



# THE COMMITTEE ON ENERGY AND COMMERCE

## INTERNAL MEMORANDUM

March 7, 2011

To: Subcommittee on Health

From: Majority Staff

Re: Hearing on "Setting Fiscal Priorities in Health Care Funding"

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On March 9, 2011 at 10:30 a.m. the Energy and Commerce Committee Subcommittee on Health will hold a hearing in 2323 Rayburn House Office Building entitled, "Setting Fiscal Priorities in Health Care Funding."

### I. Witnesses<sup>1</sup>

1. The Honorable Ernest Istook  
Distinguished Fellow, The Heritage Foundation
2. Dr. John C. Goodman  
President and CEO, National Center for Policy Analysis

### II. Discussion

Federal government spending falls into two general categories: discretionary spending and mandatory or direct spending. Discretionary spending is managed through the annual appropriations process. Congress annually considers appropriations legislation and provides funding, for among other things, programs within the Public Health Service Act, after weighing spending priorities. Mandatory spending occurs outside the normal appropriations process.

The Patient Protection and Affordable Care Act (PPACA) was unusual in the sense that it provided mandatory spending for numerous newly created or established programs that would be normally considered discretionary in nature. This funding process weakens Congressional oversight by bypassing the annual appropriations process where Congress is forced to weigh the relative value of discretionary programs. This memorandum will outline five discussion drafts that eliminate mandatory funding found within PPACA enabling Congress to conduct its oversight role and set spending priorities.

### III. Issues

- A. *Unlimited Mandatory Spending for State-Based Exchange Grants Issued by the Secretary of HHS*

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<sup>1</sup> Additional witness could be added

Section 1311(a) of PPACA provides the Secretary of Health and Human services (HHS) a direct appropriation of such sums as necessary for grants to states to facilitate the purchase of qualified health plans in newly created Exchanges. The size of the direct appropriation is solely determined by the Secretary. The Secretary can determine the amount of spending and spend the funds without further Congressional action. The discussion draft would strike the unlimited direct appropriation and rescind any unobligated funds.

Section 1311(a) funds could be used by states for activities related to developing state insurance exchanges which could include hiring and retaining hundreds of employees to establish their state Exchanges, such as brokers, advertisers, and customer service agents. Grants under this language can be used to “facilitate enrollment” into exchange plans. However, this term is undefined in the statute and could allow the funds to go any activity the Secretary determines could “facilitate” enrollment.

In a January 31, 2011, article by Kaiser Health News detailing state budget issues related to Medicaid, an official at the Center for Medicare and Medicaid Services (CMS) pointed to funds available to states under Section 1311(a) as a “solution” to state budget deficits and mitigate the burden of new federal Medicaid requirements.

#### *B. Prevention and Public Health Fund*

The Prevention and Public Health Fund, Section 4002 of PPACA, is a \$17.75 billion account (FY12-FY21) administered by the Secretary to provide for “expanded and sustained national investment in prevention and public health programs to improve health and help restrain the rate of growth in private and public sector health care costs.” The Secretary has full authority to spend funds in this account on any program or activity under the Public Health Service Act she chooses.

Section 4002 appropriates \$1 billion FY 2012; \$1.25 billion for FY 2013; \$1.5 billion for FY 2014; \$2 billion for FY 2015 and each fiscal year thereafter. The discussion draft would repeal Section 4002.

It is important to note that eliminating this fund does not cut any specific program. The fund was designed to provide the Secretary funds to spend at her discretion above whatever spending amount Congress appropriates. The House-passed health reform bill in the last Congress, H.R. 3962, did create a public health trust fund at a cost of \$34 billion over 10 years. However, this fund would have been subject to Congress appropriating the funds.

#### *C. Construction and Capital Cost Fund for School-based Health Centers*

Section 4101(a) of PPACA authorizes the Secretary to award grants to support the construction of school-based health centers. PPACA provided \$200 million in direct

appropriations for the period of FY2010-FY2013. The discussion draft would eliminate this subsection and rescind any unobligated funds.

It is important to note the funds made available under 4101(a) are limited to expenditures for facilities and there is an express prohibition on using the funds for personnel or to provide health services. \$1.5 billion was also made available to community health centers in the 2009 stimulus bill for construction, renovation, and equipment, for which school based health centers were also eligible.

Section 4101(b) of PPACA also created a grant program for school based health centers to provide health care services. This grant program is subject to annual appropriations. The President's budget did not request funds for this grant program. H.R. 3962 from last Congress did have a discretionary grant program for school based health centers similar to section 4101(b) of PPACA but it did not include the mandatory spending grant program for construction of school based health centers.

#### *D. Personal Responsibility Education Program*

Section 2953 of PPACA establishes state grants for personal responsibility education programs to educate adolescents about adulthood preparation, including education regarding financial literacy, goal-setting, stress management, contraception use, and development of health attitudes regarding body image. Section 2953 appropriates \$75 million for each of fiscal years 2010 through 2014. The discussion draft would convert the appropriation into an authorization so Congress can determine funding through the normal appropriations process.

This provision appears to duplicate existing government programs. For example, the Effective Teaching and Learning for a Well-Rounded Education program provides funding for financial literacy education (the President's FY2012 Budget requests \$246 million for the program).

#### *E. Teaching Health Centers Development Grants*

Section 5508 of PPACA authorizes the Secretary to award grants to establish new accredited or expanded primary care residency programs in teaching health centers. PPACA appropriates \$230 million for these activities for the period of fiscal years 2011 through 2015. The discussion draft would convert the mandatory appropriation into an authorization subject to the annual appropriations process.

In her testimony before the Committee, the HHS Secretary stated that the President's FY12 budget eliminates duplication. Specifically, she cites eliminating spending on Children's Hospitals Graduate Medical Education. While the President's budget proposed eliminating discretionary funding for training at children's hospitals, PPACA provides a \$230 million direct appropriation for medical education at teaching health centers. The discussion draft converts the

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mandatory appropriation given to teaching health centers into authorization so Congress can evaluate the relative value of medical education programs and fund them accordingly.

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*If you need more information, please call Ryan Long or Paul Edattel at 5-2927.*