



Legislative Bulletin.....July 10, 2012

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H.R. 6079 – Repeal of Obamacare Act

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Order of Business: Consideration of the bill is scheduled to begin on Tuesday, July 10, 2012, under a Closed rule ([H.Res. 724](#)) allowing for no amendments. The Rule provides five hours of general debate controlled in the following fashion: one hour equally divided and controlled for each of the Chairs and Ranking Members of the Committees on Education and the Workforce, Energy and Commerce, and Ways and Means; 30 minutes equally divided and controlled for each of the Chairs and Ranking Members of the Committees on the Budget, Judiciary, and Small Business; and 30 minutes equally divided and controlled by the Majority Leader and Minority Leader. It also allow for one motion to recommit the bill.

Summary: H.R. 6079 entirely repeals the Patient Protection and Affordable Care Act (P.L. 111-148, aka, Obamacare) as well as the health care-related provisions in the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152).¹ It is the second full repeal measure that the House will consider this Congress. In one of its first major legislative actions of the 112th Congress, the House first voted to entirely repeal Obamacare on January 19, 2012 when it passed [H.R. 2](#) by a vote of [245-189](#). The Senate failed to pass a full repeal when it considered a procedural vote on an amendment to a Federal Aviation Administration reauthorization bill (S. 223) on February 2, 2011 by a vote of [47-51](#).

Since passage of H.R. 2, the House has voted to fully/partially repeal or defund Obamacare approximately 30 times while also holding numerous Committee oversight hearings and legislative markups related to this federal government takeover of the nation’s health care system (see an [RSC Policy Brief](#) describing such activity up to the end of 2011).

H.R. 6079 includes ten key findings with regard to the law’s impact listed below:

¹ See description on one IPAB-related provision that H.R. 6079 retains later in this Legislative Bulletin.

- “President Obama promised the American people that if they liked their current health coverage, they could keep it. But even the Obama Administration admits that tens of millions of Americans are at risk of losing their health care coverage, including as many as 8 in 10 plans offered by small businesses.
- Despite projected spending of more than two trillion dollars over the next 10 years, cutting Medicare by more than one-half trillion dollars over that period, and increasing taxes by over \$800 billion dollars over that period, the law does not lower health care costs. In fact, the law actually makes coverage more expensive for millions of Americans. The average American family already paid a premium increase of approximately \$1,200 in the year following passage of the law. The Congressional Budget office (CBO) predicts that health insurance premiums for individuals buying private health coverage on their own will increase by \$2,100 in 2016 compared to what the premiums would have been in 2016 if the law had not passed.
- The law cuts more than one-half trillion dollars in Medicare and uses the funds to create a new entitlement program rather than to protect and strengthen the Medicare program. Actuaries at the Centers for Medicare & Medicaid Services (CMS) warn that the Medicare cuts contained in the law are so drastic that ‘providers might end their participation in the program (possibly jeopardizing access to care for beneficiaries).’ CBO cautioned that the Medicare cuts ‘might be difficult to sustain over a long period of time.’ According to the CMS actuaries, 7.4 million Medicare beneficiaries who would have been enrolled in a Medicare Advantage plan in 2017 will lose access to their plan because the law cuts \$206 billion in payments to Medicare Advantage plans. The Trustees of the Medicare Trust Funds predict that the law will result in a substantial decline in employer-sponsored retiree drug coverage, and 90 percent of seniors will no longer have access to retiree drug coverage by 2016 as a result of the law.
- The law creates a 15-member, unelected Independent Payment Advisory Board that is empowered to make binding decisions regarding what treatments Medicare will cover and how much Medicare will pay for treatments solely to cut spending, restricting access to health care for seniors.
- The law and the more than 13,000 pages of related regulations issued before July 11, 2012, are causing great uncertainty, slowing economic growth, and limiting hiring opportunities for the approximately 13 million Americans searching for work. Imposing hiring costs on businesses will lead to lower wages, fewer workers, or both.
- The law imposes 21 new or higher taxes on American families and businesses, including 12 taxes on families making less than \$250,000 a year.
- While President Obama promised that nothing in the law would fund elective abortion, the law expands the role of the Federal Government in funding and facilitating abortion and plans that cover abortion. The law appropriates billions of dollars in new funding without explicitly prohibiting the use of these funds for abortion, and it provides Federal subsidies for health plans covering elective abortions. Moreover, the law effectively forces millions of individuals to personally pay a separate abortion premium in violation of their sincerely held religious, ethical, or moral beliefs.

- Until enactment of the law, the Federal Government has not sought to impose specific coverage or care requirements that infringe on the rights of conscience of insurers, purchasers of insurance, plan sponsors, beneficiaries, and other stakeholders, such as individual or institutional health care providers. The law creates a new nationwide requirement for health plans to cover ‘essential health benefits’ and ‘preventative services,’ but does not allow stakeholders to opt out of covering items or services to which they have a religious or moral objection, in violation of the Religious Freedom Restoration Act (Public Law 103-141). By creating new barriers to health insurance and causing the loss of existing insurance arrangements, these inflexible mandates jeopardize the ability of institutions and individuals to exercise their rights of conscience and their ability to freely participate in the health insurance and health care marketplace.
- The law expands government control over health care, adds trillions of dollars to existing liabilities, drives costs up even further, and too often put Federal bureaucrats, instead of doctors and patients, in charge of health care decisionmaking.
- The path to patient-centered care and lower costs for all Americans must begin with full repeal of the law.”

Additional Background: Since the day President Obama signed the bill into law on March 23, 2010, Obamacare has been anathema to the principles of individual freedom, federalism, and the entire premise of a federal government with enumerated and limited powers. Within hours of the President’s signature on the bill, lawsuits challenging the constitutionality of the Individual Mandate and mandated Medicaid expansion were brought in federal courts around the nation which culminated with the Supreme Court deciding in a 5-4 decision on June 28, 2012 that the law is constitutional in part and unconstitutional in part. The Court held that the Individual Mandate is constitutional under Congress’ taxing authority found in Article I, section 8, Clause I. It invalidated the mandated Medicaid expansion required by the states as an unconstitutionally-coercive exercise of Congress’ spending clause authority under the same constitutional provisions (but provided a judicial remedy by allowing the expansion to stand as long as states have a choice whether to opt in or out of this expansion).

Other pending federal lawsuits still remain including challenges to the Independent Payment Advisory Board (IPAB), provisions relating to physician-owned hospitals, other challenges to the Individual Mandate on separate grounds that were decided by the recent Supreme Court decision, and a recently finalized regulation promulgated by the Health and Human requiring certain religiously-affiliated entities to provide health care services against their religious values. More legal challenges are certain to surface.

Despite significant public relations efforts by the law’s supporters since enactment and after the Supreme Court decision, public opinion remains in opposition to the law. Today’s Weekly Standard [blog](#) explains that a 100 times since the President signed Obamacare into law in March 2010, voters in all 100 polls have favored repeal of the law. For [38 consecutive polls](#), the margin in favor of repeal has been in the double-digits.

Such public animosity towards this massive federal intrusion into the personal health care choices of Americans can be explained by this [list](#) of 46 reasons.

Lastly, H.R. 6079 retains one Obamacare provision pertaining to congressional consideration of the Independent Payment Advisory Board (IPAB)-related recommendations to Congress. Subsection (d) of section 1899A of the Social Security Act, as amended by section 3403 and 10320 of Obamacare, states that “It shall not be in order in the Senate or the House of Representatives to consider any bill, resolution, amendment, or conference report that would repeal or otherwise change this subsection.” The Rules Committee and House Parliamentarians identified this matter after the House considered H.R. 2 in January 2011. Because the House adopted by incorporation all statutory rules in effect as part of the House Rules package at the beginning of the 112th Congress, this Obamacare prohibition prevents the Rules Committee from reporting changes on how the House must consider IPAB proposals. This poses no practical effect on the full repeal of Obamacare as drafted in H.R. 6079 since Congress will be unable to consider any IPAB recommendation since IPAB (and the rest of Obamacare) is repealed under the bill.²

Outside Groups Supporting the bill: Americans for Tax Reform (key vote), Freedom Works, Heritage Action (key vote), National Taxpayers Union, and Citizens Against Government Waste have indicated they support the bill.

Committee Action: Majority Leader Eric Cantor (R-VA) introduced H.R. 6079 on Monday, July 9, 2012. No further Committee action has taken place on the bill.

Administration Position: The Obama Administration released a Statement of Administration Policy (SAP) opposing this bill.

Cost to Taxpayers: The Congressional Budget Office (CBO) has not released an updated costs estimate on repealing Obamacare since the Supreme Court ruling upholding the majority of the law, but it posted the following [statement](#) on its website yesterday:

“CBO is still assessing the effects of the Supreme Court’s decision related to the Affordable Care Act (ACA) on the agency’s projections of federal spending and revenue under current law. We expect to complete that assessment and release updated projections of the budgetary effects of the ACA’s coverage provisions during the week of July 23rd. Because such updated projections are the base against which CBO will estimate the budgetary effects of changes in the ACA, CBO cannot provide estimates of the effects of such changes—including the effects of repealing the ACA—until that assessment is completed during the week of July 23rd.”

CBO did issue an [estimate](#) on February 18, 2011 estimating “...that, on balance, the direct spending and revenue effects of enacting H.R. 2 [full Obamacare repeal] would

² The House-passed [H.R. 5](#) included the same statutory text with regard to repealing IPAB.

cause a net increase in federal budget deficits of \$210 billion *over the 2012-2021 period* [emphasis included].” During the time of H.R. 2’s consideration, this estimate had been (and continues to be) challenged on grounds that it does not incorporate practical considerations including points highlighted on page 12 and 13 of the January 2011 [Speaker’s Report](#) on Obamacare. Other reports, such as one by former CBO Director Douglas Holtz-Eakin, [estimate](#) that the law will increase the deficit by at least \$500 billion in its first ten years and over \$1.5 trillion in its second decade.

Does the Bill Expand the Size and Scope of the Federal Government?: The bill will reduce spending by approximately two trillion dollars and cuts taxes by approximately \$800 billion in the next ten years according to the bill’s findings.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No. It eliminates federal mandates on health care providers, insurers, employers, hospitals, states, and private individuals.

Does the Bill Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: No.

Constitutional Authority: The Constitutional Authority Statements accompanying both the bill states:

“Congress has the power to enact this legislation pursuant to the following: In *National Federation of Independent Business v. Sebelius*, the Supreme Court rejected the constitutional basis offered by proponents of the Patient Protection and Affordable Care Act, the interstate commerce clause found in Article I, Section 8, Clause 3 of the Constitution. Having eliminated the requirement that all Americans buy insurance, the Supreme Court recast the law's penalty for not buying insurance as a tax, which Americans would pay in lieu of purchasing insurance, and five Justices upheld this tax under the taxing power of Congress, found in Article I, Section 8, Clause 1. With the individual requirement to buy insurance having been found unconstitutional, and, with the compulsory nature of that requirement being central to the funding mechanism contemplated under the Patient Protection and Affordable Care Act, Congress hereby repeals the Act in its entirety. Furthermore, Congress did not intend and does not now intend to invoke its taxing power in relation to the individual requirement to buy insurance.

The Congress, the Executive, and the Judiciary are obligated to act according to the principle of coordinate branch construction based on their respective obligations to ensure that all their actions are constitutional. This is the clear meaning of the Vesting Clauses of Articles I, II, and III along with the Supremacy Clause of Article VI, as well as of the Oath of Office that each constitutional officer of the Federal government must take pursuant to Article VI. James Madison made this clear in 1834 stating, “As the Legislative, Executive, and Judicial departments of the United States are co-ordinate, and each equally bound to support the Constitution, it follows that each must in the exercise of its

functions be guided by the text of the Constitution according to its own interpretation of it."

The ``Repeal of Obamacare Act" repeals the Patient Protection and Affordable Care Act and title I and subtitle B of title II of the Health Care and Education Affordability Reconciliation Act of 2010, which included several specific provisions that extend beyond the enumerated powers granted to Congress by the Constitution, including, in particular, the Commerce, Taxing, and the Spending Clauses of Article I, Section 8, as well as the Necessary and Proper Clauses contained therein, and that otherwise improperly extend authority to Federal agencies in a manner inconsistent with the Vesting Clause of Article I, Section 1. The general repeal of this legislation is consistent with the powers that are reserved to the States and to the people as expressed in Amendment X to the United States Constitution."

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