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The ACA Prevention and Public Health Fund: In Brief

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Background and Summary

Section 4002 of the Affordable Care Act (ACA, P.L. 111-148, as amended) established the Prevention and Public Health Fund (PPHF or "the Fund"), a permanent annual appropriation to be administered by the Secretary of Health and Human Services (HHS).[1] The PPHF authority directs the HHS Secretary to transfer amounts from the Fund to HHS agencies for prevention, wellness, and public health activities.

As with the ACA in general, the PPHF has sparked some controversy. Concerns have included the broad discretion given to the Secretary to administer a sizeable advance appropriation, and some specific uses of the Fund, such as community infrastructure projects (e.g., playgrounds and bike lanes) and ACA implementation activities.[2] Since the ACA was enacted in 2010, Congress has considered several proposals to repeal the Fund and rescind any unobligated balance.[3] For example, in the 114th Congress, the Restoring Americans' Healthcare Freedom Reconciliation Act of 2015 (H.R. 3762) was passed in both chambers.[4] It was vetoed by President Obama, and the House failed to override the veto. In the 115th Congress, the American Health Care Act (H.R. 1628) also would repeal the PPHF, beginning in FY2019, and rescind any unobligated balances remaining after FY2018.[5] H.R. 1628 has been considered by the House Committee on the Budget and the Committee on Energy and Commerce.

The Congressional Budget Office (CBO) has estimated the budgetary effects of PPHF repeal as proposed by H.R. 1628.[6] CBO estimated budget authority over the 10-year period of FY2017-FY2026 at $12.0 billion, the sum of annual appropriations to the Fund for those years, before any sequestration. It estimated outlays (i.e., the amount that would potentially be saved by the repeal) of $8.8 billion for the same period. (For grant programs, the main form of PPHF spending, outlays may occur over several years following the grant award.)

In general, PPHF funds have been distributed to HHS agencies in the Public Health Service.[7] Since PPHF funds have already been appropriated, the Obama Administration's annual budgets did not request these funds. Rather, they set out the Administration's plan to distribute and use PPHF funds for a given fiscal year. The Trump Administration "budget blueprint" for FY2018, published on March 16, 2017, does not mention the PPHF.[8] A more detailed budget proposal is expected in May 2017.

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[1] For more information see CRS Report R41278, *Public Health, Workforce, Quality, and Related Provisions in ACA: Summary and Timeline*.

[2] See for example Rep. Joseph R. Pitts, "Repealing the Prevention and Public Health Fund," House debate, *Congressional Record*, vol. 157, April 13, 2011, pp. H2633-H2634.

[3] See for example CRS Report R43289, *Legislative Actions in the 112th, 113th, and 114th Congresses to Repeal, Defund, or Delay the Affordable Care Act*.

[4] CRS Report R44300, *Provisions of the Senate Amendment to H.R. 3762*.

[5] CRS Report R44785, *H.R. 1628: The American Health Care Act (AHCA)*.

[6] Congressional Budget Office, American Health Care Act: Budget Reconciliation Recommendations of the House Committees on Ways and Means and Energy and Commerce, March 9, 2017, cost estimate, March 13, 2017, https://www.cbo.gov/publication/51107.

[7] See CRS Report R44505, *Public Health Service Agencies: Overview and Funding (FY2015-FY2017)*.

[8] White House Office of Management and Budget, *America First - A Budget Blueprint to Make America Great Again*, FY2018 budget proposal, March 16, 2017.

The PPHF is intended to support an "expanded and sustained national investment in prevention and public health programs."[9] PPHF amounts for each fiscal year are available to the Secretary beginning October 1, the start of the respective fiscal year. Congress may explicitly direct the distribution of PPHF funds, and did so for FY2014 through FY2017.

Under the ACA, the PPHF's annual appropriation would have increased from $500 million for FY2010 to $2 billion for FY2015 and each subsequent fiscal year. Congress has amended the provision two times, using a portion of PPHF funds as an offset for the costs of other activities. The Middle Class Tax Relief and Job Creation Act of 2012 (P.L. 112-96) reduced PPHF appropriations for FY2013 through FY2021. The 21st Century Cures Act (P.L. 114-255) reduced PPHF appropriations for FY2018 through FY2024.[10] See the text box below and the **Appendix** for original and current law appropriations amounts.

Table 1 presents annual transfers of PPHF funds to HHS agencies. For FY2010 through FY2013, the HHS Secretary determined the distribution of PPHF funds, transferring the majority of total PPHF appropriations for those years to the Centers for Disease Control and Prevention (CDC). For FY2013 the Secretary used almost half of the available PPHF appropriation to implement ACA insurance exchanges, prompting objections from both supporters and opponents of the Fund.[11]

Congress has used the annual appropriations process to direct annual PPHF transfers since FY2014,[12] also providing most of each annual appropriation to the CDC. The Secretary generally used the PPHF to fund a mix of preexisting activities and activities newly authorized under the ACA. In contrast, Congress has favored funding preexisting activities. **Table 2** presents congressionally directed PPHF transfers for FY2014 through FY2017.

For some programs, the PPHF contribution for FY2016 made up more than half of total program funding. Examples include CDC immunization grants to states (54%) and tobacco prevention activities (60%). The CDC lead poisoning prevention program received 100% of its FY2016 funding from the PPHF. In addition, PPHF transfers accounted for about one-third of the funds for the Garrett Lee Smith suicide prevention grants to states, administered by the Substance Abuse and Mental Health Services Administration (SAMHSA).[13] If PPHF funds were to become unavailable, additional appropriations would be needed to sustain programmatic activities at the levels provided in recent Labor, Health and Human Services, and Education, and Related Agencies (LHHS) appropriations acts.[14]

The PPHF is both authorized and permanently appropriated through the language in the text box below.

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[9] 42 U.S.C. §300u–11(a).

[10] Pursuant to P.L. 114-255, §5009, PPHF funds were reduced, but not eliminated, for several fiscal years as an offset for National Institutes of Health (NIH) and Food and Drug Administration (FDA) Innovation Funds created by the law. (See CRS Report R44720, *The 21st Century Cures Act (Division A of P.L. 114-255)*). Any subsequent reduction or repeal of PPHF funds would apply to current law, that is, the amounts remaining after reductions under P.L. 114-255, and would have no effect on the NIH and FDA Innovation Funds.

[11] See for example "HHS Takes $454 Million from Prevention Fund for Insurance Enrollment," *Inside CMS*, April 17, 2013.

[12] This congressional direction was contemplated by Section 4002(d) of the ACA, which provided, "The Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives may provide for the transfer of funds in the Fund to eligible activities under this section, subject to subsection (c)."

[13] Congressional budget justifications for these agencies are available at http://www.hhs.gov/about/budget/index.html.

[14] See for example Lev Facher, "Obamacare Repeal and Trump's Spending Plan Put CDC Budget in Peril," *STAT*, March 7, 2017.

The Prevention and Public Health Fund: Current Law as of March 20, 2017

(a) Purpose:

It is the purpose of this section to establish a Prevention and Public Health Fund (referred to in this section as the "Fund"), to be administered through the Department of Health and Human Services, Office of the Secretary, to provide for expanded and sustained national investment in prevention and public health programs to improve health and help restrain the rate of growth in private and public sector health care costs.

(b) Funding:

There are hereby authorized to be appropriated, and appropriated, to the Fund, out of any monies in the Treasury not otherwise appropriated—

(1) for fiscal year 2010, $500,000,000;

(2) for each of fiscal years 2012 through 2017, $1,000,000,000;

(3) for each of fiscal years 2018 and 2019, $900,000,000;

(4) for each of fiscal years 2020 and 2021, $1,000,000,000;

(5) for fiscal year 2022, $1,500,000,000;

(6) for fiscal year 2023, $1,000,000,000;

(7) for fiscal year 2024, $1,700,000,000; and

(8) for fiscal year 2025 and each fiscal year thereafter, $2,000,000,000.

(c) Use of Fund:

The Secretary shall transfer amounts in the Fund to accounts within the Department of Health and Human Services to increase funding, over the fiscal year 2008 level, for programs authorized by the Public Health Service Act [42 U.S.C. §201 et seq.], 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.

(d) Transfer authority:

The Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives may provide for the transfer of funds in the Fund to eligible activities under this section, subject to subsection (c).

Notes: 42 U.S.C. §300u-11. The ACA also appropriated $750 million to the PPHF for FY2011. This line of text was removed from the provision in P.L. 112-96 in 2012, which did not affect the availability of FY2011 funds. Amounts do not reflect sequestration of funds for FY2013 and subsequent fiscal years.

Authority and Funding Distributions

PPHF funds are *mandatory spending* in that the authorizing law that established the PPHF also provided an appropriation of those funds each fiscal year. The annual appropriation of those funds does not cease after a certain time period, but rather occurs indefinitely under the law.[15] Under the Budget Control Act of 2011 (BCA, P.L. 112-25), the PPHF appropriation is fully sequestrable at the applicable annual percentage rate for nonexempt nondefense mandatory spending, through

[15] For more information, see CRS Report R44582, *Overview of Funding Mechanisms in the Federal Budget Process, and Selected Examples*.

FY2025.[16] Sequestration is applied to the entire PPHF appropriation by the HHS Secretary before funds are transferred to agencies.

The distribution of PPHF funds to HHS agencies for FY2010 through FY2017 (the life of the fund to date) is presented in **Table 1**.[17] **Table 2** presents congressionally directed PPHF transfers for FY2014 through FY2017.

Table 1. PPHF Transfers to HHS Agencies, FY2010-FY2017

(Millions of Dollars, by Fiscal Year)

Agency	2010	2011	2012	2013	2014	2015	2016	2017	Agency Total 2010-2017	Agency % of Total 2010-2017
ACL	0	0	20	9	28	28	28	28	141	1.9
AHRQ	6	12	12	7	7	0	0	0	44	0.6
CDC	192	611	809	463	831	886	892	891	5,575	76.9
CMS	0	0	0	454[a]	0	0	0	0	454[a]	6.3
HRSA	271	20	37	2	0	0	0	0	330	4.6
OS	12	19	30	0	0	0	0	0	61	0.8
SAMHSA	20	88	92	15	62	12	12	12	313	4.3
Total after sequestration	500	750	1,000	949	928	927	932	931	6,918	95.4
Sequestered	—	—	—	51	72	73	68	69	333	4.6
Total	**500**	**750**	**1,000**	**1,000**	**1,000**	**1,000**	**1,000**	**1,000**	**7,250**	**100.0**

Sources: Prepared by Congressional Research Service based on HHS agency congressional budget justifications for FY2012 through FY2017, http://www.hhs.gov/budget/; and HHS, "Prevention and Public Health Fund," funding distribution tables, https://www.hhs.gov/open/prevention.

Notes: Individual amounts may not add to totals due to rounding. ACL is the Administration for Community Living. AHRQ is the Agency for Healthcare Research and Quality. CDC is the Centers for Disease Control and Prevention. CMS is the Centers for Medicare & Medicaid Services. HRSA is the Health Resources and Services Administration. OS is the Office of the HHS Secretary. SAMHSA is the Substance Abuse and Mental Health Services Administration.

a. Funds were used for implementation of insurance exchanges under the ACA. CMS, *Justification of Estimates for Appropriations Committees, Fiscal Year 2015,* p. 349, http://www.hhs.gov/budget/.

[16] The BCA provides budget process mechanisms to reduce mandatory spending over an extended period through "sequestration." In general, sequestration involves largely across-the-board reductions that are made to certain categories of spending. For further information, see the appendix to CRS Report R44691, *Labor, Health and Human Services, and Education: FY2017 Appropriations*.

[17] Further details on PPHF distributions to AHRQ, CDC, HRSA, and SAMHSA are provided in the respective agency budget tables in CRS Report R44505, *Public Health Service Agencies: Overview and Funding (FY2015-FY2017)*.

Table 2. Congressionally Directed PPHF Transfers, FY2014-FY2017

(Dollars in millions)

Agency/Program	FY2014	FY2015	FY2016	FY2017
ACL Total	27.7	27.7	27.7	27.7
ACL/Alzheimer's Disease (non-add)	*(14.7)*	*(14.7)*	*(14.7)*	*(14.7)*
ACL/Chronic Disease Self-management (non-add)	*(8.0)*	*(8.0)*	*(8.0)*	*(8.0)*
ACL/Falls Prevention (non-add)	*(5.0)*	*(5.0)*	*(5.0)*	*(5.0)*
AHRQ Total	7.0	0.0	0.0	0.0
AHRQ/USPSTF (non-add)	*(7.0)*	0.0	0.0	0.0
CDC Total	831.3	886.3	892.4	891.4[a]
CDC/Hospitals Promote Breastfeeding (non-add)	*(8.0)*	*(8.0)*	*(8.0)*	*(8.0)*
CDC/Cancer (non-add)	*(104.0)*	*(104.0)*	0.0	0.0
CDC/Diabetes Prevention (non-add)	*(73.0)*	*(73.0)*	*(73.0)*	*(72.0)*[a]
CDC/Epidemiology and Laboratory Capacity (non-add)	*(40.0)*	*(40.0)*	*(40.0)*	*(40.0)*
CDC/Healthcare-associated Infections (non-add)	*(12.0)*	*(12.0)*	*(12.0)*	*(12.0)*
CDC/Heart Disease, Stroke (non-add)	*(73.0)*	*(73.0)*	*(73.0)*	*(73.0)*
CDC/Million Hearts (non-add)	*(4.0)*	*(4.0)*	*(4.0)*	*(4.0)*
CDC/Early Care Collaboratives (non-add)	*(4.0)*	*(4.0)*	*(4.0)*	*(4.0)*
CDC/Nutrition, Physical Activity, Obesity (non-add)	*(35.0)*	*(35.0)*	0.0	0.0
CDC/Smoking and Health (non-add)	*(105.0)*	*(110.0)*	*(126.0)*	*(126.0)*
CDC/Preventive Health and Health Services Block Grant (non-add)	*(160.0)*	*(160.0)*	*(160.0)*	*(160.0)*
CDC/Racial and Ethnic Approaches to Community Health (REACH) (non-add)	*(30.0)*	*(30.0)*	*(51.0)*	*(51.0)*
CDC/Sec. 317 Immunization (non-add)	*(160.3)*	*(210.3)*	*(324.4)*	*(324.4)*
CDC/Lead Poisoning Prevention (non-add)	*(13.0)*	*(13.0)*	*(17.0)*	*(17.0)*
CDC/Workplace Wellness Grants (non-add)	*(10.0)*	*(10.0)*	0.0	0.0
SAMHSA Total	62.0	12.0	12.0	12.0
SAMHSA/Access to Recovery (non-add)	*(50.0)*	0.0	0.0	0.0
SAMHSA/Garrett Lee Smith Suicide Prevention (non-add)	*(12.0)*	*(12.0)*	*(12.0)*	*(12.0)*
Sequestered funds	72.0	73.0	68.0	69.0
TOTAL	**1,000.0**	**1,000.0**	**1,000.0**	**1,000.0**

Sources: Prepared by Congressional Research Service. For FY2014, Explanatory Statement on H.R. 3547, Consolidated Appropriations Act, 2014, *Congressional Record,* vol. 160 (January 15, 2014), pp. H1042-H1043; for FY2015, Explanatory Statement on H.R. 83, Consolidated and Further Continuing Appropriations Act, 2015, *Congressional Record,* vol. 160 (December 11, 2014), p. H9839; for FY2016, Explanatory Statement on H.R. 2029, Consolidated Appropriations Act, 2016, *Congressional Record,* vol. 161 (December 17, 2015), p. H10290; for FY2017, Further Continuing and Security Assistance Appropriations Act, 2017, P.L. 114-254, §171, 130 Stat. 1011, and HHS, "Prevention and Public Health Fund," FY2017 transfer table, effective December 15, 2016, https://www.hhs.gov/open/prevention.

Notes: Individual amounts may not add to totals due to rounding. ACL is the Administration for Community Living. AHRQ is the Agency for Healthcare Research and Quality. CDC is the Centers for Disease Control and Prevention. SAMHSA is the Substance Abuse and Mental Health Services Administration. USPSTF is the U.S. Preventive Services Task Force.

a. The Further Continuing and Security Assistance Appropriations Act, 2017, P.L. 114-254, §171, directs the HHS Secretary to transfer FY2017 PPHF funds as per FY2016 appropriations, except that CDC shall receive $1.0 million less to account for the slightly higher FY2017 sequestration percentage. CDC applied this reduction to the Diabetes Prevention account.

Scope of PPHF-Funded Activities

The terms "prevention," "wellness," and "public health activities," describe allowable PPHF-funded activities. However, no PPHF-specific or generally applicable definitions of these terms appear to be found in the Public Health Service Act (PHSA), the ACA, or elsewhere in federal law. ACA was not accompanied by committee reports in either chamber. Finally, HHS has not published regulations, guidance, or other information to clarify the department's views about the types of activities that are within scope for PPHF funding, beyond those activities that have received transfers from the Fund in previous fiscal years.[18]

The Consolidated Appropriations Act, 2012, required HHS to establish a publicly available website to provide detailed information on the use of PPHF funds.[19] This instruction has been carried forward in subsequent appropriations acts. HHS is required to post on the PPHF website specific information on the program or activity receiving funds; announcements of funding opportunities; and each grant, cooperative agreement, or contract with a value of $25,000 or more awarded using PPHF funds. Annual and semiannual reporting requirements also apply. The website was established at https://www.hhs.gov/open/prevention.

As required, HHS published an annual report to Congress on PPHF spending for FY2012.[20] The report notes spending (typically through grants or contracts) on the following types of activities, among others: (1) *community prevention activities* to improve health and reduce chronic disease risk factors, to reduce tobacco use, and to improve fitness and reduce obesity; (2) *clinical prevention activities* to improve access to important preventive services and definitive care for a variety of health needs; (3) *behavioral health* screening and integration with primary care; (4) *public health infrastructure*, workforce, and training; and (5) *public health research* and data collection. As shown in **Table 1**, to date, more than 75% of PPHF funds have been transferred to CDC.

As noted earlier, most PPHF funds have been distributed to HHS agencies in the Public Health Service.[21] In its FY2013 annual report on the PPHF, HHS provided its rationale for transferring $454 million, almost half of the available FY2013 PPHF funds, to the Centers for Medicare & Medicaid Services (CMS, which is not a Public Health Service agency) for activities to support

[18] For more information about federal prevention activities and how they may be defined, see Government Accountability Office, *Available Information on Federal Spending, Cost Savings, and International Comparisons Has Limitations*, GAO-13-49, December 6, 2012, http://gao.gov/products/GAO-13-49.

[19] P.L. 112-74, §220, 125 Stat. 1085, December 23, 2011.

[20] HHS, "The Affordable Care Act and the Prevention and Public Health Fund: Report to Congress for FY2012," undated, http://www.hhs.gov/open/prevention/fy2012-allocation-pphf-funds.html.

[21] See CRS Report R44505, *Public Health Service Agencies: Overview and Funding (FY2015-FY2017)*.

enrollment in the health insurance marketplace established under the ACA.[22] Among other things, the report states, "Studies have also shown that insurance coverage can lead to better health."[23]

The Consolidated Appropriations Act, 2012, also contained a provision specifically prohibiting the use of PPHF funds for publicity or propaganda or other expenses related to activities designed to influence the enactment of legislation, regulations, administrative actions, or executive orders before Congress or state or local bodies.[24] This provision has also been carried forward in subsequent appropriations acts. It essentially reiterates a similar general restriction that applies to the use of any federal funds.[25]

[22] HHS, "The Affordable Care Act and the Prevention and Public Health Fund Report to Congress for FY2013," undated, pp. 1, 4, and 8, http://www.hhs.gov/open/prevention/fy2013-allocation-pphf-funds.html.

[23] Ibid., p. 1.

[24] P.L. 112-74, §503, 125 Stat. 1110, December 23, 2011.

[25] See "Publicity or Propaganda Prohibitions" in CRS Report R44154, *Lobbying Congress with Appropriated Funds: Restrictions on Federal Agencies and Officials*.

Appendix. PPHF Appropriations Under ACA and Current Law

The ACA appropriated increasing amounts to the PPHF for FY2010 through FY2014, and $2 billion per fiscal year in perpetuity thereafter. Amounts have been temporarily reduced twice since the ACA was enacted to provide funds as an offset for other activities. **Table A-1** shows PPHF amounts originally made available for appropriation by the ACA, and amounts available under current law, reflecting the two reductions. PPHF amounts for FY2013 through FY2025 are subject to sequestration under the Budget Control Act (BCA, P.L. 112-25, as amended).

Table A-1. PPHF Appropriations Under ACA and Current Law

Dollars in millions

	Total Appropriation	
Fiscal Year	ACA (P.L. 111-148)	Current Law
2010	500	500
2011	750	750
2012	1,000	1,000
2013	1,250	949[a]
2014	1,500	928[a]
2015	2,000	927[a]
2016	2,000	932[a]
2017	2,000	931[a]
2018	2,000	900[b]
2019	2,000	900[b]
2020	2,000	1,000[b]
2021	2,000	1,000[b]
2022	2,000	1,500[b]
2023	2,000	1,000[b]
2024	2,000	1,700[b]
2025	2,000	2,000[b]
2026 and each subsequent fiscal year	2,000	2,000

Source: Prepared by Congressional Research Service from texts of ACA Section 4002 and current law (42 U.S.C. §300u-11).

Notes: Current law reflects two reductions, and rescissions where applicable. The Middle Class Tax Relief and Job Creation Act of 2012 (P.L. 112-96, §3205) reduced PPHF appropriations for FY2013 through FY2021. The 21st Century Cures Act (P.L. 114-255, §5009) reduced PPHF appropriations for FY2018 through FY2024.

Pursuant to P.L. 114-255, §5009, PPHF funds were reduced, but not eliminated, for several fiscal years as an offset for National Institutes of Health (NIH) and Food and Drug Administration (FDA) Innovation Funds created by the law. (See CRS Report R44720, *The 21st Century Cures Act (Division A of P.L. 114-255)*). Any subsequent reduction or repeal of PPHF funds would apply to current law, that is, the amounts remaining after reductions under P.L. 114-255, and would have no effect on the NIH and FDA Innovation Funds.

a. Reflects appropriation of $1 billion and cancellation of budgetary resources under BCA sequestration for nonexempt nondefense mandatory programs. Annual sequestration percentages are presented in Table 2 of CRS Report R44505, *Public Health Service Agencies: Overview and Funding (FY2015-FY2017)*.

b. Amounts from FY2018 through FY2025 are subject to BCA sequestration in amounts to be determined by OMB. As originally enacted, mandatory sequestration was scheduled to run through FY2021, but this period was incrementally extended to FY2025 by P.L. 113-67, P.L. 113-82, and P.L. 114-74.

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