



Legislative Bulletin.....May 3, 2011

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Key Conservative Take-Away Points

--Both bills each repeal an Obamacare federal slush fund at the disposal of the Secretary of Health and Human Services funded with advanced-appropriated federal tax dollars.

--Both bills combined reduce the federal deficit by approximately \$14 billion over fiscal years 2012-2021.

For more details on these points, see below.

H.R. 1213— a bill to repeal mandatory funding provided to States in the Patient Protection and Affordable Care Act to establish American Health Benefits Exchanges (Upton, R-MI)

Order of Business: The bill is scheduled to be considered on Tuesday, May 3rd, under a structured rule ([H.Res. 236](#)) that provides for one hour of general debate equally divided and controlled by the chair and ranking minority member of the Committee on Energy and Commerce. The rule also provides for one motion to recommit with or without instructions and makes in order only the amendments described within this legislative bulletin.

Summary: H.R. 1213 repeals Section 1311 (a) of the Patient Protection and Affordable Care Act (P.L. 111-148, Obamacare) and rescinds any unobligated balance. Section 1311 (a) provides unlimited appropriations of federal funding to the Secretary of Health and Human Services to assist states in establishing state-based health insurance exchanges created under Obamacare. By January 2013, each state is required to establish a state-based health care exchange (exchange) where individuals and small businesses will be able to purchase health insurance that meets federally-approved minimum essential benefits.¹ If a state decides not to create such an exchange, the federal government will step in to run the exchange in that particular state.

¹ For purposes of the exchange, what constitutes “minimum essential benefits” has not yet been defined by the U.S. Health and Human Services Department.

According to a recent Congressional Research Service memo, Section 1311 (a) of Obamacare gives the Secretary an “indefinite” amount of federal funding to offer to States that decide to create their own exchanges without further Congressional oversight. Further, some reports speculate that this unlimited exchange funding authority provided to the Secretary could be used to help bail out states in how they deal with their budget deficits.

Additional Background: This bill is the 2nd of at least five bills recently reported out of the House Committee on Energy and Commerce to receive a floor vote that defunds a portion of advanced appropriations within Obamacare. For more information on Obamacare’s advance appropriations, please see this RSC legislative [bulletin](#).

Although Obamacare supporters claim that states have flexibility to tailor their exchanges to fit the unique needs of their citizens’ health care needs, this claim is false. States are the central vehicle to federal government control of the U.S. health care market. Washington requires the exchanges to perform about a dozen minimum functions including ensuring that private health insurance plans meet federal standards. Also, state exchanges are permitted to require health insurance provider to offer more benefits than the federal government requires—and thus making health benefits more expensive—as long as the state is willing and able to subsidize the extra costs this will create. However, a state cannot certify a health insurance plan in the exchange with fewer, Washington-mandated benefits.

Amendments Made in Order:

1. *Jackson Lee (D-TX)* –This amendment would require the Secretary of Health and Human Services, within 10 days after enactment of this bill, to post notice of rescission of federal funds and the amount rescinded on the public website of the Department of Health and Human Services.
2. *Waters (D-CA)* –This amendment would require the Secretary of Health and Human Services, within six months after enactment of H.R. 1213, to submit a report to Congress describing the extent to which states are expected to have difficulties establishing state-based Health Exchanges without the federal funds repealed and rescinded in this bill.
3. *Ellison (D-MN)* –This amendment would require the Secretary of Health and Human Services, within six months after enactment of H.R. 1213, to submit a report to Congress on the impact H.R. 1213 will have on potential enrollment reductions in the state-based Health Exchanges.
4. *Pallone (D-NJ)* –This amendment would require the Government Accountability Office, within one year after enactment of H.R. 1213, to issue a report on the different impact to a state’s health insurance marketplace between a individual state creating and managing its own Health Exchange with federal funds available in Section 1311 (a) of Obamacare as opposed to the federal government establishing and operating a state’s Health Exchange. The report should address whether employers with over 50 employees are permitted in such Exchanges to purchase insurance over time; the type of financing mechanisms will be used to operate such Health Exchanges; whether such Health

Exchanges will be active negotiators in selecting health plans to obtain the best price and quality for citizens; whether States will operate such Health Exchanges together with one or more States; and whether there will be more than one such Health Exchange (subsidiary Exchanges), each serving a geographically distinct area, in some states.

5. *Welch (D-VT)* –This amendment in the nature of a substitute would strike the entire text in H.R. 1213 and preserve federal funding for states that apply for an early innovator grant by December 31, 2011 (as announced in a January 20, 2011 Department of Health and Human Services [announcement](#)). These grants provides states with financial incentives to “move ahead on a faster pace” by giving them the ability to apply for multi-year federal funding as opposed to federal funding for each year. The federal funds shall be subject to availability of appropriations of up to \$1.9 billion.

Committee Action: Energy and Commerce Chairman Fred Upton (R, MI) introduced H.R. 1213 on March 29, 2011. Prior to its introduction, the Subcommittee on Health held a hearing on a discussion draft identical to H.R. 1213 on March 9, 2011. The Subcommittee marked up the bill and reported it out favorably on March 31, 2011. The full committee marked up and reported it out favorably on April 5, 2011.

Administration Position: The Administration released a Statement of Administrative Policy opposing H.R. 1213.

Does the Bill Expand the Size and Scope of the Federal Government?: No. According to the bill’s accompanying Congressional Budget Office [report](#), enacting H.R. 1213 *reduces* direct spending by \$14.6 billion dollars over 10 years (FY2012-FY2021).

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No. H.R. 1213 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The House Committee on Energy and Commerce, in House Report [112-065](#), asserts that, “...H.R. 1213 contains no earmarks, limited tax benefits, or limited tariff benefits.”

Outside Groups Supporting the bill: Americans for Prosperity, Americans for Tax Reform, Citizens Against Government Waste, Freedom Works, the National Taxpayers Union, and the 60 Plus Association.

Constitutional Authority: The Constitutional Authority Statement published in the Congressional Record upon introduction of the bill states: “Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, Clause 1: The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.”

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H.R. 1214— a bill to repeal mandatory funding for school based health center construction (Burgess, R-TX)

Order of Business: The bill is scheduled to be considered on Tuesday, May 3rd, under a modified-open rule ([H.Res. 236](#)) that provides for one hour of general debate equally divided and controlled by the chair and ranking minority member of the Committee on Energy and Commerce. The rule also provides one motion to recommit with or without instructions and makes in order only those amendments that were printed in the Congressional Record dated May 2, 2011 (and described within this legislative bulletin).

Summary: H.R. 1214 repeals Section 4101 (a) of the Patient Protection and Affordable Care Act (P.L. 111-148, Obamacare) and rescinds any unobligated balance. Section 4101 (a) of Obamacare provided an advanced appropriation of \$200 million for the Secretary of the Health and Human Services to award grants for construction and renovation of school-based health centers for fiscal years 2010-2014. *This funding is not subject to the discretion or oversight of Congressional appropriators—in other words, it is mandatory spending within Obamacare.* The federal funds made available under Section 4101 (a) are dedicated for facility expenditures, such as construction-related projects, equipment costs, and the purchase or acquisition of real estate for school-based health centers. The legislation expressly prohibits the use of these federal funds for personnel to provide health services.

Additional Background: The 2009 “stimulus” and Obamacare each appropriated \$1.5 billion for construction costs for Community Health Centers. The Committee on Energy and Commerce’s [report](#) indicates that many school-based health centers have already qualified to receive grants through these federal funding sources.

Creating duplicative federal funding sources to local school-based health centers—whose purposes are traditionally best left to the states and localities to handle—has encouraged many Conservatives to support the rescinding of federal funding through H.R. 1214.

Amendments Pre-Printed in the Congressional Record:

1. *Jackson Lee (D-TX)* –This amendment would require the Secretary of Health and Human Services, within 10 days after enactment of this bill, to post notice of rescission of federal funds and the amount rescinded on the public website of the Department of Health and Human Services.
2. *Capps (D-CA)* –This amendment would require the Government Accountability Office, within one year after enactment of this bill, to conduct a study to determine the school districts in the United States most in need of constructing or renovating school-based health centers.

3. *Capps (D-CA)* –This amendment would require the Government Accountability Office, within one year after enactment of this bill, to conduct a study to determine the school districts in the United States most in need of constructing or renovating school-based health centers using the federal funding made available under 4101 (a) of Obamacare.
4. *Waters (D-CA)* –This amendment would prevent H.R. 1214 from taking effect, and therefore continue federal funding of school-based health centers’ construction and renovation, if the Secretary of Health and Human Services certifies that a significant number of public school children do not have health insurance. **Note:** The amendment does not define or quantify a “significant number of public school children.”
5. *Waters (D-CA)* –This amendment would prevent H.R. 1214 from taking effect, and therefore continue federal funding of school-based health centers’ construction and renovation, if the Secretary of Health and Human Services certifies that a significant number of public school children do not have access to primary health care facilities or services outside of school. **Note:** The amendment does not define or quantify a “significant number of public school children.”
6. *Waters (D-CA)* –This amendment would prevent H.R. 1214 from taking effect, and therefore continue federal funding of school-based health centers’ construction and renovation, if the Secretary of Health and Human Services certifies that existing school-based health centers have a demonstrable and positive impact on the educational performance or development of students.
7. *Waters (D-CA)* –This amendment would require the Secretary of Health and Human Services, within six months after enactment of the bill, to submit a report to Congress on the number of children in public schools who do not have health insurance.
8. *Waters (D-CA)* –This amendment would require the Secretary of Health and Human Services, within six months after enactment of the bill, to submit a report to Congress describing the extent to which children in public schools are able to access primary health care facilities and services in the communities in which they live.
9. *Waters (D-CA)* –This amendment would require the Secretary of Education, within six months after enactment of the bill, to submit a report to Congress on the impact of school-based health centers on student achievement.
10. *Pallone (D-NJ)* – This amendment would require the Secretary of Health and Human Services, within 10 days after enactment of this bill, to post notice of rescission of federal funds and the amount rescinded on the public website of the Department of Health and Human Services.
11. *Pallone (D-NJ)* –This amendment would prevent H.R. 1214 from taking effect until the date when 100% of individuals in the United States who are age 17 years old and younger have a specific source of ongoing health care.

Committee Action: Representative Michael Burgess (R, TX) introduced H.R. 1214 on March 29, 2011. Prior to its introduction, the Subcommittee on Health held a hearing on a discussion draft identical to H.R. 1214 on March 9, 2011. The Subcommittee marked up the bill and reported it out favorably on March 31, 2011. The full committee marked up and reported it out favorably on April 5, 2011. The Committee on Education and the Workforce also received a referral for H.R. 1214 upon its introduction and discharged the bill on April 27, 2011.

Administration Position: The Administration released a Statement of Administrative Policy opposing H.R. 1214.

Does the Bill Expand the Size and Scope of the Federal Government?: No. According to the bill's accompanying Congressional Budget Office [report](#), enacting H.R. 1214 *reduces* direct spending by \$100 million dollars over 10 years (FY2012-FY2021) despite the \$200 million appropriated in H.R. 1214. This is because CBO estimates that \$100 million of federal grant funding will have already been obligated by the time the bill is expected to be enacted into law.

The U.S. Department of Health and Human Service Health Resources and Services Administration is in its final stages of reviewing the approximately 350 grant applications for this 1st \$100 million of federal grants announced last fall.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No. H.R. 1214 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The House Committee on Energy and Commerce, in House Report 112-066, Part I asserts that, "...H.R. 1214 contains no earmarks, limited tax benefits, or limited tariff benefits."

Outside Groups Supporting the bill: Americans for Prosperity, Citizens Against Government Waste, Freedom Works, and the National Taxpayers Union.

Constitutional Authority: The Constitutional Authority Statement published in the Congressional Record upon introduction of the bill states: "Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, Clause 1: The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States."

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