

ACA REPEAL & REPLACE

Capitol Hill

Yesterday, the House passed an amended version of the American Health Care Act (AHCA) by a vote of 217 - 213. House passage came after Rep Upton (R-MI), former chairman of the House Energy and Commerce Committee, and Rep Long (R-MO) offered an amendment to provide \$8 billion to offset the costs of individuals with pre-existing conditions who cannot afford their insurance premiums. An amendment negotiated by Rep. MacArthur (R-NJ) during the recent recess that would allow states to waive essential health benefits and community rating requirements if the state has established a high-risk pool, also passed prior to final passage of AHCA.

All Democrats voted “no” and the twenty Republicans who voted in opposition included:

- Andy Biggs (R-AZ)
- Mike Coffman (R-CO)
- Barbara Comstock (R-VA)
- Ryan Costello (R-PA)
- Charlie Dent (R-PA)
- Dan Donovan (R-NY)
- Brian Fitzpatrick (R-PA)
- Jaime Herrera Beutler (R-WA)
- Will Hurd (R-TX)
- Walter Jones (R-NC)
- David Joyce (R-OH)
- John Katko (R-NY)
- Leonard Lance (R-NJ)
- Frank LoBiondo (R-NJ)
- Thomas Massie (R-KY)
- Pat Meehan (R-PA)
- Dave Reichert (R-WA)
- Ileana Ros-Lehtinen (R-FL)
- Chris Smith (R-NJ)
- Mike Turner (R-OH)

The bill now moves to the Senate, where the process may be lengthy and several Senators said yesterday that the Senate will craft its own legislation. The Senate bill will be developed by a working group of members from the Senate Finance, Budget and Health, Education, Labor and Pensions (HELP) Committees. Senate HELP Committee Chair Alexander (R-TN) confirmed that the Senate will develop its own package and reporters, “We’ll take whatever good ideas we find there [the House bill] that meet our goals.”

The package developed by the Senate workgroup will likely differ from the AHCA for both procedural and policy reasons. As you know, many of the provisions in the bill as passed by the House likely cannot move in the Senate on the special reconciliation procedure, which only requires 51 votes for passage. Additionally, many moderate Senators, especially those from Medicaid expansion states, have expressed concerns with the changes to the Medicaid program in the AHCA. In a [statement](#), Senator Portman (R-OH) said, “I’ve already made clear that I don’t support the House bill as currently constructed because I continue to have concerns that this bill does not do enough to protect Ohio’s Medicaid expansion population, especially those who are receiving treatment for heroin and prescription drug abuse. We have an opioid crisis in this country, and I’m going to continue to work with my colleagues on solutions that ensure that those who are impacted by this epidemic can continue to receive treatment.”

In a statement following the House vote Senate Finance Committee Chair Hatch (R-UT) acknowledged the procedural and policy challenges facing the Senate stating, “As we work to fulfill our promise to our

constituents to repeal and replace the law in the Senate, we will be guided by the important principles to address costs and give American families more choices. At the same time, we will be working to put together a package that reflects our member's priorities with the explicit goal of getting 51 votes. Coupled with the constraints imposed by the budget reconciliation process, we must manage expectations and remain focused on the art of the doable as we move forward."

In terms of timing, Leader McConnell (R-KY) said the Senate will not consider a bill without a Congressional Budget Office (CBO) score, which will provide cost and coverage numbers. Once a score is released, the Senate parliamentarian will review it to see what provisions comply with the reconciliation rules. CBO's work and the parliamentarian's review process could take several weeks, possibly pushing Senate debate until at least June. The score and parliamentarian's analysis will likely guide the Senate workgroup's work; Sen. Collins (R-ME) said, "We certainly need the CBO analysis on the impact on cost and coverage before we can produce our own [bill]."

Reiterating that Senators do not feel pressured to act quickly, Senate Majority Whip Cornyn (R-TX) made clear that the Senate is not under a deadline and said, "When we have 51 Senators we will vote but not until then."

It is unclear if the House would be able to pass a modified bill when/if it is returned to the chamber for consideration.

BUDGET & APPROPRIATIONS

Fiscal Year 2017

House and Senate appropriators early Monday unveiled the text of an omnibus spending bill that comprises all 11 unfinished FY17 bills to fund the government for the rest of the fiscal year. The House passed the bill Wednesday, 309-118, and the Senate Thursday, 79-18. The President signed the bill into law this afternoon.

The agreement provides \$77.7 billion in discretionary funding for the Department of Health and Human Services, a \$2.7 billion increase above the FY16 level. Some key provisions in the Labor-HHS section of interest include:

Centers for Disease Control and Prevention: A total of program level of \$7.3 billion for the CDC, \$22 million above the FY16 enacted level. This includes \$6.3 billion in appropriated funds, as well as \$891 million in transfers from the Prevention and Public Health Fund. Within the total the bill provides:

- \$112 million, \$42 million more than last year, for preventing prescription drug overdoses
- \$163 million, \$3 million more than last year, for combating antibiotic resistance

National Institutes of Health (NIH): \$34.1 billion, an increase of \$2 billion above FY16. The bill includes:

- \$1.39 billion for Alzheimer's disease research, an increase of \$400 million;
- \$5.689 billion for the National Cancer Institute, including \$300 million from the 21st Century Cures Act to support the Cancer Moonshot Initiative, an increase of \$475.8 million over FY16;
- \$1.09 billion for the National Institute on Drug Abuse, an increase of \$13.365 million;
- \$320 million for the Precision Medicine Initiative, an increase of \$120 million;
- \$260 million for the BRAIN Initiative, an increase of \$110 million;
- \$463 million to Combat Antibiotic Resistant Bacteria, an increase of \$50 million;
- \$333.4 million for the Institutional Development Award, an increase of \$12.5 million

Fighting Opioid Abuse: combined with the \$500 million from 21st Century Cures which was already appropriated, the bill includes an increase of \$650 million in FY17 for opioids. Specifically:

- \$112 million for the CDC, \$42 million over FY16, for preventing prescription drug overdoses
- A \$150 million increase for efforts to combat opioid and heroin addiction on top of the \$500 million authorized by the 21st Century Cures Act

- A \$31 million boost in medication-assisted treatment programs, for a total funding level of \$56 million
- \$20 million for programs authorized in a 2014 opioid response law, including \$1 million for increased access to overdose treatment, \$12 million to train first responders, \$3 million for recovery community-building and \$4 million to treat addiction in pregnant women or women who have recently given birth
- A minimum of \$50 million to be awarded to Community Health Centers for treatment, prevention, and awareness of opioid abuse
- \$3 million for the Agency for Healthcare Research and Quality related to effective primary care support as well as medical care delivery in rural communities

Health Resources and Services Administration (HRSA): \$6.4 billion for HRSA, \$77 million above the FY16 level.

- Within the total, the bill provides \$1.5 billion for Community Health Centers, which is the same as the FY16 level.

Mental Health: \$1.2 billion for mental health programs within SAMHSA and HRSA. This level includes an \$80 million increase above FY16 for key mental health investments. The bill provides \$541.5 million, an increase of \$30 million above FY2016, for the Mental Health Block Grant, and continues a 10 percent set-aside for serious mental illness activities. The bill also provides \$50 million within the funding for Community Health Centers to provide mental health services at health centers across the country.

Substance Abuse and Mental Health Services Administration (SAMHSA): \$3.6 billion, \$14.9 million below FY16, but a \$130.5 million increase over what the Obama administration sought.

- The bill includes a \$150 million increase for efforts to combat opioid and heroin addiction on top of the \$500 million authorized by the 21st Century Cures Act.
- A \$30 million increase to the Mental Health Block Grant, for a total of \$563 million. The Trump administration's skinny budget proposed to cut that program by \$100 million.

Fiscal Year 2018

The new focus on health care in the Senate, following House passage of the American Health Care Act (AHCA) yesterday, could bog down an already delayed appropriations process for FY18. As you know, to avoid a Democratic filibuster in the Senate, Republicans are using the budget reconciliation process which relies on authority provided in the FY17 budget resolution. Although the rules are untested, if an FY18 budget resolution were adopted before the repeal bill passed, the new budget resolution and its reconciliation instructions could wipe out the privilege enjoyed by the repeal bill. In this case, for procedural reasons, Congress may be unwilling to pass a 2018 budget resolution setting top line spending levels until the health care measure is completed. Given this complication and the late start to the FY18 appropriations process, it is likely that another continuing resolution will be necessary in September when the current fiscal year ends.

TRUMP ADMINISTRATION

FDA Commissioner Nomination

The Senate will take a procedural vote on Monday on Scott Gottlieb to lead the Food and Drug Administration. Assuming the cloture vote passes, a final vote on his nomination could occur as early as Wednesday.

Office of National Drug Control Policy

It was reported today that President Trump's FY18 budget would cut about 95 percent of funding for the Office of National Drug Control Policy (ONDCP). The office, which received \$388 million in FY17, would only receive \$24 million in FY18, according to the budget proposal from the White House. The agency's high-intensity drug trafficking program, which received \$254 million in federal funding in 2017, and its drug-free communities support program, which received \$100 million, would be completely zeroed out under Trump's proposal. In addition, the proposed budget would also cut almost \$7 million in salaries,

leading to projected cuts of as many as 33 full-time equivalents. About 70 people currently work at the drug control office. Acting ONDCP Director Rich Baum wrote in an internal email to staff that was shared with POLITICO that he is working with the White House to save the office's funding. The proposed cut would redirect the office's mission to support the White House's new opioids commission chaired by New Jersey Governor Chris Christie.

The White House declined to comment on the reported cut saying, "It would be premature for us to comment — or anyone to report — on any aspect of this ever-changing, internal discussion before the publication of the document." Trump is expected to release a more comprehensive FY18 budget proposal later this month. Of note, the President's budget request is subject to Congressional approval.

As an aside, earlier this week Rep. Tom Marino (R-PA), who was tapped by the White House to run ONDCP as its full-time director, said he was withdrawing from consideration citing a family medical issue.

Cost-Sharing Subsidies

One of the major areas of contention in the passage of the Omnibus Appropriations Act was the potential inclusion of cost-sharing reduction subsidies. These payments are designed to defray the costs of insurance providers in the individual market. Ultimately, congressional negotiators chose to not include those payments with the promise that the executive branch would continue to make payments to ensure market stability. However, after the bill passed the House, White House Director of the Office of Management and Budget (OMB) Mulvaney stated that he may not make future CSR payments. Mulvaney's statement was later walked back by White House Chief of Staff Reince Priebus, who assured lawmakers that the payments would continue to be funded, at least unless a pending federal lawsuit instructs otherwise. The uncertainty of these cost sharing payments comes right at the moment most insurers are finalizing their rates for the coming year, which has caused some chaos in the industry.

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