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The Health 202: Meet the referee in the GOP effort to replace Obamacare

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Washington is filled with people who talk much but affect little. Senate parliamentarian Elizabeth MacDonough is the opposite — she intentionally stays out of the spotlight but wields enormous influence in proceedings on the Senate floor. As the Capitol Hill version of a referee in the contentious health-care debate, MacDonough will soon exercise broad authority in considering the fate of the House GOP health-care bill. She could also rule on a Senate version, if and when it materializes.

Picture this. Sometime in the next few weeks, four Democratic attorneys and four Republican ones will file into the ornate LBJ room just steps from the Senate chamber to consider a bill overhauling the Affordable Care Act.

They'll sit at a long table before MacDonough. Democrats will argue the GOP bill known as the American Health Care Act (ACHA) bleeds over the boundaries of what can be accomplished under the budget rules known as "reconciliation." Republicans will insist the ACHA complies with those rules by containing only provisions that affect federal spending.

MacDonough will listen carefully to both sides. She'll ask questions. She won't appear to favor one side over the other. And when she finally makes a decision, it will be based on her best understanding of Senate rules and past precedent — not on whether she personally approves or disapproves of Obamacare or the effort to revamp it, say multiple friends and former co-workers.

David Schiappa, who for years worked closely with MacDonough as secretary for Senate Republicans, said he feels she is "completely unbiased and she cares about the institution and she follows the precedent that has been established." Bill Dauster, a longtime counsel to Senate Democrats, told me he "always felt I could get a fair hearing" from her.

(In case you're wondering, The Health 202 reached out to the parliamentarian's office, but MacDonough declined an interview.)

MacDonough worked her way up the hard way. After attending law school, she started as an assistant parliamentarian in 1999 and served for 13 years before the Senate approved her as parliamentarian in 2012 at the recommendation of then-Majority Leader Harry M. Reid (D-Nev.).

Observers say it is a stressful role, especially as the environment in Congress has grown evermore partisan and toxic. While past Senate leaders have ousted parliamentarians for decisions they didn't like – and Senate Majority Leader Mitch McConnell has the ability to do the same to MacDonough -- the job is still widely recognized as nonpartisan. Part of being perceived as fair to both sides means that MacDonough keeps her personal political views to herself.

“My experience with her is that she is fair,” said Sen. Bernie Sanders (I-Vt.), ranking Democrat on the Budget Committee, which has had extensive interaction with MacDonough and her team. “She has a lot of responsibility on her shoulders.” McConnell's deputy chief of staff Don Stewart told me the Senate is “fortunate” to have MacDonough's guidance.

But the health-care debate into which MacDonough is about to step could challenge even her fair reputation.

A budget bill needs just a simple majority in the Senate to be approved -- not the 60 votes typically required to overcome a filibuster -- allowing Republicans to pass their health-care legislation with just 50 out of their 52 members, with tiebreaking help from Vice President Pence.

But there are strings attached, and MacDonough is the one who can pull them. Each piece of such a budget bill must be directly related to federal spending, like a tax or expenditure. Repealing certain parts of Obamacare, like its taxes for example, fit easily under this standard. But other parts, like rolling back the law's insurance regulations, don't necessarily qualify.

MacDonough's primary task over the next few weeks is to rule on whether AHCA qualifies as a budget bill – and if so, which parts of it meet reconciliation rules. If she finds individual parts don't have a direct budgetary impact, through a process known as a “Byrd bath,” they would be stripped out -- but the House wouldn't have to vote again on its bill. She'll apply a similar standard to a Senate measure, should lawmakers get their act together.

Most health-care experts believe some parts of the House bill will be stripped by MacDonough — indeed, many House Republicans are holding their breath over some of the AHCA's riskier elements.

The parts most vulnerable to MacDonough's rejection include its waivers for states to opt out of protections for people with preexisting conditions, or its provision raising the ratio for how much insurers can charge older people relative to younger ones. Both those elements are insurer regulations not directly related to federal spending, but some Republicans have argued an indirect link by noting that premiums would be affected and therefore the amount of subsidies the government must pay out.

Another questionable part of the House bill is its language banning federally subsidized insurance plans from covering abortions. Abortion foes insisted such a ban must be included, even though that too might raise MacDonough's eyebrows.

Republicans already have a sense of how MacDonough might rule. A year and a half ago, she and her deputies analyzed a measure aimed at repealing some of the ACA but not replacing it. While President Obama ultimately vetoed that bill, House and Senate Republicans passed it partly as a readiness exercise should they eventually win the White House.

Staffers writing that 2015 House health-care measure hadn't even tried to repeal large parts of the ACA, fearing MacDonough would strip it anyway. But under pressure from conservatives, the Senate added in provisions eliminating the insurance subsidies, Medicaid expansion and small business tax credits. Notably, MacDonough allowed them.

Perhaps even more surprisingly to health wonks, MacDonough ruled that a section banning Planned Parenthood from getting Medicaid reimbursements could remain. The legislation said Medicaid dollars couldn't go to certain abortion providers, without explicitly mentioning the group.

But MacDonough didn't give the bill an entirely free pass. Under her guidance, the Senate was forced to tweak language repealing the individual and employer mandates, technically leaving the requirements in place but eliminating the penalties associated with lacking coverage or for businesses not offering it to workers.

A few of the more conservative senators including Sen. Ted Cruz (Texas) have suggested that McConnell could replace MacDonough if she disappoints them — or at least allow the Senate president to overrule her.

But that's not a widespread viewpoint. Those who know MacDonough say they're not surprised she doesn't give interviews or speak publicly because she takes her job as an unbiased adjudicator seriously.

And even some outside conservatives who argue for a more expansive interpretation of budget rules as they apply to health care say they are not worried MacDonough won't be fair.

“I have complete confidence in her ability to interpret Senate rules,” said Michael Cannon, a health-policy expert at the libertarian Cato Institute who has argued extensively that virtually every part of Obamacare is closely tied to government spending. Cannon stressed, however, that he's unsure whether MacDonough has a deep enough understanding of health policy to consider the arguments from him and others that most of the law could be repealed using reconciliation.

Cannon also told *The Health 202* something about MacDonough we definitely didn't know: She has great teeth.

Cannon used to live in MacDonough's neighborhood, and he says they'd run into each other while walking their dogs. They also visited the same dentist – and once during an appointment, he saw her photo displayed on the office wall.

“She's got such a great smile, [the dentist] put her picture up in his office,” Cannon said.

Republicans must certainly be hoping she'll flash her pearly whites their way.