

[H.R. 3762, Restoring Americans' Healthcare Freedom Reconciliation Act \(Senate Amendment\)](#)

FLOOR SITUATION

On Wednesday, January 6, 2016, the House will consider the Senate Amendment to [H.R. 3762](#), the Restoring Americans' Healthcare Freedom Reconciliation Act, under a [rule](#). The House passed the bill on October 23, 2015 by a vote of [240 to 189](#). The Senate passed the bill, with a substitute amendment, on December 3, 2015 by a vote of [52 to 47](#).

SUMMARY

The Senate amendment to H.R. 3762 repeals the health exchange subsidies and the Medicaid expansion included in the Affordable Care Act (ACA), repeals the "Obamacare slush fund", eliminates federal funding for Planned Parenthood, repeals the individual and employer mandate penalties, and repeals the medical device and "Cadillac" tax, among other provisions.

Major Similarities—Major provisions in both the House and Senate passed bills:

"Obamacare Slush Fund" Repeal—The bill repeals the Prevention and Public Health Fund (PPHF), sometimes referred to as the "Obamacare slush fund" and rescinds unobligated balances. The PPHF allows the Secretary of Health and Human Services to spend up to \$1 billion per year in mandatory spending. These funds were reduced in 2012, but under current law will variably increase from \$1 billion to \$2 billion in 2022 and beyond. [H.R. 2029](#), the Consolidated Appropriations Act, 2016, which was enacted on December 18, 2015, prohibits the Fund from being used to promote or defeat legislation, lobby certain legislatures, and provides for increased transparency of Fund expenditures.

Planned Parenthood Funding Prohibition and Community Health Center Funding—The bill prohibits federal funding for Planned Parenthood for 1 year, beginning on the date of enactment. The bill also increases funding for community health centers by \$235 million in fiscal year 2016 and \$235 million in fiscal year 2017. The Community Health Center [CHC] fund provides grants to health centers that offer primary and preventive care to patients regardless of their ability to pay. Under current law, the program will receive \$3.6 billion in each of the fiscal years 2016 and 2017.

Employer and Individual Mandate Repeal— The House bill eliminated the mandates to purchase health insurance and the corresponding penalties, effective January 1, 2015. The Senate bill eliminates the penalties for failure to comply with the ACA’s individual and employer mandate to purchase health insurance, effective January 1, 2015.

Medical Device Tax Repeal—The House bill repealed the Medical Device Tax upon enactment. The Senate bill repeals the tax beginning after December 31, 2015. [H.R. 2029](#), the Consolidated Appropriations Act, 2016, which was enacted on December 18, 2015, provided for a two-year moratorium on the Medical Device Tax beginning on January 1, 2016.

Cadillac Tax Repeal—The House bill repealed the excise tax on high-cost employer sponsored health plans, or the so-called “Cadillac Tax,” effective after December 31, 2017. The Senate bill repeals the tax effective after December 31, 2017. [H.R. 2029](#), the Consolidated Appropriations Act, 2016, which was enacted on December 18, 2015, provided for a moratorium on the Cadillac Tax until December 31, 2019.

Senate Provisions not included in the House-Passed Bill— Unlike the House bill, the Senate bill includes additional provisions to revise and repeal parts of the ACA, as well as other non-ACA provisions. These include:

Premium Tax Credit and Cost-Sharing Subsidy Repeal—The bill repeals the premium tax credit and cost-sharing subsidies beginning in 2018. The ACA created a refundable tax credit for the purchase of health insurance on an exchange. Similarly, HHS makes payments to insurers to reduce the amount of cost-sharing qualified persons are required to pay. Credit benefits are determined based upon income on a sliding scale. The bill also enhances government recollection of overpayments of such subsidies.

Medicaid Expansion Repeal—The bill repeals the Medicaid expansion beginning in calendar year 2018. The bill makes the following changes associated with the Medicaid expansion:

- Repeals the requirement that states provide Medicaid coverage to people earning less than 133 percent of the federal poverty level;
- Repeals the ability of states to make presumptive eligibility determination. States would still be allowed to make presumptive eligibility determinations for children, pregnant women, and breast cancer and cervical cancer patients;
- Repeals the expanded match and availability of funds for all territories and the expanded match for the newly-eligible Medicaid population;
- Repeals the enhanced match rate for states who had already expanded eligibility for Medicaid to cover adults with earnings below the federal poverty level; and
- Repeals other various provisions in the ACA associated with the Medicaid expansion.

ACA Tax Repeals—The bill repeals the following ACA taxes (effective January 1, 2016):

- The prescription drug annual fee imposed on manufacturers and importers of prescription drugs;
- The annual fee imposed on health insurers;

- The additional Medicare 0.9 percent surtax on taxpayer income above \$200,000 for individuals and \$250,000 for couples;
- The 10 percent excise tax on indoor tanning services;
- The cap on tax-free contributions that can be made to Health Care Flexible Spending Accounts (FSAs)—the ACA capped it at \$2,500 per year);
- The prohibition on using FSA or Health Savings Accounts (HSAs) funds to be used for non-prescription health care expenses;
- Reduces the tax penalty for non-qualified purchases from FSAs from 20 percent to 10 percent; and,
- Reduces the threshold spent on health care costs from 10 percent to 7.5 percent adjusted gross income, allowing any costs above the limit to be tax deductible.

Repeals DSH Allotment Reductions— The bill restores the Medicaid Disproportionate Share Hospital (DSH) cuts.

ACA Reinsurance Prohibition—The bill prohibits the Secretary from collecting fees or making payments for the ACA risk sharing reinsurance program, effective January 1, 2016.¹ The ACA established² a temporary three-year reinsurance program to help insurance companies offset individual health plan risks associated with high-cost enrollees. Under current law, the reinsurance program is set to expire on January 1, 2017.

Remuneration— The bill ends the limitation on excessive remuneration paid by certain health insurance providers in Section 9014 of the ACA, effective January 1, 2016. The ACA limits the deductibility of compensation for people working for health insurance companies that exceeds \$500,000.

Funding for Territories— The Affordable Care Act provides \$1 billion (\$925 million to Puerto Rico) for premium and cost sharing assistance to U.S. territories that establish their own exchanges. The bill rescinds these funds. “Puerto Rico cannot use the federal health insurance exchange under the Affordable Care Act, and it chose not to create its own exchange because its citizens do not pay federal income taxes and thus are not eligible for the subsidies that make exchange plans more affordable.”³

Small Business Tax Credit Repeal—The bill repeals the small business tax credit beginning after 2018. The ACA authorized a temporary tax credit for employers with fewer than 25 employees and annual wages under \$50,000 for the purchase of health insurance.

Funding for State Substance Abuse and Mental Health Programs— The bill authorizes \$750 million for both fiscal years 2016 and 2017 to the Secretary of HHS to award grants to States to address the substance abuse public health crisis or to respond to urgent mental health needs within the State. The funds may be used for improving the State prescription drug monitoring programs, prevention activities, training for providers, supporting access to providers, and other public health activities related to addressing or responding to a substance abuse or mental health crisis.

¹ See CRS Report, [“Health Insurance Exchanges Under the Patient Protection and Affordable Care Act \(ACA\).”](#) June 5, 2013.

² [42 U.S.C. 18061](#)

³ See New York Times Article, [“Puerto Ricans Brace for Crisis in Health Care.”](#) August 2, 2015.

Budgetary Savings Directed to Medicare— The bill instructs the secretary of the Treasury to transfer the vast majority of on-budget savings (over the period of fiscal years 2016 through 2025) from this act to the Federal Hospital Insurance Trust Fund.

BACKGROUND

The budget reconciliation process allows Congress to use an expedited procedure when considering legislation that would bring existing spending and revenue into compliance with current fiscal priorities established in the annual budget resolution.⁴ The adoption of the budget resolution allows Congress to agree upon budgetary goals. In order to meet these goals, Congress must enact legislation that alters or reconciles existing law with its priorities provided in the budget resolution.⁵

The reconciliation process is optional and begins if the budget resolution includes reconciliation directives instructing individual committees to develop and report legislation that would change laws within their respective jurisdictions to achieve overall budgetary goals.⁶ Any legislative committee with jurisdiction over spending and revenue may be directed to report reconciliation legislation.⁷

According to Budget Committee Chairman Tom Price, “[this bill] goes a long way toward lifting the burden of Obamacare from individuals, families, health care providers, job creators, and our economy at large. The president's health care law is doing real harm – increasing premiums and out-of-pocket costs, reducing access to care, levying more taxes and regulations on an already weakened economy, and injecting unnecessary government involvement into the lives of the American people. This damaging law needs to be repealed, so we can put in place positive, patient-centered solutions that would actually expand access to quality, affordable health care choices for all Americans.”⁸

COST

The Congressional Budget Office (CBO) and the staff of the Joint Committee on Taxation (JCT) [estimate](#) that enacting H.R. 3762, as amended with macroeconomic feedback, would reduce the deficit by \$516 billion over the 2016 to 2025 period.

STAFF CONTACT

For questions or further information please contact [John Huston](#) with the House Republican Policy Committee by email or at 6-5539.

⁴ Section 2001 of [S.Con.Res. 11](#) restricts the use of reconciliation for purposes related to the debt limit for this budget cycle.

⁵ See CRS Report, [“The Budget Reconciliation Process: Stages of Consideration.”](#) June 2, 2015.

⁶ Id.

⁷ Id.

⁸ See House Budget Committee Press Release, [“Price Statement on Senate Passage of Reconciliation Bill.”](#) December 3, 2015.