

Gail R. Wilensky

## from “no plan” to multiple plans, but no consensus to date

Republicans have long been talking about repealing and replacing the Affordable Care Act (ACA). Despite the continuing rhetoric, I had assumed that once the 2012 election had passed and President Obama had been elected to a second term, the ACA was here to stay because the major benefits associated with the Medicaid expansion and subsidized insurance in the exchanges were scheduled to begin before another election would be held.

To my knowledge, no major benefit, particularly not a new entitlement, has ever been rolled back after having been in effect for several years. But here we are in early 2017: The Republicans have won the White House and have majorities in both the House and Senate, and not surprisingly, they are feeling pressure to make good on their promise to “repeal and replace” the ACA.

### Obstacles to a Repeal

There is a problem, however, that not all voters may fully understand. Although the Republicans have majorities in both Houses, their majority in the Senate is slim—52 to 48. Legislation generally requires at least 60 votes to pass in the Senate, because Senate rules allow the minority to filibuster if the vote falls short of that number, and the majority cannot stop the filibuster.

The only type of legislation that cannot be filibustered in such circumstances is legislation passed as part of the budget reconciliation process, which requires only the support of a

simple majority. But the challenge here is that reconciliation legislation must primarily involve budgetary issues, and the effect on the budget cannot be purely incidental. This restriction may preclude changing many of the insurance reforms connected with the ACA, although there are some who claim the insurance changes qualify as being “germane” to budgetary issues. The parliamentarian of the Senate—the official adviser to the Senate on how to interpret its standing rules (currently, Elizabeth MacDonough, JD)—ultimately makes the determination about such issues.

### Republican Replacement Plans

Democrats have been charging that Republicans are focused only on repealing the ACA, without having any real replacements plans to offer in its place. That charge has clearly been unfounded since last June, when the Republicans in the House released a replacement plan called “A Better Way,” covering not only healthcare reform but also other areas such as poverty, national security, and tax reform. The plan provides for refundable tax credits for people who don’t have employer-sponsored insurance, and it allows for the purchase of insurance across state lines and for block grants to states for Medicaid. It also maintains some of the ACA’s insurance reforms such as not allowing preexisting condition exclusions and providing for continued coverage of dependents up to age 26.

It never has been clear whether Senate Republicans would support this proposal or a similar

alternative proposal by Rep. Tom Price (R-Ga.), the newly confirmed HHS secretary. More recently, Senate Republicans have been introducing their own alternatives. Senators Bill Cassidy (R-La.) and Susan Collins (R-Maine), with support by Senators Johnny Isakson (R-Ga.) and Shelly Moore Capito (R-W.Va.), introduced legislation that would allow states to choose to remain in the ACA as currently configured or to opt out and receive 95 percent of the federal money they would otherwise receive to use for a program of refundable tax credits linked to health savings accounts (HSAs).

Sen. Rand Paul (R-Ky.) also has introduced an ACA replacement bill, which provides a tax credit up to \$5,000 per person to use with an HSA to pay for medical care. The legislation would eliminate the current insurance mandate, minimum insurance standards, and existing protections for people with preexisting conditions. Instead people would have a two-year period to obtain coverage. After that, people who had maintained continuous coverage would be protected from preexisting conditions exclusions. The legislation also would provide a tax deduction for health insurance for people who buy their own insurance and would maintain the existing employer-sponsored premium exclusion.

The January Republican Congressional retreat in Philadelphia made it clear (as a result of a leaked tape of conversations among members during closed-door meetings) that Republicans do not yet agree on how to proceed. Some members, especially some of the most conservative ones, want Congress to act quickly on repealing the ACA (with an implementation delay that doesn't exceed two years) and then to work on replacement legislation. Others, including President Trump, who has yet to weigh in with any specifics about an ACA replacement, want Congress to repeal the ACA and pass replacement legislation simultaneously or in close succession, even if that means delaying the repeal vote.

A third faction has been gaining ascendancy, however: Republicans who express interest in

reforming or repairing the ACA rather than repealing and replacing it. Both Sen. Lamar Alexander (R-Tenn.), who chairs the Senate health committee, and Rep. Greg Walden (R-Ore.), who chairs the House Energy and Commerce Committee, have started framing their proposals in this way. Their message has focused on the idea of repairing the healthcare market that has been harmed by the Obama version of the ACA. But it also may reflect a recognition of the challenge of literally repealing and replacing the ACA and of the sudden skittishness that has emerged among the public regarding substituting what is known (albeit previously disliked) for something as yet unknown.

### **The Impact of Public Preferences**

A Quinnipiac University Poll conducted in late January reported most Americans favor fixing rather than repealing the ACA, and an overwhelming majority (84 percent) say Congress shouldn't repeal the ACA until there is a replacement plan in place. Meanwhile, the legislation that Republicans passed in late 2015 (using budget reconciliation rules that President Obama vetoed) no longer seems as likely as it once did. That bill repealed the taxes, subsidies, and mandate penalties associated with the ACA but provided a two-year delay in implementation so that replacement language could be developed. Not surprisingly, some conservative members of Congress continue to push for an immediate vote to repeal the ACA and then figure out what to do next, but this strategy is looking increasingly unlikely.

As so many have mentioned before, it is much easier to criticize legislation when the likelihood of being able to actually repeal that legislation is low than it is to craft a strategy that has a clear chance of becoming law. That's the dilemma that Republicans now find themselves facing. ■

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