

## Sebelius Defends Another Administration Misstep

By: Eric Pianin – May 24, 2013

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During her early years as Secretary of Health and Human Services, Kathleen Sebelius operated largely in the shadows of the Obama White House while Congress and administration officials thrashed out the details of the Affordable Health Care Act.

White House Chief of Staff Rahm Emanuel, Nancy-Ann DeParle, the deputy chief of staff for policy, and others took the lead in shaping President Obama's signature legislation to extend health care coverage to millions of uninsured Americans.

But in the run-up to the formal launching of Obamacare, Sebelius surfaced as the administration's central player in implementing the new legislation — and became a lightning rod for the growing criticism leveled at the legislation.

Sebelius, 65, a former two-term governor from Kansas, arguably has become the most controversial and politically radioactive Obama cabinet members next to Attorney General Eric Holder, who is hip-deep in controversy of his own over Justice Department snooping into reporters' phone records and the tragically flawed "Fast and Furious" federal gun-trafficking investigation in the Southwest. For example:

- Sebelius touched off an election-year uproar in January 2012 by announcing an administration rule under the Affordable Care Act requiring religiously affiliated employers such as universities and hospitals to provide full birth control coverage to the women they employ. Although the administration later tempered the new rule, it wasn't enough to quell bitter protests from Catholic and other religious groups and officials.
- The U.S. Office of Special Counsel ruled in September 2012 that Sebelius had violated the Hatch Act, the law that restricts the political activity of members of the executive branch, by campaigning for Obama and other candidates during an appearance at a gala for the pro-gay rights Human Rights Campaign in Charlotte, North Carolina.
- In the wake of the Supreme Court ruling upholding the health care reform law but allowing states to opt out of a Medicaid expansion if they choose, Sebelius sent a letter to the nation's governors, signaling that states should not try to use the ruling to make it more difficult for low-income people to qualify for Medicaid. Critics charged she was attempting to coerce the governors into implementing that part of the new health care law.

Most recently, the secretary has enraged Republicans by soliciting private funds from the Robert Wood Johnson Foundation and H&R Block to assist Enroll America, a private

non-profit organization that will encourage millions of Americans to sign up for insurance on new exchanges beginning this fall. Robert Wood Johnson has awarded a \$10 million grant to Enroll America, while H&R Block has yet to make a commitment.

HHS officials and their allies say there is ample precedent for the government enlisting private support in promoting public programs, such as the Medicare Part D prescription drug program of the Bush administration and a children's health insurance program. But many Republicans already concerned about Obama administration overreach and the Internal Revenue Service's misdeed in targeting conservative political groups have dubbed Sebelius's activity a "shakedown" of companies and institutions that are either regulated by the agency or eager to curry favor with the government.

"The secretary should not be allowed to go to any private organization and try to raise funds because that's an invitation to corruption," Michael F. Cannon, director of health policy at the libertarian Cato Institute, said Thursday. "Executive branch agencies don't have any inherent powers to raise funds. They are only supposed to control the funds that Congress appropriates them."

Jonathan Oberlander, a professor of social medicine at the University of North Carolina, said that controversy over Sebelius's outside fundraising activities reflects a larger problem "that [the administration] can't get anything through Congress in terms of additional funding for health care reform."

Two House committees have begun investigating the solicitations, while five senior House and Senate Republicans have asked the Comptroller General of the United States to investigate Sebelius's conduct to determine if she was improperly circumventing spending limits imposed by the Congress.

Sen. Lamar Alexander of Tennessee compared Sebelius's fundraising for a non-profit to the Iran-Contra scandal of the Reagan administration. Oliver North and other senior administration officials used proceeds from illegal arms sales to Iran to help U.S. intelligence agencies fund rebels in Nicaragua.

A select Joint Committee of Congress report on the scandal released in November 1987 stated that "Congress's exclusive control of the expenditure of funds cannot legally be evaded through the use of gifts or donations to the executive branch."

Alexander said yesterday in an op-ed piece in the *Wall Street Journal* that "if the money being raised by Ms. Sebelius is being spent to do an end-run around Congress, then the Obama administration had better brush up on its Iran-Contra history."

Sebelius defenders say that Alexander's analysis is something of a stretch. Moreover, they note that while he served as Secretary of Education in the administration of Republican President George H.W. Bush in 1991, Alexander crisscrossed the country raising money for a non-profit group called New American Schools Development Corp., which was promoting a Bush administration educational initiative.

Joanne Peters, a spokesperson for Sebelius, said yesterday that the secretary's activities were legal and had been cleared by department lawyers. She told *The Fiscal Times* that a special section in the Public Health Service Act, in place since 1976, allows the secretary to

support, and to encourage others to support, non-profit organizations that are working to improve public health.

“Part of our mission is to help uninsured Americans take advantage of new quality, affordable insurance options that are coming, thanks to the health law,” she said. “Since March, the secretary has made two fundraising calls on behalf of Enroll America to two organizations — the Robert Wood Johnson Foundation and H&R Block — neither of which is regulated by us and both of whom share a commitment to helping uninsured Americans. The secretary has made no fundraising requests to entities regulated by HHS,” she stressed.

Before her arrival in Washington, Sebelius was known as a Democrat who could deal with Republicans, a necessity in Kansas where the Republicans controlled both chambers of the legislature. Obama once said Sebelius “is as talented a public official as there is right now” who can work with “all people of all walks of life.”

But under the big tent, Sebelius gets mixed reviews from health care policy experts, with some saying she’s doing the best she can under tough circumstances to get the new system up and running by early 2014, while others claim she is in over her head.

“I don’t think she’s a very effective secretary. I don’t think she’s a very effective agent of the president’s health care reform,” said Joseph Antos, a health care authority with the conservative American Enterprise Institute.