Op-Ed

When Political Imperatives Collide With Policy Objectives

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THE REPUBLICAN PARTY HAS BEEN ADAMANTLY OPPOSED TO the Affordable Care Act (ACA) since it was signed into law in March 2010. The Republican House has repeatedly voted to repeal the ACA and after Republicans regained control of the Senate in 2014, the Senate voted to repeal it as well. However, Republicans in both houses of Congress passed such bills knowing that President Obama would veto them, as he did most recently in early 2016.

Now that Republicans have control of the House of Representatives and the Senate as well as the White House, any legislation that passes Congress will presumably be signed into law by the Republican president. There is a “catch,” however. Republicans hold only a 52-48 lead in the Senate. This slim majority means that the Republican leadership needs 50 of its 52 members to support whatever legislation is being proposed and even then can only be assured of passing legislation that can be considered through the budget reconciliation process, meaning that it affects the budget or government spending. Budget-related bills can be passed with a simple majority and cannot be filibustered. Any other legislation requires the votes of 60 supporting Senators in order to overcome a filibuster, which given the 52 Republicans in the Senate, translates into bipartisan support.

The challenge for Republicans is that having promised to “repeal Obamacare” as often as they have, it will be difficult to wait until they are ready with a replacement bill in order to “repeal and replace.” If the GOP caucus feels obligated to pass a bill that just effectively defunds the ACA, as did the bill passed by Republicans in late 2015, they could do that within the first two months of the new administration. The 2015 bill would have repealed the funding for the exchange subsidy tax credits, the funding for the Medicaid expansion, the individual and employer mandates, and the various taxes that fund the ACA, including

the medical device tax, the insurance tax, the tax on high-cost insurance plans and the increased Medicare taxes on the wealthy.

Although the legislation that was passed last year and vetoed by Obama would meet the requirements of a budget reconciliation bill and would also be in the spirit of repealing the ACA by removing most of what the public regards as “Obamacare,” political challenges may remain for Republicans. First, it would not actually repeal the ACA. It would take a much broader bill, which would require at least 60 supporting votes in the Senate, to repeal the ACA with all of its complexity—including the insurance reforms, the required coverage of various types of preventive care with zero coinsurance, the Center for Medicare and Medicaid Innovation and all its pilot programs.

Second, it is not clear whether all or almost all Republicans in the Senate would support a bill that only “repealed” the ACA (or at least effectively removed the parts of the ACA that are associated with federal spending). Several senior Republicans have said publicly that Republicans are not going to increase the number of uninsured by 20 million and the strong interest of most politicians to survive the next election would suggest this as well. Pairing a second bill with a repeal bill is also more in keeping with the phrase most Republicans have used since the ACA was signed into law—“repeal and replace”—not just “repeal,” although a lot more focus and media attention has been given to the repeal part than the replace part.

Third, depending on how the bill is written and when the repeal would be implemented, the funding that financed the exchange subsidies and the Medicaid expansion could go back onto the baseline and no longer be available to finance an alternative strategy such as the use of refundable tax credits outlined in the House Republican plan released last June.¹

The Republican Congress may pass a budget reconciliation bill similar to the one passed in late 2015, which had a 2-year delay before it went into effect—hence the terms “repeal and delay.” This approach would allow the Republicans enough time to craft alternative uses of some or all of the existing funding and garner enough Republican support to pass an additional budget reconciliation bill focusing on budget-related aspects of an ACA substitute. However, passing separate “repeal and replace” bills, months or even a year or two apart, may make it very difficult to get any Democratic support, which will make it challenging to include any nonbudget-related changes such as those involving insurance reforms

or alternative strategies to encourage a maintenance of coverage. There is also no guarantee that Republicans in the House and Senate will be able to agree on a single strategy that would produce coverage roughly comparable to what has resulted from the ACA.

The desirability of linking a repeal bill with a replacement bill and the challenges of considering them separately has been raised by analysts on both the right and the left—even if it means delaying the repeal bill for a couple of months (or longer).^{2,3} Despite these concerns, delaying a repeal action is not politically likely. The more frequently politicians call for a quick repeal, the less likely other options remain viable.

Equally frustrating is that it may be possible to significantly modify the ACA so that it would no longer contain many of the features Republicans and others have found so objectionable, without executing an outright repeal. These policy changes include at least some of the following changes to the ACA: 1) replacing exchange subsidies with refundable tax credits; 2) redefining the essential benefit package to allow a “skinnier” package of benefits; 3) allowing people who receive a refundable tax credit to purchase Medicaid or those on Medicaid to use their subsidies to purchase private insurance; 4) allowing an actuarially determined age band of 5:1 (rather than the current 3:1 age band); 5) using continuous coverage to protect individuals from facing higher premiums because of pre-existing conditions; 6) funding high risk pools to cover individuals who don’t stay continuously covered; and 7) imposing Medicare-like penalties for 5 years for those who don’t buy insurance in the first year it is made available under new terms to cover the adverse selection costs of those who wait until they are sick to buy insurance instead of imposing the current “mandate” to buy insurance.

The adoption of these changes, or at least a significant subset of them, would present a major political challenge and require both Republicans and Democrats to give up policies that are of real or symbolic importance to them.

But their adoption would also go a long way to meeting many of the most serious objections of those opposed to the ACA while meeting many of the objectives of those who support the ACA. Given the current political climate, however, it is hard to imagine any serious consideration being given to crafting such a strategy.

The forces for “repeal and figure out next steps later” may be too great for serious, bipartisan legislation—even if it complicates the ultimate goal of “repeal and replace.”

References

1. Ryan P. A Better Way website. abetterway.speaker.gov. Accessed December 5, 2016.
2. Capretta JC. Repeal Without Replace Is a Terrible Idea. *Real Clear Health*. November 21, 2016. http://www.realclearhealth.com/articles/2016/11/21/repeal_without_replace_is_a_terrible_idea_110268.html. Accessed December 5, 2016.
3. Jost T. Day One and Beyond: What Trump's Election Means for the ACA. *Health Affairs* blog. November 8, 2016. <http://healthaffairs.org/blog/2016/11/09/day-one-and-beyond-what-trumps-election-means-for-the-ACA/>. Accessed December 5, 2016.

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