Repeal Is Dead. Long Live What?

Shannon Firth

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Revision after revision, and one yanked vote after another, the long-held Republican dream to repeal-and-replace the Affordable Care Act (ACA) appeared to be evaporating on Tuesday.

On Monday night, following the announcement that two more Republican senators would vote down the Senate's Better Care Reconciliation Act (BCRA), bringing the total defections to a total of four -- Republicans could only afford to lose two -- Senate majority leader Mitch McConnell (R-Ky.) issued a statement, saying plans to "repeal and immediately replace" the ACA would not succeed.

While pulling the BCRA from a vote, he pledged to vote on a straight-forward repeal with a 2-year transition, or "repeal-and-delay" as some have called it.

McConnell both conceded the failure of the BCRA, and pushed for a new vote on the House-passed bill, which could lead, through amendment, to a "clean repeal" with a 2-year delay. During that time, Republicans could allegedly reach consensus on a suitable replacement, *The Washington Post* reported.

McConnell cited the ACA repeal bill of 2015, which Congress passed and then President Obama vetoed, as an example.

But even that plan fell flat: three moderate senators, Sen. Shelley Moore Capito (R-W.Va.), Sen. Lisa Murkowski (R-Alaska), and Sen. Susan Collins (R-Maine) panned the push for repeal-and-delay, according to *The New York Times.*

"I did not come to Washington to hurt people," Capito said in a statement, explaining that she couldn't eliminate Obamacare without a replacement.

Despite the opposition, McConnell said Tuesday afternoon that he will hold a vote "in the near future," according to *The Atlantic*.

Meanwhile, President Trump urged a repeal-and-delay strategy. He tweeted Tuesday morning that one way to achieve that goal would be by amending Senate rules: "The Senate must go to a 51 vote majority instead of current 60 votes. Even parts of full Repeal need 60. 8 Dems control Senate. Crazy!"

But overhauling senate rules "for a short-term gain isn't worth it, no matter what bill we're voting on," said Charles Sauer, a policy fellow at the Goodman Institute.

The Senate's Next Move

"Put up or shut up," is how Tom Miller, a resident fellow for the conservative American Enterprise Institute, translated McConnell's message to his Republican colleagues.

He said he believes McConnell intended to force a vote on the repeal-and-delay idea in order to prove to conservative proponents of "repeal-only" just how few votes they'd get. *The New York Times* has already confirmed such a plan is unpopular with enough moderates to sink any such vote.

The bottom line is that Republicans failed, he said. "They are not going to be able to mark up a bill that changes current law."

Miller suggested that, while many Republicans say they want a repeal, "when it comes to the voting, they don't want to do it." They aren't ready to face the consequences of a repeal, he added.

"The normal adage is when you're in a hole, stop digging. Eventually, they will stop digging," Miller said.

Maybe not: some conservative stakeholders continue to dig in on repeal.

"Every single Senate Republican should vote to begin debate. They owe it to their constituents and the nation," said Michael Needham, CEO of Heritage Action for America, the policy arm of the Heritage Foundation, a conservative think tank, in a press statement on Tuesday.

Needham went onto say that Republicans should vote to approve the 2015 ACA repeal bill, noting that because it is a partial repeal, "it will mark just the first step in a long process toward unraveling the damage caused by Obamacare."

Asked whether the 2015 bill had the votes to pass, the Heritage Action team was uncertain.

"Given the number of senators flip-flopping on their 2015 votes, the exact count is unclear. But regardless of what passes -- if anything passes at this point -- there will still need to be an incredible amount of work restoring choice and competition in the individual marketplace," added Dan Holler, vice president for Heritage Action, in a follow-up email.

On the question of a possible bipartisan compromise, Kavita Patel, MD, a nonresident fellow at the Brookings Institution, a liberal think tank, was skeptical.

"You can't get [Sen.] Murkowski and [Sen.] Lee on the same page," said Patel, who is also a primary care internist at Johns Hopkins in Baltimore.

If Republicans can't find agreement in their own party, they're unlikely to find consensus with Democrats, she noted. But Republicans will be forced to take action to stabilize the market, she said.

"I know Trump would like to let [the ACA] implode, but these are all congressional Republicans. They have to go back home, and they've got to face people, and that's hard," she said.

Robert Laszewski, president of Health Policy and Strategy Associates, characterized the concept of a "bipartisan solution" as a "smokescreen."

"What is the compromise? How do you compromise rolling back Medicaid or not rolling back Medicaid? ... What have the Democrats offered that comes close to what Republicans want?" he asked, noting that Republicans are opposed to an "Obamacare bailout" of insurers and certainly wouldn't support single-payer health insurance.

Even if there were enough moderate Republicans willing to team up with Democrats, McConnell would have to be willing to introduce that bill for a vote, which he would be very unlikely to do, Laszewski said.

He argued that a bipartisan fix isn't urgently needed, because he predicts the individual insurance markets will stabilize, as he outlined in a recent blog post on his website, and even be profitable in 2018.

Others like Michael Cannon, director of health policy studies for the Cato Institute, took the unusual tack of arguing that bipartisanship wasn't necessary, because the BRCA, despite McConnell's statement to the contrary, is not in fact dead.

"You can certainly read it as 'This bill we were trying to put together is not going to happen,'" he said. He opined that McConnell's suggestion to put forward a repeal-only bill could be a "power play."

While both Lee and Moran said they would not vote to agree to a motion to proceed, they were wiling to negotiate, Cannon pointed out.

After McConnell proves that repeal-only is unpopular, then he can re-negotiate the BCRA and say to the members and both ends of the ideological spectrum, "you gotta work with me ... you've gotta give up something to get what you want," Cannon said.

If nothing else, it's clear that Republicans "own" healthcare, and will be held responsible for what comes next.

"If people start losing coverage, and having massive premium increases as a result of [the Republicans] failure to come together on a good policy, I think they'll be held accountable for that," said Sabrina Corlette, JD, a research professor at the Center on Health Insurance Reform at Georgetown University here.

She said the decision to pull the BCRA was a good one, but, unlike Laszewski, her concerns about the insurance markets have not diminished. "The ACA depends on the voluntary participation of private insurance companies that have to set premiums based on what they know the rules of the road to be ... Without leadership from Washington as to what those [rules] are I'm very concerned that people may lack affordable coverage options this fall."

Corlette argued that McConnell's best move right now would be to gather his committee chairmen and ranking members together to find a bipartisan solution to shore up the insurance markets. But she acknowledged such an approach requires walking "a very narrow path" that could be even more challenging in the House, "assuming Paul Ryan wants to keep his speakership."

Docs, Hospitals React

Major healthcare societies didn't hold back in their criticism of repeal-and-delay, or the ongoing debate.

"Repeal-and-delay creates a high likelihood of lost coverage, poorer health, and financial instability for millions of Americans and their families. We urge the Senate to return to the drawing board and consider more limited, targeted solutions to our healthcare challenges," wrote Bruce Siegel, MD, MPH, president and CEO of America's Essential Hospitals in a press statement.

"The health reform debate is by no means over. Congress must begin a collaborative process that produces a bipartisan approach to improve healthcare in our country," said David Barber, MD, president of the American Medical Association in a press release. "The status quo is unacceptable. Near-term action is needed to stabilize the individual/nongroup health insurance marketplace. In the long term, stakeholders and policymakers need to address the unsustainable trends in healthcare costs while achieving meaningful, affordable coverage for all Americans. The American Medical Association is ready to work on short- and long-term solutions."