

## Obliterating Obamacare: What Will Republicans Do Next?

Health policy experts offer differing answers

Shannon Firth

December 8, 2015

WASHINGTON -- The Senate voted 52-47 last week to pass a bill that would repeal key provisions of the Affordable Care Act (ACA). The vote was split mainly along party lines, and a presidential veto is more than likely. The question now is: What will conservative Republicans, who are determined to take down "Obamacare," do next?

*MedPage Today* spoke with healthcare policy experts who expressed mixed opinions.

### Nothing in Return?

"The big takeaway from this is that everybody should have the expectation that come 2017, a Republican House, a Republican Senate, and a Republican president will in fact repeal Obamacare," said Dan Holler, vice president of communications and government relations for Heritage Action, the advocacy arm of the Heritage Foundation conservative think tank, in Washington.

But Timothy Jost, JD, a professor at the Washington and Lee University School of Law in Lexington, Va., disagreed.

"The Republicans were only able to pass the budget reconciliation bill because they knew it would be vetoed," he said.

Moreover, the "repeal bill" the Senate passed did not immediately repeal Medicaid expansion, eliminate premium taxes or cost-sharing reduction payments. Instead, it delayed such changes for 2 years.

"If Republicans actually tried to repeal [these provisions], they would either cause millions of Americans to be uninsured or have to propose an alternative, which would cost a lot and probably cover many fewer people," Jost pointed out.

In other words, Republicans offered suggestions on zapping core provisions of Obamacare without offering anything in return. "They said 'We're going to give you something terrific, but we aren't going to tell you what until after the election,'" Jost told *MedPage Today*.

Jost also noted that the Senate bill, a revised version of one previously passed in the House, offered tax cuts to families making more than a \$250,000, but for those making less than 400% of the federal poverty level, "they're not promising anything other than 'You're going to lose what you have now'... so that's their program: 'we want to do more for rich and less for poor people.'"

If Republicans won the next presidential election, the legislation would continue to be filibustered and under a budget reconciliation approach, which requires only 51 votes to pass, but the full statute could not be repealed.

This means that "as a practical matter, a Republican presidential administration could do a lot to undermine the Affordable Care Act, but they couldn't simply repeal it," Jost said.

## **Taking a Stand**

Gail Wilensky, PhD, a former administrator at the Centers for Medicare and Medicaid Services, said the legislation that passed in the Senate was "a marker" to show where Republicans stood but was not intended to be implemented as is.

"The specifics here are easy to criticize because it was a collection, just as the Affordable Care Act was a collection, of what it took to get legislation out," she said. She said there are many provisions that "could be [or] should be changed," such as the Cadillac tax. Wilensky said it would be a mistake to repeal the tax without implementing a limit on what health plan businesses can provide on a tax-free basis under employer-sponsored insurance. Wilensky also countered that the idea that Republicans had no alternative plans was inaccurate, citing Republican presidential candidate Jeb Bush's proposal.

Some of the common themes of Republican's sponsored plans included refundable tax credits and a continuous coverage provision that would incentivize rather than penalize the uninsured, Wilensky said.

"As we get further into the election cycle, we will see this in more detail," she said. Joe Antos, PhD, a scholar in healthcare and retirement policy for the American Enterprise Institute (AEI), a fiscally conservative group in Washington, quoted House Speaker Paul Ryan (R- Wis.) who called for an "urgent" repeal, and said he would "unveil a plan to replace every word of Obamacare" next year. "Ryan agrees with [Rep.] Tom Price's (R- Ga.) reform and that is likely to be the main proposal, perhaps with some adjustments, and I suspect that Republican leadership will press whoever the candidate is to move in that direction," said Antos in an email.

Wilensky and AEI will release a paper offering conservative policy experts' own ideas on replacing Obamacare this week.

But some argue Republicans don't need to wait for full Obamacare repeal for their next strategic assault.

Michael Cannon, MA, JM, director of health policy studies at the Cato Institute and a former domestic policy analyst for Republican Policy Committee in the Senate, said Republicans should build on Sen. Marco Rubio's (R-Fla.) win, that targeted risk corridors. Republican should expand or reauthorize Rubio's ban on "bailing out" Obamacare's participating insurers when they fail, Cannon said.

"If they do that, that will expose consumers to more of the cost of Obamacare and that will build up even more opposition to the law," he said. Those insurers that don't receive a bail out will be forced to leave the market or find ways to make themselves less "unattractive to the sick." Asked how a Republican plan would support those who might lose their insurance following a possible repeal, Cannon recalled the conservative "race to the bottom" theory.

"Price controls on health insurance are not sustainable because you're forcing insurance companies to do something that's against their financial self-interest, which is sell health insurance below cost. And you're forcing 'good risk,' healthy people to do something that's against their financial self-interest, which is buy health insurance above cost."

By eliminating price controls such as community ratings and the individual mandate, health insurers are incentivized to develop innovative insurance products.

Cannon said the "vast majority" of people on the exchanges would see their premiums drop if Obamacare were repealed. True, those with pre-existing conditions might not be able to afford insurance after such a repeal. However, these individuals would be placed in high-risk pools that would include "some sort of subsidy" Cannon said.

### **No Change Before 2016**

Thomas Greaney, JD, a professor at the St. Louis University School of Law, told *MedPage Today* that he expects to see little change in the ACA before 2016.

He noted that the employer mandate was not critical to sustaining Obamacare, and that there is some bipartisan support for repealing the Cadillac tax on high-cost health plans. However, the individual mandate could not be tampered with.

"It's hard to see the [ACA] surviving without getting everybody in the pool," he said. He pointed out that Hillary Clinton, the Democrats' leading presidential candidate, is a "staunch defender" of the law.

"I think the congressional Democrats will take their lead from her," Greaney said.