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White House budget director's false claims about the Obamacare legislative process

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"It's there. Anybody can read it. Folks watching on television now can go online and read what the bill is. They can watch the committee hearings. Those are things that were dramatically missing in Obamacare."

— **White House budget director Mick Mulvaney, interview on CNN's "State of the Union," March 12, 2017**

"We already had two committee hearings, which I believe is two more than Obamacare had in the House."

— **Mulvaney, interview on ABC's "This Week," March 12**

Legislative sausage-making, particularly on big bills, is often complex and confusing. In theory, the bills are drafted in committees, but the reality is that hard work is often done behind the scenes, where lawmakers haggle over details and cut deals. Sometimes secrecy is essential, because if some details become public too soon, opponents have more time to build opposition.

The House Republican replacement bill, for instance, for a period was kept under lock and key, available only to members, until it was ready for debate at two key committees.

Nevertheless, we were rather surprised to see White House budget director Mulvaney assert on national television that the Affordable Care Act, by contrast, was drafted with no committee hearings and that no ordinary American could read the bill before it was passed.

Is that really the case?

The Facts

We asked Mulvaney's staff for evidence of his statement. We did not receive anything specific. Instead, we were told "the director was contrasting a process where Nancy Pelosi told us that you 'had to pass the bill so you can find out what's in it' with the current one which is trying to clean up the resulting mess." The suggestion was that Mulvaney was talking about the chaotic end game that led to passage of the Affordable Care Act in both Houses of Congress.

That's a bit of apples and oranges, since the replacement bill has not even passed the House, let alone gone through the Senate or through a conference committee. Mulvaney even said "in the House" on ABC. But let's review what actually happened in 2009.

For the record, the Pelosi quote cited by Mulvaney's staff is often taken out of context, as she inelegantly tried to make the point that media coverage had obscured the content of the legislation. This is the full quote, made during a speech March 9, 2010, as the law neared final passage:

"You've heard about the controversies within the bill, the process about the bill, one or the other. But I don't know if you have heard that it is legislation for the future, not just about health care for America, but about a healthier America, where preventive care is not something that you have to pay a deductible for or out of pocket. Prevention, prevention, prevention — it's about diet, not diabetes. It's going to be very, very exciting. But we have to pass the bill so that you can find out what is in it, away from the fog of the controversy."

To reconstruct this history, we reviewed news coverage of the period and transcripts, and also relied on a detailed account of the legislative maneuvering by John Cannan, research and instructional services librarian at Drexel University Thomas R. Kline School of Law. His report, published in the Law Library Journal, made the case that the "ad hoc" process that led to the ACA is "an illustrative example of modern lawmaking, especially for major initiatives."

The Democratic process began in March 2009, when three committee chairmen (Education and Labor, Energy and Commerce, and Ways and Means) agreed to work together to try to avoid competing bills. After holding more than a dozen hearings between March and May, the committee chairmen released a "discussion draft" proposal on June 19, 2009. Each of the committees then held additional hearings in June, with the House Energy and Commerce Committee even holding a three-day session. (The full list of hearings is available on pages 61-67 of this 2009 House report.)

Then, on July 14, the three committee leaders introduced H.R. 3200, titled Americas' Affordable Health Choices. This essentially mirrored the June draft, but it included a surcharge on wealthier Americans to help pay for the law. The three committees then each marked up the bill in hearings with their own sets of amendments.

Cannan noted that the votes in two of the committees amounted to "housekeeping rather than robust debate," though the version that emerged from Energy and Commerce (with a more conservative makeup) was scaled back after hard bargaining between various lawmakers. The three bills were not reported to the floor until Oct. 14, a delay in part because the House was waiting for the Senate to move forward as well. Moreover, House leaders worked behind the scenes to come up with a compromise that would win enough votes for passage.

Finally, on Oct. 29, a compromise version was introduced: H.R. 3962, the Affordable Health Care for America Act. It closely resembled H.R. 3200, but with concessions to win the votes of conservative and moderate Democrats.

The American Health Care Act falls far short of repealing and replacing the Affordable Care Act, but there are some big potential changes. (Daron Taylor/The Washington Post)

“Much of the legislation that’s being announced today has been available for review and comment for over three months online so that every American could read it and give us their input,” said House Majority Leader Steny H. Hoyer (D-Md.) when the bill was introduced. “We will keep our promise and commitment to the integrity of this process by making the bill’s full text, which will be online, as the speaker said, as we speak, and the manager’s amendment, to make sure we have this exactly right, publicly available for 72 hours before the members are asked to vote, and by ensuring a full floor debate.”

The bill was then passed on Nov. 7.

Let’s pause here a moment and see what we have. We have about 20 hearings, many aired on C-SPAN. That’s 18 more than the current replacement bill. On top of that, the bills were available to read for many days (though, frankly, legislative language is rather dense for most laypeople). So Mulvaney’s comments are clearly wrong.

(While Mulvaney claimed that the House committees this year had two hearings — both markups — he is apparently unaware that before the markups, Energy and Commerce in 2017 had three hearings on “collapsing health markets,” and Medicaid and Ways and Means had a hearing on the individual mandate. The Budget Committee, which will also markup the bill, held a hearing on the “failures of Obamacare.” So counting those hearings, it would be seven for the replacement bill and about 20 in the House for the 2009 Obamacare bill.)

The Senate process was even more transparent, with many days of hearings and lengthy markups. The drafting of the bill in the Health, Education, Labor and Pension Committee took from June 17 to July 14, during which 500 amendments were made. In the Finance Committee, which drafted its version between Sept. 22 and Oct. 2, there were 564 proposed amendments. Senate Majority leader Harry M. Reid (D-Nev.) then announced a merged version of the two bills on Nov. 18. After a lengthy debate on the Senate floor — at one point a Republican lawmaker demanded the entire 767-page bill be read by a Senate clerk — an amended version was passed Dec. 24.

The two houses never had an official conference committee to merge the two versions because on Jan. 19, 2010, the Democrats lost their filibuster-proof majority with the election of a Republican to replace the late Sen. Ted Kennedy (D-Mass.). That left 59 Democrats in the Senate. Lawmakers then relied on a parliamentary procedure in the Senate known as reconciliation to allow passage of the law with just 50 votes.

Under that process, the House passed the Senate bill and then both Houses passed a law amending it to deal with concerns in the House. That’s one reason the number of pages — about 2,700 — seems so large. It’s actually two bills. (The bills also included elements that had nothing to do with universal health care, such as an overhaul of student loans and long-term care legislation.) A consolidated version of the law, done by Michael Cannon of the Cato Institute, clocks in at 907 pages.

The Pinocchio Test

We're not sure what Mulvaney has been smoking, except his own propaganda. The process that led to the Affordable Care Act was lengthy and complex, but involved numerous hearings and ample time for public comment and input. Any suggestion to the contrary is ridiculous.

Four Pinocchios