Op-Ed

Is the Fate of the ACA Settled or Not?

JOHN E. McDONOUGH

ONCE UPON A TIME, I BELIEVED THAT EFFORTS TO REPEAL the Affordable Care Act (ACA) would wither and die once the ACA's major Medicaid and private insurance expansions became effective on January 1, 2014. After all, opponents had let Senator Ted Cruz (R-TX) trigger a 3-week federal government shutdown in October 2013 in a desperate final attempt to thwart the expansions. Over the course of 2 open enrollment periods, between 2013 and 2015, as many as 17 million previously uninsured Americans obtained coverage. Surely the worst was over. Now I am not so certain.

Since 2010, Americans have witnessed 3 near-death experiences relating to national health reform: first, the election of Scott Brown (R-MA) to the US Senate in January 2010, ending Democrats' 60-vote filibuster-proof majority; second, the US Supreme Court's decision in June 2012 upholding the constitutionality of the ACA writ large; and third, the November 6, 2012, federal elections in which a victory for presidential candidate Mitt Romney would have augured substantial repeal. By this standard, the October 2013 government shutdown and the 2015 Supreme Court case, *King v Burwell*, were faux near-death experiences, not the real thing.

Now we can foresee another looming near-death experience in the form of the November 8, 2016, elections. If Republicans emerge victorious on November 9 and control the White House, the Senate, and the House of Representatives, they will be able to substantially dismantle the ACA, using the legislative budget reconciliation process that preempts filibusters and requires only 51 votes for passage in the Senate.

What Is the Evidence for This Belief?

First, every Republican presidential candidate (including those who dropped out) has publicly and unambivalently committed to full repeal

of the ACA, with or without replacement. Second, in January 2016, for the first time, both the House and the Senate approved and sent to the President's desk budget reconciliation legislation that would substantially undermine key components of the ACA. This was the House's 61st legislative attempt to kneecap the ACA since 2011.¹

Third, with just one exception, every Republican and conservative plan to repeal and replace the ACA released since 2013 has included near total repeal of the law. Fourth, even though public opinion on the ACA remains split between maintaining and improving the law versus repealing or repealing and replacing it, the Republican base shows no ambiguity, favoring the latter course by 76% to 14%.²

What Would Repeal-and-Replace Look Like?

In a recent blog post,³ I provided results from a survey of 8 proposals—5 legislative and 3 conservative think tank—to repeal and replace the ACA. Of these, only one (the Universal Exchange Plan of the Manhattan Institute's Avik Roy) explicitly preserves the ACA while proposing far-reaching structural changes. The others endorse full or nearly full repeal.

In addition, at least 7 of these proposals would eliminate nearly all ACA reforms for private health insurance, including

- Individual and employer mandates.
- Health insurance exchanges/marketplaces.
- Income-related premium and cost-sharing subsidies.
- Ten “essential health benefits” to be included in all health insurance.
- Coverage of clinical preventive services without cost sharing.
- “Minimum loss ratios” establishing limits on insurers' nonmedical costs.
- Coverage of young adults up to age 26 on their parents' insurance plans.
- Consumers' cost-sharing limits, including deductibles and co-insurance.
- Elimination of lifetime and annual benefit limits.

Most of these plans endorse the continuation of guaranteed issue and elimination of preexisting condition exclusions, though only

for individuals who maintain “continuous coverage.” While all but one plan endorse subsidies to lower premium costs in the form of tax credits or deductions, the subsidies would vary by age, not income, thereby ensuring unaffordability for lower- and lower-middle-income persons. Nearly all the plans endorse new federal support to states to establish “high-risk pools” for individuals with preexisting conditions.

Although 7 of the plans would eliminate the ACA’s Medicaid expansion to low-income persons, no consensus exists on a replacement. Five plans would repeal all of the ACA’s changes to Medicare, including closing the Part D prescription drug coverage gap called the “doughnut hole,” but no consensus has been reached on broader changes in Medicare. Moreover, many other ACA reforms would be removed as well, such as authorization for the US Food and Drug Administration to permit biosimilar drugs to enter the US pharmaceutical market, measures to prevent Medicare and Medicaid fraud and abuse, calorie labeling on chain-restaurant menus, the Patient Centered Outcomes Research Institute, and the Indian Health Care Improvement Act.

One plan, the Patient CARE Act proposed by Senators Orrin Hatch (R-UT) and Richard Burr (R-NC) and Congressman Fred Upton (R-MI), would repeal the whole ACA “except for the changes to Medicare” that are projected by the US Congressional Budget Office to save \$879 billion between 2016 and 2025.^{4(p4)} Not repealing these payment reductions to hospitals, Medicare Advantage insurers and others would transform the projected budget deficit caused by repealing the law into a budget surplus. If there is a viable financing pathway to achieve substantial repeal, this is it.

How Would Republicans Go About Repeal?

The only feasible path for repeal—because the likelihood of Republicans achieving a 60-vote majority in the US Senate in January 2017 is negligible at best—is the budget reconciliation process. While not all ACA provisions could be repealed using reconciliation, enough could that would upend the ACA’s core structure, as evidenced by the reconciliation legislation sent to the president’s desk—and subsequently vetoed—in January 2016. One obstacle would be whether less hardline

conservative Republican senators would support legislation canceling insurance coverage for millions of vulnerable Americans.

While it is clear that the House of Representatives would approve such legislation, less clear would be the policy preferences of a new Republican president and Senate. The 2015 reconciliation bill does not provide clear indication because all Senators knew that a certain veto by President Obama would not be overridden and no American would lose coverage because of this exercise.

What About Negative Impact and Political Resistance?

Eliminating insurance for an estimated 22 million Americans, plus rescinding consumer protections for tens of millions more, would be a breathtaking political act. Yet, after years of promises and faux repeals, would a new Republican president deny his party their clear policy preference? The November election of a Tea Party governor in Kentucky, Matt Bevin, offers a silver lining. Though candidate Bevin's statements on the state's successful Medicaid expansion varied during his campaign, promising both repeal and nonrepeal, his postelection unwillingness to rescind the expansion is a sign of how difficult real-world repeal may be for Republicans in 2017.

Also consequential are the \$879 billion in Medicare payment reductions that Republicans would preserve even as they eviscerate the insurance expansions that led the hospital industry, among others, to consent to sizable reductions in Medicare payments. Hospital and other health-sector leaders would surely mobilize against continuing Medicare cuts that were linked in the ACA to removing the burden of caring for uninsured citizens.

It's difficult to imagine this happening. Yet if the nation finds itself with unitary Republican control of the federal government in January 2017, it is a reality to which we may have to adjust.

References

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Address correspondence to: John E. McDonough, Division of Policy Translation and Leadership Development, Harvard T.H. Chan School of Public Health, 677 Huntington Avenue, Boston, MA 02115 (email: jmcdonough@hsph.harvard.edu).