

# Research Report

## **DELAYING CONFIRMATION OF BIDEN'S HHS NOMINEE COULD IMPEDE ADMINISTRATION'S ABILITY TO FIGHT COVID-19 PANDEMIC**

**ACCOUNTABLE**.US

**SUMMARY: The Biden administration will take office amid an unprecedented and escalating crisis over COVID-19:**

- Cases and deaths from COVID-19 have surged, doubling from a previous peak in the spring.
- Recent reporting indicates a total lack of a federal vaccination strategy from the Trump administration, earning criticism from Senators such as Mitt Romney (R-UT), who called it “inexcusable.” **Biden’s team has subsequently said their strategy will require them to start from scratch.**

**The Department of Health and Human Services (HHS) plays a critical role in fighting the pandemic, as it’s tasked with distributing hundreds of millions of vaccines across the country. Yet the confirmation of Biden’s HHS nominee Xavier Becerra is being stalled, with concerns grounded more in politics than his administrative competency. HHS deputy assistant secretary, Norris Cochran, has been left as the Acting HHS Secretary as Becerra awaits confirmation.**

**Obstruction of Becerra’s confirmation could impede the ability of the Biden administration to effectively manage the pandemic. Even competent acting officials suffer from issues such as weakened authority and administrative turnover compared to confirmed officials:**

- A Southern California Law Review study details how acting secretaries have harder times implementing administrative agendas, as they **lacked the political capital and authority of confirmed officials. The author concluded that relying on acting officials lead to an increased chance of federal inaction, more confusion among career workers, and decreased accountability.**
- Partnership for Public Service CEO Max Stier, who has worked on multiple presidential transitions include Donald Trump’s, stated that **acting officials suffer from a “substitute teacher” problem: the lack of tenure results in both the acting official and the official’s team recognizing that actions may not have long-term impact, as they know their time is designed to be temporary. This creates problems for both long-term thinking and agency accountability.**
- A former Justice Department counsel and NSC director argued that **acting officials inherently have less ability to speak truth to institutional power, as they lack an ability to drive institutional changes or raise issues for congressional attention.**

**After President Obama’s initial pick for HHS withdrew from consideration, the department was without a confirmed Secretary until Kathleen Sebelius was confirmed in late April 2009, creating delays and possibly impacting swine flu readiness:**

- The earliest actions by the Obama administration on vaccinations related to the swine flu epidemic were forced to operate from Obama’s Department of Homeland Security due to the vacancy.
- **Numerous Senators noted the urgency of the need to get Sebelius into the position at the time – including Republican Senator Susan Collins (R-ME). Facing some criticism over her efforts to remove pandemic funding from the 2009 stimulus bill, Collins pointed the finger back at Congress, arguing the real issue with swine flu readiness was a failure to fill top HHS positions. Collins subsequently called on the Senate to “move promptly” to confirm Sebelius’ nomination.**
- The delay meant that the Obama White House lacked an authoritative voice on early health care reform discussions; **led to delays in filling sub-cabinet positions, such as at the CDC; and led the eventual secretary, Kathleen Sebelius, to have a backlog of pressing concerns upon entering office.**

## **Need For Fully Functional HHS Department Has Never Been Greater As Biden Administration Enters Office With COVID-19 Pandemic In Worst Stage Yet**

### **Secretary Of Health And Human Services Was Tasked With Administering Agency's Goals Of Protecting Health And Well-Being Of Americans - And Will Play Crucial Role In COVID-19 Vaccination Process**

**HHS Agency Priority Goals, FY 2021: HHS Secretary Was Tasked With 5 Goals For Agency, Including Protecting Health Of Americans, Strengthening Social Well-Being, And Fostering Scientific Advancement.** The report indicated the Secretary of Health and Human Services was tasked with administering the fulfillment of the five agency goals below:

- Goal 1: Reform, Strengthen, and Modernize the Nation's Health Care System.
- Goal 2: Protect the Health of Americans Where They Live, Learn, Work, and Play.
- Goal 3: Strengthen the Economic and Social Well-Being of Americans across the Lifespan.
- Goal 4: Foster Sound, Sustained Advances in the Sciences.
- Goal 5: Promote Effective and Efficient Management and Stewardship.

[Department of Health and Human Services – “U.S. Department of Health and Human Services FY 2021 Annual Performance Plan and Report,” [March 2020](#)]

**HHS Was “Crucial Agency Amid Pandemic That Will Be Tasked With Distributing Hundreds Of Millions Of Coronavirus Vaccines.”** “If confirmed, Becerra would become the first Latino to lead HHS, a crucial agency amid the pandemic that will be tasked with distributing hundreds of millions of coronavirus vaccines.” [Newsweek, 12/7/20]

**HHS Contained Office Of Infectious Disease And HIV/AIDS Policy, Which Operated National Vaccine Program, Coordinating Vaccine And Immunization Activities Among Federal Agencies And Other Organizations.** . “The Office of Infectious Disease and HIV/AIDS Policy (OIDP) oversees the National Vaccine Program which provides strategic leadership and coordination of vaccine and immunization activities among federal agencies and other stakeholders whose mandate is to help reduce the burden of preventable infectious disease. This portfolio includes the National Vaccine Plan and National Vaccine Advisory Committee.” [Department of Health and Human Service – “Vaccines and Immunizations Home,” accessed [1/22/21](#)]

**HHS Contained Centers For Disease Control (CDC), Which Put In Place Agency Wide Response To Pandemic, Such As Providing Vaccine Recommendations And Producing Guidance Documents For Healthcare Providers.** “Since launching an agency-wide response to the COVID-19 pandemic on January 21, 2020, CDC has been learning more about how the disease spreads and affects people and communities. Our work helps frontline healthcare workers, communities, and the public to protect themselves and save lives. [...] [\*] CDC is providing information and recommendations about two vaccines to prevent COVID-19 currently authorized and being distributed in the United States. Although CDC does not have a role in developing vaccines, it has been working closely with health departments and partners to develop vaccination programs. [...] [\*] Has published more than 180 guidance documents to advise healthcare providers on subjects like infection control, hospital preparedness assessments, personal protective equipment (PPE) supply planning, and clinical evaluation and management.” [Centers for Disease Control, accessed [1/22/21](#)]

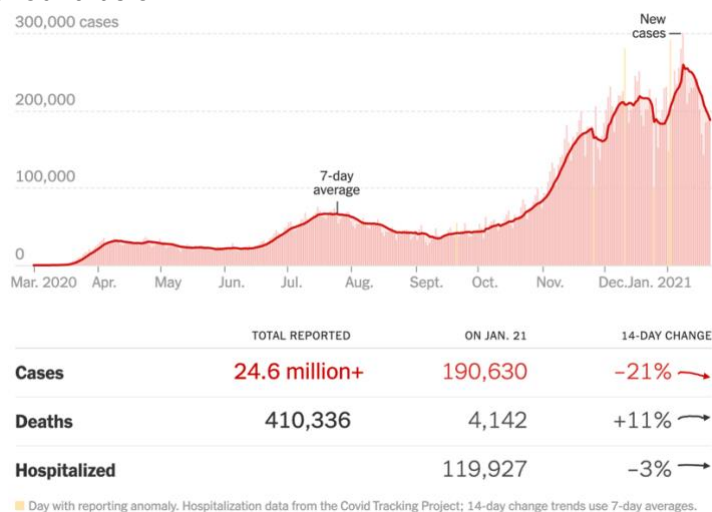
**HHS Is “Crucial Agency Amid The Pandemic That Will Be Tasked With Distributing Hundreds Of Millions Of Coronavirus Vaccines.”** “If confirmed, Becerra would become the first Latino to lead HHS, a

crucial agency amid the pandemic that will be tasked with distributing hundreds of millions of coronavirus vaccines.” [Newsweek, 12/7/20]

**Bloomberg: “Delays Would Hamper Biden’s Efforts To ... Stem The Spread Of COVID-19 And Vaccinate The Public.”** “Biden’s transition team and allies including Wyden and Senate Democratic Leader Chuck Schumer have been pushing hard for Republicans to follow precedent with hearings before Inauguration Day and swift confirmations, arguing that delays would hamper Biden’s efforts to bolster a still struggling economy, stem the spread of Covid-19 and vaccinate the public.” [Bloomberg, 12/17/20]

## **As Of January 2021, COVID-19 Crisis Was Worse Than Ever, As Lack Of Federal Leadership Contributed To Record Cases And Deaths Amid Winter Wave**

**As Of January 2021, United States Was Facing The Worst Of The COVID-19 Crisis, With Hundreds Of Thousands Of New Cases A Day And Thousands Of Deaths A Day.** At the end of the year, the United States had surpassed 24.6 million coronavirus cases, with more than 410,336 people dead. More details from the New York Times can be found below.



[New York Times, “Coronavirus in the U.S.: Latest Map and Case Count,” Accessed [01/22/21](#)]

**December 2020: Hospitals Were Treating Patients “More Than Three Times The Number They Treated In September And Nearly Double That Reported At The Height Of The Spring Surge.”** “Hospitals reported more than 110,000 coronavirus patients on each of the past two days, a record count for the pandemic, according to tracking by The Washington Post. That is more than three times the number they treated in September and nearly double that reported at the height of the spring surge.” [Washington Post, [12/16/20](#)]

## **As Of Early January, Only 4.2 Million People Had Received Initial Vaccination, Reaching Only Approximately 20% Of Government’s 20 Million Goal – Prompting Senators Such As Mitt Romney To Criticize Lack Of Strategy**

**Only “4.2 Million People Have Received The Initial Vaccination Dose As Of Saturday” Which “Is Far Below The Government’s Goal Of Having 20 Million People In The U.S. Vaccinated By The End Of December.”** “Many people are holding out hope that the COVID-19 vaccines will help quell the pandemic. But so far government predictions for how many people should be vaccinated so far are falling short. More than 4.2 million people have received the initial vaccination dose as of Saturday, according to the CDC. That number is far below the government’s goal of having 20 million people in the U.S. vaccinated by the end of December.” [NPR, [1/3/21](#)]

**Republican Senator Mitt Romney Even Noted That “Comprehensive Vaccination Plans Have Not Been Developed At The Federal Level” And Government’s Rollout Plan Has Been “As Incomprehensible As It Is Inexcusable.”** “Sen. Mitt Romney, R-Utah, released a statement calling for action to address the problems happening with vaccine rollout, saying ‘that comprehensive vaccination plans have not been developed at the federal level and sent to the states as models is as incomprehensible as it is inexcusable.’” [NPR, [1/3/21](#)]

## **Trump Administration Lacked Comprehensive Vaccine Distribution Plan, Meaning Biden Administration Would Have To Start From Scratch**

**Biden Administration Discovered That Trump Administration Lacked Federal Vaccine Distribution Plan, Meaning They Would Have To Start “From Scratch.”** “Newly sworn in President Joe Biden and his advisers are inheriting no coronavirus vaccine distribution plan to speak of from the Trump administration, sources tell CNN, posing a significant challenge for the new White House. The Biden administration has promised to try to turn the Covid-19 pandemic around and drastically speed up the pace of vaccinating Americans against the virus. But in the immediate hours following Biden being sworn into office on Wednesday, sources with direct knowledge of the new administration’s Covid-related work told CNN one of the biggest shocks that the Biden team had to digest during the transition period was what they saw as a complete lack of a vaccine distribution strategy under former President Donald Trump, even weeks after multiple vaccines were approved for use in the United States. ‘There is nothing for us to rework. We are going to have to build everything from scratch,’ one source said.” [CNN, [1/21/21](#)]

**Headline: CNN: “Biden inheriting nonexistent coronavirus vaccine distribution plan and must start ‘from scratch,’ sources say.”** [CNN, 1/21/21]

## **Delay In Confirming Biden’s HHS Secretary Could Impede Agency’s Ability To Implement Biden’s COVID-19 Response Plan**

### **Biden’s HHS Nominee Has Been Stalled By GOP Senators, Citing Political Concerns**

**Biden Nominee Xavier Becerra Faced Uphill Confirmation Battle, Based Not On Concerns Over Competency On COVID-19, But Republican Objections To His Pro-Choice Views And Support For Universal Health Care.** “Xavier Becerra, President-elect Joe Biden’s pick for health and human services secretary, the Cabinet member tasked with overseeing vaccinating millions of Americans against the coronavirus as quickly as possible, faces an uphill confirmation battle. It won’t be because of how he’ll handle the pandemic, but over his support for abortion rights and universal health care, say Republicans who control the Senate and are already warning that he could be denied confirmation, or see the process take longer.” [NBC News, 12/28/20]

**Republicans On Committees Responsible For Vetting HHS Nominees Said Senate Would Not Hold Hearings On Xavier Becerra, Biden’s HHS Nominee, Until After Dealing With Other Senate Business.** “Senate Republicans are signaling they will delay considering President-elect Joe Biden’s nominee to run the Department of Health and Human Services, threatening to slow the Biden administration’s response to the pandemic that has killed more than 283,000 Americans. On Monday, Republican spokespeople for the committees responsible for vetting HHS nominations said the Senate may not hold hearings on California Attorney General Xavier Becerra, Biden’s pick to lead the department, until the Senate approves committee assignments and other organizational details for the new Congress.” [Kaiser Health News, [12/8/20](#)]



**Senator Tom Cotton (R-AR) Responded To Becerra's Nomination By Saying "I'll Be Voting No" And Calling For Senate To Reject His Nomination.** "The early reaction from Republicans signaled Becerra could face strong political opposition to his nomination, with critics like Arkansas Sen. Tom Cotton citing Becerra's opposition to abortion restrictions and calling him 'unqualified' to lead HHS. 'I'll be voting no, and Becerra should be rejected by the Senate,' he wrote on Twitter." [Kaiser Health News, [12/8/20](#)]

**As Of January 22, 2021, There Was No Confirmation Hearing Scheduled For Becerra.** 'An ongoing feud between Senate Majority Leader Chuck Schumer and Minority Leader Mitch McConnell is delaying efforts to schedule a confirmation hearing for Xavier Becerra, Biden's pick to run the federal health department. At issue is how the parties will control committees and floor votes amid a 50-50 Senate split. [...] The dynamic has left the committee unable to finalize a date for Becerra's hearing, Democratic aides tell Alice. And Becerra will also need a hearing in the Senate Finance Committee, which is the panel that ultimately sends the nomination to the floor.' [Politico, [1/22/21](#)]

- **Becerra May Face Continued Delays In Confirmation Even Following His Hearing.** "An ongoing feud between Senate Majority Leader Chuck Schumer and Minority Leader Mitch McConnell is delaying efforts to schedule a confirmation hearing for Xavier Becerra, Biden's pick to run the federal health department. [...] Yet Becerra's confirmation may not move quickly even after a power-sharing agreement is in place. Democrats have called for swift hearings, citing the urgency of the Covid-19 pandemic. Meanwhile, several Republicans, such as Sens. Tom Cotton of Arkansas and Mike Braun of Indiana, have raised concerns over Becerra's support for abortion rights and 'Medicare for All.' They could drag out the process even if they ultimately lack the votes to block his confirmation." [Politico, [1/22/21](#)]

## **In Absence Of Confirmed HHS Secretary, Role Will Be Held By Acting Official – Fulfilling Functions Of Office On Limited Timeframe**

**HHS Deputy Assistant Secretary Of Budget Norris Cochran Was Announced To Serve As Acting HHS Secretary While Nominee Xavier Becerra Was Confirmed By Senate.** "Norris Cochran, HHS Deputy Assistant Secretary of Budget, will serve as acting secretary of the Department of Health and Human Services while the new administration works to turn around a pandemic response it argues is inadequate, the Biden administration announced Wednesday. Cochran will serve until President Joe Biden's nominee, Xavier Becerra, is confirmed by the Senate. Confirmation is likely, although it may take some time." [Bloomberg Law, [1/20/21](#)]

**Role Of Acting Cabinet Official Has Been Defined By The Federal Vacancies Reform Act Of 1998.** "The Federal Vacancies Reform Act of 1998 (Vacancies Act) generally provides the exclusive means by which a government employee may temporarily perform the nondelegable functions and duties of a vacant advice-and-consent position in an executive agency. Unless an acting officer is serving in compliance with the Vacancies Act, any attempt to perform the functions and duties of that office will have no force or effect." [Congressional Research Services – "The Vacancies Act: A Legal Overview," [5/28/20](#)]

**Acting Secretaries May "Temporarily Perform The Nondelegable Functions And Duties Of A Vacant Advice-And-Consent Position In An Executive Agency."** "The Federal Vacancies Reform Act of 1998 (Vacancies Act) generally provides the exclusive means by which a government employee may temporarily perform the nondelegable functions and duties of a vacant advice-and-consent position in an executive agency. Unless an acting officer is serving in compliance with the Vacancies Act, any attempt to perform the functions and duties of that office will have no force or effect." [Congressional Research Services – "The Vacancies Act: A Legal Overview," [5/28/20](#)]

**Vacancies Act Limited Amount Of Time Someone Can Serve In Acting Cabinet Position, No More Than 210 Days From The Date Of The Vacancy Or From When Nomination Was Submitted To Senate.** "For How Long? The Vacancies Act generally limits the amount of time that a vacant advice-and-consent position

may be filled by an acting officer. Section 3346 provides that a person may serve ‘for no longer than 210 days beginning on the date the vacancy occurs,’ or, ‘once a first or second nomination for the office is submitted to the Senate, from the date of such nomination for the period that the nomination is pending in the Senate.’ These two periods run independently and concurrently. Consequently, the submission and pendency of a nomination allows an acting officer to serve beyond the initial 210-day period.” [Congressional Research Services – “The Vacancies Act: A Legal Overview,” [5/28/20](#)]

## **Experts On Federal Agencies And Academic Researchers Have Found Acting Secretaries Lacked Internal Influence To Quickly Implement Agenda Items And That Turnover In Federal Appointees Contributed To Agency Inaction**

*Southern California Law Review Article Showed Acting Cabinet Officials Had Difficulty Implementing Their Agendas Because They Lacked Political Influence And Turnover Led To Federal Inaction And Confusion*

**Research From Southern California Law Review Showed Acting Secretaries Had A Harder Time Implementing Their Agendas Due To Lack Of Influence.** “But O’Connell’s research, published in the Southern California Law Review in 2009, found that Senate confirmations strengthened the internal positions of Cabinet secretaries, who were able to move more quickly on their agendas. Acting officials typically don’t have the stature to implement new programs or regulations that would have significant effect, and lack the access to the networks that would get them help from the White House and other agencies, O’Connell wrote. ‘Temporary political picks have less political capital to spend externally and internally,’ O’Connell wrote.” [Time, [4/9/19](#)]

**Research From Southern California Law Review Showed Turnover In Federal Appointees Fostered Agency Inaction, In Part As Appointees Inevitably Require Getting Up To Speed.** “But O’Connell’s research, published in the Southern California Law Review in 2009, found that Senate confirmations strengthened the internal positions of Cabinet secretaries, who were able to move more quickly on their agendas. [...]. ‘Even proper appointees have to get up to speed at the start of their government service; therefore, frequent turnover among confirmed appointees also fosters agency inaction.’” [Time, [4/9/19](#)]

- **Author Of 2009 Paper Summarized Her Findings As Saying Acting Officials Resulted In Federal Inaction, Confusion Among Career Workers, And Decreased Accountability.** “In previous work, I joined this chorus of naysayers—arguing that acting officials (and vacancies more generally) had ‘significant consequences for public policy.’ Specifically, I contended that vacancies contribute to ‘agency inaction, confusion among nonpolitical workers, and decreased agency accountability.’ In essence, even though they hold the same formal power as confirmed leaders, acting officials are less able to wield it—because of diminished buy-in from the workers below them, relevant congressional committees, and the wider public.” [Brookings Institute – Anne Joseph O’Connell, [7/22/19](#)]

**Despite Reduction In Agency Actions Compared To Confirmed Appointments, Acting Officials Nonetheless Make Critical Policy Decisions During Their Time In Office.** “Notwithstanding these critiques, the traditional appointments process takes time, increasingly so in recent administrations. [...] As Nina Mendelson has shown, while interim officials may not push out as many agency actions as confirmed leaders, acting officials make critical policy decisions, including, for example, at the EPA ‘reinterpret[ing] ... the key Clean Water Act jurisdictional term ‘waters of the United States,’ in response to recent Supreme Court decisions.” [Brookings Institute – Anne Joseph O’Connell, [7/22/19](#)]

*CEO Of Partnership For Public Service Argued Acting Officials Suffer From “Substitute Teacher” Problem, As Temporary Nature Of Position Leads To Lack Of Long-Term Considerations And Creates Difficulties Holding Leaders Accountable For Agency Missteps And Crises*

**Partnership For Public Service CEO Max Stier Worked On Multiple Presidential Transitions, Including For President Trump.** “The types of changes that need to take place in the government aren’t ones that get done with the stroke of the pen. They’re the proverbial long march,” said Max Stier, the president and CEO of the Partnership for Public Service. “So the idea that the Trump team has begun within its first 100 days a serious reform effort I think is really important, because they have a better opportunity to actually see something through.” Stier is a leading advocate for management reform in the government and has advised presidential transitions, including the Trump team.” [The Atlantic, [4/17/17](#)]

**Stier Argued That Acting Officials Suffer From “Substitute Teacher” Problem, Where Lack Of Long-Term Tenure Results In Both Secretary And Their Team Recognizing Actions As Lacking Long-Term Impact.** “A major obstacle for the new president, Stier said, is that he’s embarking on this Herculean challenge even before he’s installed most of his government in the first place. [...] Most of the other assistant secretary and agency director positions have no nominees at all. The people performing those jobs for the time being are either temporary officials installed by the Trump transition team or career civil servants. Stier likens them to ‘substitute teachers’ who lack both the designated authority and the self-assurance to effect change and implement the president’s agenda. ‘They certainly don’t have longterm tenure, and as a result, they themselves typically don’t take on the hard challenges or view the choices that they’re making from that longterm lens,’ he said. ‘And the people around them understand that any choice they make may be changed by the full-time leadership as it comes in.’” [The Atlantic, [4/17/17](#)]

**Stier: Acting Officials, Regardless Of Qualifications, Create Risk Of Failure To Act With Long-Term Effectiveness And At Taking Responsibility For Mistakes And Crises.** “Stier: My view is that the acting individuals, no matter how capable they are, are akin to the substitute teacher. [...] So how does that translate to what we see in government? In my view, what ends up happening when you’re dealing with the acting officials is sort of twofold: One, you typically don’t get the kind of intense and effective focus on an agenda. So for a president that means that they are less likely to move forward with the things that they committed to doing with any effectiveness. Then on the reactive side, if any when something goes wrong, when there’s a crisis, it’s hard for those individuals to actually perform at the level that you want them to. Both individually and then collectively. So there’s a real risk.” [The Atlantic, [4/17/17](#)]

*Former Justice Department Counsel And Former NSC Director Argued That Acting Officials Lack Capacity To Speak Truth To Power Or To Drive Internal Changes At Their Organizations Due To Lack Of Practical Authority In Their Acting Positions*

**LawFare: Acting Officials Often Lack Capacity To Speak Truth To Power And Make Unpopular Points Or Drive Internal Change At Their Organizations.** “To the contrary, there’s real reason to worry about Trump’s stated preference for acting secretaries, as acting cabinet members and other senior officials are less likely to speak truth to power—especially while serving [a](#) president who demands unquestioning ‘loyalty.’ [...] Having acting cabinet members for long periods is generally bad governance, given that such unilateral appointments by the president skirt the constitutional requirement that the president submit such important officials to the Senate for its consideration and—if they’re deemed to be qualified—consent. While acting secretaries are generally able to exercise the technical legal authorities of their positions, they don’t have the same practical ability to push back against a president where doing so is justified, drive change within their organizations internally or raise issues for congressional attention.” [LawFare – Carrie Cordero and Joshua Geltzer, [5/20/19](#)]

- **LawFare Blog Publishes In Cooperation With Brookings Institute.** [LawFare, accessed [1/21/21](#)]



- **LawFare Piece Was Written By Former Department Of Justice Legal Counsel And Former National Security Council Senior Director.** Per the description on LawFare, “Carrie Cordero is a Senior Fellow at the Center for a New American Security. She is also an adjunct professor at Georgetown Law, where she previously served as Director of National Security Studies. She spent the first part of her career in public service, including as Counsel to the Assistant Attorney General for National Security; Senior Associate General Counsel at the Office of the Director of National Intelligence; Attorney Advisor at the Department of Justice, where she practiced before the Foreign Intelligence Surveillance Court; and Special Assistant United States Attorney.” Joshua A. Geltzer is Executive Director and Visiting Professor of Law at Georgetown University Law Center’s Institute for Constitutional Advocacy and Protection and a Fellow in New America’s International Security Program.” [LawFare – Carrie Cordero and Joshua Geltzer, [5/20/19](#)]

## **Confirmation Delay For Obama’s HHS Secretary Led To Concerns—including From At Least One GOP Senator—Over Preparedness For Swine Flu, And Subsequent Delays In Staffing Relevant Agencies**

*Obama’s Initial Pick For HHS Secretary Withdrew From Consideration, Leading To Delay In That Role Being Filled Until Late April*

**Obama’s Initial Choice For HHS Secretary, Former Senator Tom Daschle, Withdrew In Early February 2009.** “Former Sen. Tom Daschle has withdrawn his nomination to head the Department of Health and Human Services, according to a statement Tuesday from the White House.” [CNN, [2/3/09](#)]

**March 2, 2009: Obama Nominated Kansas Governor Kathleen Sebelius To Be HHS Secretary.** “Today, President Barack Obama officially announced his intent to nominate Kansas Governor Kathleen Sebelius as Secretary of Health and Human Services. In this role, Sebelius will oversee a department with wide-ranging responsibilities essential to the American people, including the implementation of the President’s vision for health care. As Secretary of Health and Human Services, Sebelius will work with Democrats and Republicans alike to cut costs, expand access, and improve the quality of health care for all Americans.” [Obama White House – Press Release, [3/2/09](#)]

**April 28, 2009: Kathleen Sebelius Was Confirmed As HHS Secretary.** [United States Senate – PN188, [4/28/09](#)]

*Reporting Showed Lack Of HHS Secretary In Early Days Of Obama Administration Meant Earliest Discussions On Health Care Reform Lacked Authoritative White House Voice, Led To Delays In Staffing Sub-Agency Positions Such As CDC, And Left Secretary With Backlog Of Priorities*

**Politico: Lack Of Confirmed Secretary Meant Agency Found Itself Without “Authoritative Voice” Heading HHS During Earliest Months Of Health Care Reform.** “The Department of Health and Human Services holds a dubious distinction in the Obama administration: last on the list to install a secretary. Few would have predicted this after Election Day. President Barack Obama settled on former Sen. Tom Daschle early, positioning him to be one of the most powerful members of the administration. But more than two months after Daschle withdrew amid a tax scandal, the department was still waiting for a leader. And so HHS found itself caught in a paradox: It was central to Obama’s goal of delivering a comprehensive health care fix — which the president lists as a top priority — but it was lacking a leader and an authoritative voice at the negotiating table during the earliest months.” [Politico, [4/24/09](#)]

**Lack Of Confirmed Secretary For HHS Led To Delays In Sub-Cabinet Positions, Including At CMS, CDC, And NIH.** “The secretary fiasco. The collapse of Daschle’s nomination was one of Obama’s biggest embarrassments, prompting him to issue an unusually blunt mea culpa: ‘I screwed up.’ It meant the department that was supposed to take an early lead role on health care reform lacked a figure of authority in

budget talks. The secretary stumble also led to delays in filling key sub-Cabinet positions at the Centers for Medicare & Medicaid Services, the Centers for Disease Control and Prevention, and the National Institutes of Health.” [Politico, [4/24/09](#)]

**After Her Confirmation, Sebelius Was Described As Not Only Having To Establish Herself As Political Negotiator, But Tasked With FDA Overhaul, Disbursing Stimulus Funds, And Making Changes To Medicaid And Medicare.** “The Department of Health and Human Services holds a dubious distinction in the Obama administration: last on the list to install a secretary. [...] Secretary-designate Kathleen Sebelius won’t need to establish herself quickly as a player just on health care reform. She also will be tasked with overhauling the Food and Drug Administration, distributing billions in stimulus money, and transforming Medicaid and Medicare.” [Politico, [4/24/09](#)]

*Obama HHS Nominee Kathleen Sebelius Was Confirmed Shortly After Obama Administration Declared Swine Flu Public Health Emergency, With Senators, Including Republican Senator Susan Collins, Noting Outbreak Created Greater Need For Confirmed Secretary*

**April 26, 2009: The Obama Administration Officially Declared A “Public Health Emergency” To Confront The Swine Flu, But Lacked Confirmed HHS Secretary Or Heads Of Sub-Agencies.** “The Obama administration declared a ‘public health emergency’ Sunday to confront the swine flu — but is heading into its first medical outbreak without a secretary of Health and Human Services or appointees in any of the department’s 19 key posts. [...] In an unusual Sunday briefing at the White House, acting CDC Director Richard Besser appeared on camera with Homeland Security Secretary Janet Napolitano and Obama homeland security adviser John Brennan to announce the emergency declaration in response to the swine flu outbreak.” [Politico, [4/26/09](#)]

- **Without HHS Secretary, Obama Was Forced To Turn To DHS To Coordinate H1N1 Vaccines.** “In 2009, as H1N1 flu began to spread and Obama’s first HHS pick withdrew from consideration, the administration was forced to improvise. With no confirmed health secretary, Obama turned to Janet Napolitano, the Homeland Security secretary, to coordinate a plan to distribute vaccines with the CDC.” [Kaiser Health News, [12/9/20](#)]

**April 28, 2009: Nominee Kathleen Sebelius Was Confirmed As HHS Secretary, With Nomination Taking On Greater Urgency In Wake Of Swine Flu Outbreak.** “Kansas Gov. Kathleen Sebelius (D) has been confirmed as secretary of the Health and Human Services Department. The Senate vote was 65-31. Sixty votes were needed for approval. The nomination took on a greater urgency in the wake of the swine flu outbreak. That apparently outweighed Republican objections to her record on abortion.” [NPR, [4/28/09](#)]

- **Kathleen Sebelius Subsequently Received 8 Republican Votes To Confirm.** Senators Kit Bond (R-MO), Sam Brownback (R-KS), Susan Collins (R-ME), Judd Gregg (R-NH), Richard Lugar (R-IN), Pat Roberts (R-KS), Olympia Snowe (R-ME), and Arlen Specter (R-PA). [Senate – Roll Call PN188, [4/28/09](#)]

**April 2009: Senator Gillibrand Called For Swift Confirmation Of Kathleen Sebelius As HHS Secretary, Arguing Position Of HHS Secretary Could Not Wait Another Day To Be Filled Amid Swine Flu Outbreak.** “Today, as the U.S. Senate considers the nomination of Governor Kathleen Sebelius as Secretary of Health and Human Services, U.S. Senator Kirsten Gillibrand issued the following statement: ‘While I commend the Obama Administration, and state and local governments for acting swiftly and aggressively to contain the current Swine Flu outbreak, it is clear that we can’t wait another day to fill this critical leadership post. Beyond emergency preparedness, reforming our broken health care system is a vital component in ensuring that we have the ability to contain outbreaks in the future. It is time to end the partisan ideological divide in the Senate and confirm Governor Sebelius immediately.’ [Senator Kirsten Gillibrand – Press Release, [4/28/09](#)]

**Former Senator Chris Dodd (D-CT) Called Swine Flu Outbreak “Global Crisis,” Adding That HHS Secretary Was “Missing In All Of This.”** “Kathleen Sebelius won Senate confirmation Tuesday as the nation’s Health and Human Services secretary, thrusting the former Kansas governor into the middle of the public health emergency involving swine flu. The 65-31 vote came after Democrats urged quick action so that Sebelius could get to work leading the federal response to the flu outbreak. ‘We find ourselves in the midst of a global crisis,’ Sen. Christopher J. Dodd (D-Conn.) said. ‘What we’ve been missing in all of this is the head of the Health and Human Services Department.’” [LA Times, [4/29/09](#)]

**Senator Jeanne Shaheen Called For Kathleen Sebelius To Be Swiftly Confirmed Amid Swine Flu Crisis, Saying It Was Urgent To Have Leader In Place To Deal With Crisis.** “U.S. Senator Jeanne Shaheen today urged immediate confirmation of Kathleen Sebelius to serve as Secretary of the U.S. Department of Health and Human Services in a statement on the U.S. Senate floor. As our nation faces an outbreak of Swine Flu, the nomination of Sebelius to fill this key public health post in President Obama’s Cabinet continues to be held up for political purposes.” [Senator Jeanne Shaheen – Press Release, [4/28/09](#)]

*Responding To Criticisms Of Her Cuts To Pandemic Preparedness Funding In Stimulus Bill, Senator Susan Collins (R-ME) Argued Her Cuts Made Little Difference – But Said Failure To Fill Top HHS Positions Had, And That Sebelius Deserved Quick Confirmation*

**In Wake Of Swine Flu, Senator Susan Collins (R-ME) Received Criticisms For Her Role In Removing Pandemic Preparedness Funds From Stimulus Bill.** “Soon, however, HHS will need its political appointees in place for tasks such as asking Congress for more money. [...] In fact, some of that money was included in the economic stimulus bill passed by the House earlier this year. But it was removed at the insistence of a small group of Senate Republicans, who wanted to make the bill less expensive. ‘Everybody in the room is concerned about the pandemic flu, but does it belong in this bill? Should we have \$870 million in this bill? No, we should not,’ Sen. Susan Collins (R-ME) said back in February. Collins’ office on Monday issued a statement clarifying that she is a longtime backer of efforts to prepare the nation for a potential flu pandemic, and that her point was simply that she thought the funding should go through the regular budget process, not the fast-track stimulus bill.” [NPR, [4/28/09](#)]

**Collins Spokesperson Said Failure For HHS To Fill Top Positions Was Problem For Swine Flu Preparations And Called On Senate To “Move Promptly” To Confirm Sebelius.** “Collins spokesman Kevin Kelley: As Ranking Member of the Senate Homeland Security Committee, Senator Collins has led hearings on pandemic flu preparedness, worked on ‘bioshield’ legislation and funding, and helped strengthen our nation’s preparedness for a pandemic flu. Claims that she is opposed to increased funding for pandemic flu research are blatantly false and politically motivated. [...] There is no evidence that federal efforts to address the swine flu outbreak have been hampered by a lack of funds. Senator Collins does, however, believe that it is a problem that the Centers for Disease Control and the Department of Health and Human Services still do not have top positions filled. She hopes the Senate will move promptly to confirm Governor Sebelius for HHS Secretary.” [Politico, [4/27/09](#)]

- **Senator Collins Subsequently Voted To Confirm Sebelius.** [Senate – Roll Call PN188, [4/28/09](#)]