clinical testing expenses for certain drugs for rare diseases or conditions. Businesses will now only be able to claim a credit for 25% of such expenses, instead of 50%. One study found that if the orphan drug credit were repealed entirely, one third fewer drugs addressing rare diseases would be developed in the future.

Why this matters for people with disabilities: Many people with disabilities have one of the approximately 7,000 rare diseases or conditions that affect 30 million Americans and may see fewer new drugs to help them.

ABLE Act Changes. While The Arc is pleased with two improvements made by the tax law (described in the next section), there is a provision in the law that may put people with disabilities at risk for losing benefits. Language in Section 11024 regarding work earnings would place a significant administrative burden on account beneficiaries or those acting on their behalf. The problem is that the law shifts the burden of tracking amounts that might be over the annual limit from the ABLE program administrator to the beneficiary.

In addition, it appears that the beneficiary is the only person who can add the additional funds, although it was originally intended to allow families and others to also contribute the additional funds. Further, existing marketing on this provision leads some to believe that earnings from work that are contributed to an ABLE account based on this provision will not be counted for purposes of Supplemental Security Income (SSI) or Social Security disability programs. However, the statutory language did not make such changes to the SSI and Social Security disability programs.

Are There Any Improvements for People with Disabilities in the Tax Law?

Yes, there are a few provisions that The Arc believes will benefit people with disabilities. However, they are fairly limited, both in dollar amount and duration, and are far outweighed by the harmful effects of the law.

Expanded Child Tax Credit and New Family Tax Credit. The law increases the child tax credit (CTC) to $2,000 (it had previously been $1,000) per qualifying child under the age of 17, and creates a $500 family tax credit for each dependent of the taxpayer who is not a qualifying child under age 17. This means that filers with dependent adult children with disabilities can now receive a small tax credit.

The increased CTC and the new Family Tax Credit both phase out at $200,000 for unmarried taxpayers and $400,000 for married taxpayers filing jointly. Both expire at the end of 2025.

Improvements to ABLE Accounts. The tax law includes several improvements to allow for increased contributions to ABLE (Achieving a Better Life Experience) tax advantaged savings accounts though the end of 2025 – allowing increased contributions to ABLE accounts by beneficiaries who work, allowing a saver's credit for ABLE contributions and allowing rollovers from 529 accounts to ABLE accounts.

The ABLE to Work Act (S. 818/H.R. 1896) included in Section 11024 of the new law provides for additional savings for beneficiaries who work. The intent is to allow individuals to save more money in an ABLE account if the ABLE beneficiary works and earns income. Specifically, in addition to the current $14,000 annual contribution cap, an ABLE beneficiary who earns income from a job could contribute additional funds from his/her compensation up to the amount equal to the Federal Poverty Level, which is currently at $11,770 (potentially increasing allowable annual contributions to $25,770). These additional funds into the ABLE account would only be allowed if the beneficiary was not participating in his/her employer's retirement plan (e.g., 401k). ABLE beneficiaries will also now be able to qualify for the existing Saver's Credit when they put savings into their accounts.

The ABLE Financial Planning Act (S. 816 /H.R. 1897) included in SEC. 11025 of the law allows for rollovers from 529 education savings accounts into ABLE accounts. Such rollovers can help families who may have set up a 529 account prior to learning of their child's disability or prior to their child becoming disabled. Without this provision, these families had funds trapped in a

529 college fund and faced penalties on their withdrawals if funds were used for any purpose other than higher education.

Unfortunately, however, the tax law does not include the ABLE Age Adjustment Act (S. 2704/ H.R. 4813) that The Arc advocated strong for. This would have raised the age limit for ABLE accounts to age 46. Currently, only individuals with a severe disability prior to the age of 26 are eligible to open an ABLE account.

Expanded Medical Expense Deduction. The law preserves the deduction for medical expenses and temporarily lowers the threshold for claiming it to 7.5% of adjusted gross income, from the current 10% for two years (2017-2018). The medical expense deduction is used by about 6% of tax filers who have expensive health care needs, including people with chronic medical conditions, and parents of children with disabilities. Many people with disabilities rely on this deduction to afford necessary but expensive medical services and devices such as wheelchairs, prosthetic limbs and orthotic braces, vision and hearing aids, service animals, transportation to medical appointments, specialized medical equipment, or physical therapy.

What About the Automatic Cuts to Medicare and Other Programs That the Tax Law Triggered?

The 2010 "pay-as-you-go" law requires that any new spending or tax cuts be offset. Fortunately, Congress waived this requirement (as it has done many times before) in its short-term funding bill that was enacted on December 22, 2017. If Congress had not waived this rule, the $1.5 trillion tax bill would have triggered $136 billion annually in automatic cuts to Medicare and other programs beginning in 2018.

Next Steps

Most of the provisions in the tax law go into effect at the start of 2018. The Internal Revenue Service is preparing guidance for workers and employers, but says taxpayers won't see any changes in their paychecks until at least February. But while implementation of the tax law gets underway, there are three things that disability advocates need to do:

1) **Get Ready to Fight Program Cuts.** The new tax law will reduce federal revenue so much that Congress is all but certain to attempt to cut programs to pay for it. In fact, several Members of Congress have already stated publicly that they plan to cut Medicaid and other programs next. As Members of Congress return and begin to plan their legislative agenda, we need to ask them to preserve Medicaid and other health and disability programs. It is critically important to remind them of the power of the disability community. Send an email to your Members of Congress by clicking here.

2) **Support Legislative Fixes.** A law of this magnitude may require a number of fixes in the near future. For disability advocates, a top priority is fixing ABLE Act sections to avoid the unintended consequence of harming beneficiaries. There is much work to be done before the work earnings provision is clarified and made user-friendly and The Arc calls on its network to be ready to help getting it fixed.

3) **Keep Track of Whether the Promises Made by Members of Congress Have Materialized that Were Used to Push the Law Through.** Supporters of the tax plan say that the tax cuts will pay for themselves because they will stimulate the economy and cause economic growth to increase significantly. *But tax cuts in the past have never paid for themselves and no evidence exists that these tax cuts will be any different.* In fact, recent analyses find the opposite to be true. We also know from recent and historic examples that tax cuts have often not yielded promised results and have instead resulted in increased deficits and harmful programs cuts. The Kansas tax cuts provide a cautionary tale. The disability community must remain vigilant that the increased deficits caused by the tax law are not used to justify cuts to essential programs for people with disabilities. So far, an early analysis shows that corporations are using most of their tax savings to pay management and to buy back their own stock rather than to increase employee wages or benefits, to increase research and development, or to make capital investments (see more here).

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