

Health Care in Motion

Timely, Substantive Updates on Policy Shifts · Actionable Advocacy to Protect Health Care

January 19, 2017

The Price is too High: Confirmation Proceedings Begin for Rep. Tom Price, Important Questions Remain Unanswered

This week, President-Elect Trump's nominee for Secretary of the Department of Health and Human Services (HHS), Representative [Tom Price](#) (R-GA-6) began his confirmation process in the Senate. Advocates should pay close attention to these confirmation hearings, as Senate Democrats will likely use the confirmation process to force Price to take "on the record" positions on important health care issues as well as attempt to clarify the direction the Trump Administration will take on key health care questions. The Senate Committee on Health, Education, Labor, and Pensions (HELP) held a "courtesy hearing" on Wednesday, January 18, 2017, and the Senate Committee on Finance is expected to hold its own confirmation hearing on Tuesday, January 24, 2017. As Secretary of HHS, Price would wield considerable influence over the shape of health policy. These hearings are an opportunity to clarify the intentions of the Trump Administration, especially on health care issues where it appears that President-Elect Trump may differ from Congressional Republicans. Unfortunately, Price's answers in the January 18 hearing on key health care issues, such as universal coverage, consumer protections, and drug pricing, were either vague or conflicted with his past policy positions. As a result, considerable uncertainty remains as to the Trump Administration's Health Care Plan.

For vulnerable individuals, particularly those who depend on ACA consumer protections or the Medicaid program, Rep. Price himself is an alarming nominee for Secretary of HHS. Rep. Price has been a vocal opponent of the Affordable Care Act (ACA), including proposing his own repeal and replace legislation, [Empowering Patients First Act of 2015](#). That bill would undermine access to care by removing income scaled subsidies, requiring continuous coverage to maintain consumer protections, and promoting high deductible health plans. In addition to his repeal and replace plan, Price has a record of sponsoring and supporting legislation to significantly reduce access to care for vulnerable individuals, such as those with lower incomes and those living with chronic conditions and disabilities. Price's nomination also raises ethics concerns because he is accused of using his leadership position on health care issues in Congress to conduct insider trading.

Next Steps for Advocates:

1. Advocates should reach out to Senators serving on the [Finance Committee](#) and encourage them to force Price to clarify his positions, as well as the plans of the Administration, on key health policy issues. Advocates can submit questions for Senators to ask during the Finance Committee hearing by close of business on January 19, 2017 to matthew_fuentes@finance.senate.gov.
2. Advocates should closely monitor the confirmation hearings to glean any insight into the Trump Administration's priorities and intentions for health care.
3. Advocates should contact their [Senators](#) to voice their opposition to Price's confirmation as Secretary of HHS as well as their support for the programs he plans to target, such as the ACA and Medicaid.

Health Care in Motion

Advice and Consent; The Process for Appointing the Secretary of HHS

The Constitution divides responsibility for appointing high-level positions within the executive branch between the President and the Senate. Although the President has the right to choose his Cabinet members, such as the Secretary of HHS, the Constitution¹ requires Senate confirmation of his selection. These appointments are often referred to as “advice and consent positions” or “PAS positions”. The Senate confirms a nominee by holding a hearing with the candidate and then taking a vote on whether or not to confirm the nomination. The hearings, which are held by the relevant Senate Committee, are an opportunity to probe the nominee’s policy perspectives and force him or her to articulate positions on relevant issues “on the record.”

The [Senate Committee on Finance](#) has jurisdiction to hold the confirmation hearings for the Secretary of HHS. The [Senate Committee on Health, Education, Labor, and Pensions](#) (HELP), however, typically holds a “courtesy hearing” for the Secretary as well. The Finance Committee has the “final say,” as it is their responsibility to process the nominee’s paperwork and vote on whether or not to refer the nomination to the full Senate for a floor vote. The Senate HELP committee held their hearing on January 18, 2017. The Finance Committee’s hearing will happen on January 24, 2017. The final confirmation vote, taken by the entire Senate, will likely occur in early February.

Historically, the Senate has confirmed the vast majority of all executive branch nominations. Since 1977, only six PAS position nominations failed—five were withdrawn and only one was voted down by the Senate. Issues that have previously caused nominations to fail include revelations of failure to pay federal taxes, illegal employment of immigrants, a pay-for-play scheme, and sexual harassment. Notably Tom Daschle, President Obama’s 2009 pick for Secretary of HHS, withdrew after ethics concerns were raised when it was uncovered that Daschle had failed to pay roughly \$140,000 in taxes on consulting fees and other benefits received as a consultant.

Price’s Answers in First Hearing Vague; Uncertainty Around Key Health Care Questions Remain

As the 115th Congress continues its first month, cracks in the Republican unity on health care policy are becoming increasingly visible. The most noticeable crack is the discrepancy between the Trump Administration and Congressional Republicans on key health care issues. For example, President-Elect Trump stated in a [press conference](#) that the ACA would not be repealed without an immediate replacement at a time when Congressional Republican Leadership was attempting to repeal the ACA while delaying a replacement. Trump has also criticized high deductible plans, despite their popularity among Congressional Republicans (including Price himself), and promised universal coverage, in conflict with some Congressional proposals. On some issues, such as on drug pricing, Trump has even [espoused](#) more traditionally liberal positions. Meanwhile, Trump has touted his health care plan but has not made any of the details of this plan public. As of now, it is unclear what exactly Trump envisions for health care policy and whose vision for health care—Trump’s or Congressional Republican’s—will be realized in the next few months.

As Secretary of HHS Rep. Price could be a deciding factor in the shape health care policy developments take. Unfortunately, the [HELP confirmation hearing held on January 18, 2017](#), gave very little insight into Trump and Price’s plans. Some important issues discussed in the January 18 hearing, but not sufficiently clarified, included:

- Coverage of millions of Americans. Trump has stated that he will provide “insurance for everybody,” but most proposed replacement plans, [including Price’s own](#) (see below), will cause approximately millions of Americans to lose coverage. Price contended in the hearing that his goal is to provide everyone the *opportunity* to purchase

¹ Article II, Section 2 (The President “shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law”)

Health Care in Motion

coverage, rather than a guarantee of coverage. He also stated that the replacement plan will cover more Americans than the ACA, which has not been supported by any evaluation by the Congressional Budget Office or other nonpartisan group. Advocates should push Senators to clarify in the next hearing how Price intends to achieve that goal. Advocates should also be aware that Republicans often define coverage differently than Democrats or the [Congressional Budget Office](#), such as considering high deductible catastrophic care plans to meet the definition of coverage. Advocates should be sure to hold politicians accountable when they use a different definition of coverage in order to avoid admitting that a proposal would cause Americans to lose coverage rather than gain it.

- The [Centers for Medicare and Medicaid Services Innovation Center](#) (CMMI). Price praised CMMI overall, but criticized several CMMI programs. In the past he has specifically [criticized](#) CMMI's hip-and-knee-placement bundled payment program, indicating that bundled payments are likely at risk if he is confirmed. His vague statement on CMMI raises questions about the future of other CMMI programs, including Accountable Care Organizations and value based purchasing. Advocates should ask Senators to push Price to be specific about the future of innovative care and payment models and emphasize the importance of these programs.
- Consumer Protections, including the prohibitions on lifetime caps and pre-existing condition exclusions. Price stated that he wants to continue the ACA consumer protections that allow people under age 26 to remain on their parents' plans as well as the prohibitions against lifetime caps on health care coverage and pre-existing conditions exclusions. This is in contrast to his previously proposed ACA replacement plan (see below), however, which repealed both the pre-existing conditions exclusions ban as well as the lifetime caps on coverage. Advocates should encourage Senators to pressure Price about these discrepancies and demand that these consumer protections be preserved.
- Funding for Medicare and Medicaid. Price stated that he did not know if Trump's promise not to cut Medicare and Medicaid funding would be honored. He argued that metric for evaluating changes to Medicare and Medicaid should not be money, but instead improvements in care. He also argued in support for Indiana's Medicaid expansion program as well as for expanded waivers to allow states flexibility. Advocates should ask Senators to clarify Trump and Price's commitment to preserving funding for these critical programs.
- Drug Pricing. Price did not espouse Trump's promise to force pharmaceutical companies to negotiate with Medicare on drug prices. Instead, Price promised that he would work in "a bipartisan way" to address high drug prices but did not offer any details of how he would ensure that drug prices are reasonable. His responses make it difficult to predict whether Price would pursue negotiated pharmaceutical pricing, as Trump promises, or oppose it, as most Congressional Republicans do. Advocates should push Senators to ask for clarification on this important subject.

Advocates should push the Senators on the Finance Committees to require Price to clarify as much as possible where the Administration stands on health care issues, especially ones in which Trump appears to differ from Congressional Republicans and party orthodoxy. Advocates should also ask the Senators on the Finance Committee not to accept the vague answers provided to the HELP Committee and require Price to clarify his positions on key issues, including universal coverage, consumer protections, and drug pricing. Advocates should closely monitor both confirmation hearings to understand Price's positions relative to Congressional leadership and to Trump and to gain more insight into the shape of future health care policy developments.

Price's Previous Health Policy Agenda Suggests a Threat to for Access to Care for Vulnerable Populations

Rep. Price's nomination poses a significant threat to access to care, particularly for vulnerable individuals. Price has consistently been vocal in his opposition to the ACA and supports a full repeal of the landmark health care law, stripping comprehensive and affordable coverage from the approximately 22 million Americans that have gained coverage under the

Health Care in Motion

ACA. Price is a proponent of modifying Medicaid by eliminating its traditional entitlement funding structure, a change that could reduce access to care for the nearly 70 million Americans who rely on that program. He has also advocated privatizing Medicare and argued against many of the emerging payment structures meant to bend the health care cost curve, such as value based or bundled care payments. Advocates should be sure to understand his legislative record and to educate their Congressional delegations about why his previous positions make him a poor choice.

Price's Plan to Repeal and Replace the ACA Raises Alarms for Vulnerable Individuals

Especially in light of his vague answers at the HELP confirmation hearing, advocates should review Price's [Empowering Patients First Act of 2015](#) (EPFA) bill, intended as a replacement plan to the ACA, to better understand Price's potential objectives as Secretary. In addition to completely repealing all of the ACA, Price's proposed legislation would implement a number of measures that would impede access to care for individuals with lower incomes and those living with chronic illnesses or disabilities, including:

- Transforming the ACA's means-tested premium tax credits into modest fixed-dollar, age-adjusted credits.
- Replacing the ACA's guarantee of coverage for those with pre-existing conditions with no health underwriting² with a requirement to maintain continuous coverage for 18 months in order to avoid higher premiums based on health status. Without sufficient financial supports, a continuous coverage requirement would put many vulnerable individuals at risk of being priced out of the private insurance markets due to health status underwriting.
- Promoting high-deductible health plans coupled with tax-free health savings accounts (HSAs). This would result in insurers offering less robust coverage and provide wealthier people with substantial tax benefits.
- Allowing insurers to sell health plans across state lines, an idea supported by President-Elect Trump. As many states heavily regulate their insurance markets to protect consumers, this will lead to a "race to the bottom" in which healthier individuals enroll heavily in cheaper, less-regulated plans, pushing out insurers offering more comprehensive care.

It is important to remember that EPFA is Price's proposal and not a plan espoused by the Trump Administration. Nevertheless, EPFA indicates that its author is not focused on promoting access to care, especially for those living with chronic illness and disability or those who are lower income.

Price's Record on Medicaid and Medicare Suggests a Radical Reworking of Both Programs

Price's prior history suggests that as Secretary of HHS he would approve waivers that would scale back access to care and enrollee protections in Medicaid and support Congressional attempts to remove important funding for Medicaid and Medicare. As Secretary of HHS, Price would wield broad authority to approve requests from states to waive key Medicaid rules and allow programs to impose harmful requirements on enrollees such as premiums, cost sharing, and work requirements. Price has a long track record of supporting Medicare and Medicaid proposals to scale back the popular entitlement programs that provide health care services to roughly 130 million people.

Last year, Price drafted the [House Republican 2017 budget resolution](#),³ and proposed moving Medicare towards a privatized premium support model that would eliminate a 50-year-old social contract and shift costs to seniors and people with disabilities. It would have also replaced the entitlement funding to Medicaid, in which federal funding is tied to actual

² Health status underwriting is the practice of scaling premiums based on pre-existing conditions. It was widespread before the ACA prohibited this practice.

³ This is not the budget resolution that is currently under consideration in Congress. For a discussion of the current budget resolution Congress plans to use as a vehicle to partially repeal the ACA, please see the Center for Health Law and Policy Innovation's previous Health Care in Motion update [here](#).

Health Care in Motion

health spending, with either block grants or per capita funds. This would undoubtedly increase financial pressure on the already-strained safety net, likely result in enrollment and service cuts for those with lower incomes, remove important federal enrollee protections, and undermine the ability of states to implement innovative solutions to address health disparities.

Price Faces Allegations Related to Investments in Health Companies in January 18 Hearing

A number of recent revelations about Rep. Price's investments in health care technology companies have raised ethics concerns that impede his confirmation. Senate Democrats have called for an investigation into Price's health-related [stock trades](#) that may have run afoul of insider trading laws, and have voiced concern over ties to health industry corporations Price would oversee as Secretary. Price has been accused of trading more than \$300,000 in shares of health care companies while sponsoring and advocating for legislation that could affect their stock price. Under the 2011 [STOCK Act](#), this practice could be considered insider trading. In the January 18 hearing, Price [defended his financial decisions](#) to Senators such as Al Franken (D. Minn.), stating that the stocks in question were purchased by a broker without his knowledge and that he would divest from more than three dozen companies in which he owns stocks that could pose conflicts in his role as Secretary of HHS. He did acknowledge that he personally conducted one trade, but denied using any private information to influence his decision.

[Senate Democrats](#) are calling for a delay in the next confirmation hearing until this matter can be properly investigated, although to date, both Committees have ignored these requests. Senator [Chuck Schumer](#) (D-NY), the new Senate Minority Whip, has called for the Office of Congressional Ethics to investigate, while Senator [Kirsten Gillibrand](#) (D-NY), author of the STOCK Act, has called for the Securities and Exchange Commission to look into the matter. Nevertheless, these issues are serious enough to pose a threat to Rep. Price's nomination, especially since past nominations for Secretary of HHS have failed due to ethics concerns, and presents an opportunity for advocates to oppose his confirmation.

Advocates Should Urge Senators to Question Rep. Price on Key Access to Care Issues as Well as to Vote Against His Nomination

It is important to be engaged in the confirmation process for the Secretary of HHS. **Advocates should submit questions they would like Senators to ask during the Finance confirmation hearing to matthew.fuentes@finance.senate.gov by close of business on January 19, 2017.** This is an opportunity to force Rep. Price, and the Trump Administration, to go "on the record" about issues that impact our communities, especially after the uncertainty remaining after the HELP hearing. Advocates should follow both the HELP courtesy hearing and the Finance confirmation hearing closely to get a better sense of Price's priorities, role, and focus as potential Secretary of HHS. Advocates should also monitor the hearings to get a better sense of Trump's vision for health care policy, especially in areas where he has differed from Congressional Republicans and party orthodoxy. Advocates should highlight any problematic answers given by Price during the hearings to their Senators and educate them on why Price is not a good nominee for Secretary of HHS.

Price's legislative record indicates that, as Secretary, he would not work to protect access to care or consumer protections for many communities, including those living with chronic illnesses and disabilities. While the confirmation process is unlikely to be stopped, except perhaps due to ethics concerns, it is important that Senators are aware of Price's harmful policy agenda. **Advocates should reach out to members of their state's delegation who serve on the [Senate Finance Committee](#) and educate their Senators on the devastating impact that Price's confirmation will have on the health care system. In anticipation of Price clearing the Finance Committee's hearing, advocates should also reach out to [Senators](#) in their states and ask that they vote against Price's confirmation during a floor vote.**

Advocates should inform their Senators about Price's previous alarming policy positions and the threat he poses to access

Health Care in Motion

to care. Specifically, advocates should use the EPFA to urge Senators on the Finance Committee to closely question Price's positions on important consumer protections and programs that support access to care. Advocates should draw Senators' attention to Price's proposals to push people living with pre-existing conditions out of the private marketplaces by reducing financial supports while imposing a continuous coverage requirement to avoid health status underwriting and pre-existing exclusions. Advocates should also call for Senators to scrutinize Price on his commitment to preserving the key missions of Medicare and Medicaid.

Lastly, advocates must draw attention to Price's potential ethics violations and make it clear to their Senators that a Secretary of HHS who uses his position to benefit his own investments is unacceptable. Previous nominees to Cabinet positions, including Secretary of HHS, have been forced to withdraw due to ethics concerns, especially around their finances. Advocates should put pressure on the Administration to withdraw Price, the two Senate Committees to refuse to approve him, and on Senators to vote against his confirmation, due to his history of promoting legislation to benefit his own investments in the health care industry.

Health Care in Motion is written by:

Caitlin McCormick-Brault, Associate Director at the Center for Health Law and Policy Innovation; Carmel Shachar, Clinical Instructor at the Center for Health Law and Policy Innovation; and Phil Waters, Clinical Fellow at the Center for Health Law and Policy Innovation.

For further questions or inquiries please contact Carmel Shachar, cshachar@law.harvard.edu.

Subscribe to all Health Care in Motion Updates