



**Legislative Bulletin.....April 24, 2013**

**Contents:**

**H.R. 1549 – Helping Sick Americans Now Act**

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**H.R. 1549 – Helping Sick Americans Now Act,  
Rules Committee Print (Pitts, R-PA)**

**Order of Business:** The bill is scheduled to be considered on Wednesday, April 24, 2013, under a structured rule ([H.Res. 175](#)). The rule provides for one hour of general debate equally divided and controlled by the Chairman and Ranking Member of the House Energy and Commerce Committee. It makes in order as original text for the purpose of amendment an amendment in the nature of a substitute consisting of the text of Rules Committee Print [113-8](#). It provides for one motion to recommit with or without instructions and makes **two** amendments in order described within this Legislative Bulletin.

**Summary:** H.R. 1549 amends two Obamacare-created federal health care programs with the goal to assist those with pre-existing health conditions obtain health insurance coverage prior to Obamacare’s insurance market reforms scheduled to begin on January 1, 2014. Specifically, it requires the Secretary of Health and Human Services (HHS) to transfer approximately \$3.7 billion of unobligated balances from appropriations for the Prevention and Public Health Fund<sup>1</sup> for fiscal years 2013 through 2016 for funding of the temporary high risk health insurance Pre-Existing Condition Insurance Plan.<sup>2</sup> Also, the bill eliminates the requirement for adults with a pre-existing health condition to have been uninsured for six months as a condition of PCIP eligibility.

*The Pre-Existing Condition Insurance Plan (PCIP)*

Obamacare envisioned the PCIP to be a temporary health insurance “bridge” program for adults who have been denied health insurance (or could not afford its cost) due to a pre-existing medical condition to be covered in either a federal or federally-funded state-based PCIP program. Its statutory expiration date is December 31, 2013, after which Obamacare’s insurance market reforms prohibiting any health insurance plans from denying coverage or varying premiums/cost-sharing based on health factors (with limited exceptions) take effect. Upon passage of Obamacare in early 2010, the Chief Actuary for the Centers for Medicare and Medicaid (CMS) estimated that approximately 375,000 people would enroll in PCIP. To date, about a third of that estimate (134,000) have enrolled. Congress appropriated \$5 billion to PCIP in Obamacare, which critics at the time warned would not be a sufficient funding amount to

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<sup>1</sup> Section 4002 of P.L. 111-148

<sup>2</sup> Section 1101 of P.L. 111-148

cover the costs of beneficiaries' premium assistance and medical claims. That criticism became true when on February 15, 2013, CMS [announced](#) that the PCIP program would no longer be accepting new enrollees in order to continue providing the current approximate 134,000 nationwide enrollees with coverage.<sup>3</sup>

### *The Prevention and Public Health Fund (PPHF)*

Obamacare created PPHF as the first and only federal health program with advanced appropriated funding in perpetuity “to provide for expanded and sustained national investment in prevention and public health programs...authorized by the Public Health Service Act, for prevention, wellness, and public health activities, including prevention research, health screenings, and initiatives such as the Community Transformation grant program, the Education and Outreach Campaign Regarding Preventive Benefits, and immunization programs.” It is administered with broad discretion of the HHS Secretary to fund any activity or program authorized by the Public Health Service Act without further congressional action.

Past PPHF funding for activities and programs can be viewed [here](#), and planned funding for FY2013 can be viewed [here](#). Recently, [reports](#) have explained that HHS Secretary Kathleen Sebelius has committed federal PPHF funding for all sorts of different Obamacare-related implementation activities including public relations advertising for the inaugural enrollment in federally-facilitated or state partnership Exchanges (referred to as “[Navigators](#)”) to begin this fall as well as for implementation efforts related to establishment of federally-facilitated Exchanges. The House Energy and Commerce Committee highlighted some of the funding activities in its [Obamacare Ugly Truth Alert](#).

Originally, Congress appropriated to the PPHF through Obamacare at least \$1 billion a year for FY2010 through FY2014, and then \$2 billion in *each future fiscal year in perpetuity*. Last Congress, House Republicans voted multiple times to repeal or reduce this Obamacare “[slush fund](#)” when it passed [H.R. 1217](#)<sup>4</sup>, [H.R. 3630](#)<sup>5</sup>, [H.R. 5652](#)<sup>6</sup>, & [H.R. 6684](#)<sup>7</sup>. The Middle Class Tax Relief and Job Creation Act of 2012 ([H.R. 3630](#)<sup>8</sup>), Public Law 112-96, ultimately reduced the PPHF appropriation down to \$1 billion from FY2012-FY2017 while delaying its increase to \$2 billion beginning in FY2022.

**Additional Background:** One of the main arguments President Obama and congressional supporters of Obamacare asserted in passing a federal takeover of the U.S. health care industry in 2010 was that the private health care market discriminated against those whom could not obtain health insurance due to a pre-existing health care condition. When CMS announced its early [termination](#) of PCIP in February of this year, the Administration’s hypocrisy of completely revamping the U.S. health insurance industry for the sake of those suffering from pre-existing

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<sup>3</sup> The announcement stated that federally-run PCIP programs operating in 23 states and the District of Columbia would stop receiving new enrollees on February 15, 2013, while the 27 federally-funded state-based PCIP programs would stop receiving new enrollees on March 2, 2013. For information about the implementation and operation of PCIP by state, please see this January 31, 2013 [report](#) published by the Center for Consumer Information and Insurance Oversight (CCIO)

<sup>4</sup> [236-183](#) roll call vote.

<sup>5</sup> [234-193](#) roll call vote.

<sup>6</sup> [218-199](#) roll call vote.

<sup>7</sup> [215-209](#) roll call vote.

<sup>8</sup> [293-132](#) roll call vote.

conditions became even more evident. In response to CMS' announcement that the PCIP would not be enrolling any additional beneficiaries, House GOP Leaders [wrote](#) to President Obama offering to work with his Administration to help those Americans in need of obtaining health insurance who would no longer be eligible for the PCIP program.

In effect, H.R. 1549 would provide for funding an "orderly reopening of the program" to help the estimated 4,000 monthly PCIP enrollees receive health insurance until the PCIP expires on December 31, 2013.

**Arguments in Support of the Bill:** Supporters of the bill maintain mainly four arguments:

- The bill prevents HHS Secretary Sebelius from using a federal slush fund pot of taxpayer dollars at her disposal from moving forward on Obamacare implementation activities that otherwise would be difficult due to federal agencies not receiving necessary appropriated amounts to fully implement Obamacare. Estimates indicate that such agencies are at least \$1 billion short of needed funding in this fiscal year largely because the House has successfully underfunded the Administration's efforts to implement the law.
- Federal funding for high-risk pools or reinsurance pools has historically been a GOP priority. Transferring PPHF funds to PCIP is a distinction without a difference since Congress has previously funded high-risk pools at the state level prior to Obamacare becoming the law of the land in 2010 (see relevant CRS report [here](#)). PCIP, though not at all ideal in structure or design, is a temporary program that can address assisting some Americans in need of health insurance help. Also, the GOP alternative<sup>9</sup> to Obamacare in the debates leading up to its passage included \$25 billion of high-risk pool and reinsurance pool funding.
- The bill will highlight the shortcomings of the PCIP's authors and the hypocrisy of Obamacare supporters with regard to individuals with pre-existing conditions vis-à-vis their ability to obtain affordable health coverage.
- The bill reduces direct spending over the 10 year window by \$840 million according to the [Congressional Budget Office](#) (CBO).

Outside [groups](#) supporting the base bill include [Americans for Tax Reform](#), American Commitment, Christian Coalition of America, [Freedom Works](#), [Independent Women's Forum](#), 60 Plus Association, Let Freedom Ring, National Taxpayers Union, [Restore America's Voice](#), & Tea Party Nation. Additionally, health care policy analysts including Jim Capretta and [Grace Marie Turner](#) and a Wall Street Journal [Op-Ed](#) have voiced support for the bill.

**Arguments in Opposition to the Bill:** Opponents of the bill claim the following positions:

- H.R. 1549 does not fully repeal Obamacare, instead transferring funds from one program to another. The House-passed FY2014 Budget, along with the RSC FY2014 Budget, both included full repeal of Obamacare.
- The bill back fills an administratively expired PCIP program with "new" funding. In essence, H.R. 1549 resuscitates a terminated Obamacare program that ran out of money, which represents a significant departure from previous House efforts last Congress to solely repeal or defund Obamacare provisions/activities.

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<sup>9</sup> H.R. 4038 in the 111<sup>th</sup> Congress.

- Previous GOP legislative support for high-risk and reinsurance pooling for those who cannot obtain or afford health insurance has always involved state-based solutions (see previously hyper-linked CRS report above). *Also*, another concern is whether the PCIP will be extended past its statutory December 31, 2013, expiration date and thereby requiring more federal funding for a health care program that is expensive to run.
- Finally, the real or perceived perception that this bill will fix a portion of Obamacare is anathema to the goal of full repeal of bill that the Supreme Court upheld last June on very questionable constitutional grounds. For an analysis of the unprecedented decision, please see this [RSC Policy Brief](#).

Outside groups in opposition to the base bill include the [Club for Growth](#), which is key voting, and [Heritage Action](#).

**Amendments Ruled in Order (debatable for 10 minutes each):**

1. **Pitts (R-PA) & Upton (R-MI)** – The Amendment, based off of language from the GOP Obamacare alternative in 2009, repeals federal funding for PPHF after FY2016, requires the HHS Secretary to award states federal block grant funding in calendar year 2014 for the development of methods to provide health insurance coverage for Americans with pre-existing conditions either through new state high-risk pools or the enhancement of existing state high-risk pools, and authorizes for appropriations \$5 billion for FY2014. It allows each state the ability and flexibility to determine criteria for its citizens’ beneficiary eligibility but establishes certain criteria for the establishment state high risk pools. The HHS Secretary shall determine the amount of each state’s federal block grant award. The amendment explicitly maintains the Hyde abortion protections. Lastly, CBO explains that this amendment, along with savings in the underlying bill, reduces direct spending by \$8.1 billion over the ten year window.
2. **Brownley (D-CA)** – The Amendment requires the HHS Secretary to submit a report to Congress within 90 days of enactment describing the total amount of PPHF funding transferred under the bill and the impact such transfer would have on (A) immunizations for uninsured and underinsured children, adolescents, and adults; (B) Alzheimer’s disease education and prevention programs; and (C) the Baby Friendly Hospitals Initiative and maternal care programs.

**Committee Action:** Energy and Commerce Health Subcommittee Joe Pitts (R-PA) introduced H.R. 1549 on April 15, 2013. Prior to introduction, the Subcommittee held a hearing on Obamacare’s PCIP and explored alternatives to helping Americans with pre-existing conditions obtain health insurance. On April 17, 2013, the full committee reported the amended bill out favorably by a vote of [27-20](#).

**Administration Position:** The Administration released a Statement of Administration Policy (SAP) stating that President Obama’s senior advisors would recommend he veto the bill in its present form.

**Cost to Taxpayers:** The CBO released a [cost estimate](#) for H.R. 1549 on April 19, 2013, estimating that implementing the bill would reduce direct spending by \$840 million over the

2013-2023 period. If the Pitts/Upton amendment passes, CBO explains that the amended bill reduces direct spending by \$ 8.1 billion over ten years.

**Does the Bill Expand the Size, Scope, or Influence of the Federal Government?:** The bill reduces direct spending by \$840 million (\$8.1 billion if the Pitts/Upton Amendment passes) over the ten year period. It also provides for the “orderly reopening” of the administratively suspended federal PCIP program.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** The CBO explains that the bill does not contain any intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA)

**Does the Bill Contain Any Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** The committee report states that the bill complies with clause 9 of rule XXI of the Rules of the House of Representatives and contains no congressional earmarks, limited tax benefits, or limited tariff benefits.

**Constitutional Authority:** The Constitutional Authority Statement accompanying the bill upon introduction states: “Congress has the power to enact this legislation pursuant to the following: This bill is enacted pursuant to the power granted to Congress under Article I, Section 8, Clause 3 of the United States Constitution.

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