Republicans Propose Obamacare Lite. Or Worse.

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During the presidential campaign, Donald Trump promised legislation that "fully repeals ObamaCare." Monday night, the Republican leadership of the House of Representatives released legislation it claims would repeal and replace ObamaCare. Tuesday afternoon, Vice President Mike Pence will travel to Capitol Hill to pressure members of Congress to support the bill. On Wednesday, two House Committees will begin to mark-up the legislation. House and Senate leaders are hoping for quick consideration and a signing ceremony, maybe by May, so they can move on to other things, like tax reform and confirming Supreme Court nominee Judge Neil Gorsuch.

Everyone needs to take a step back. This bill is a train wreck waiting to happen.

The House leadership bill isn't even a repeal bill. Not by a long shot. It would repeal far less of ObamaCare than the bill Republicans sent to President Obama one year ago. The ObamaCare regulations it retains are already causing insurance markets to collapse. It would allow that collapse to continue, and even accelerate the collapse. Republicans would then own whatever damage ObamaCare causes, such as when the law leaves seriously ill patients with no coverage at all. Congress would have to revisit ObamaCare again and again to address problems they failed to fix the first time around. ObamaCare would consume the rest of Congress' and President Trump's agenda. Delaying or dooming other priorities like tax reform, infrastructure spending, and Gorsuch. The fallout could dog Republicans all the way into 2018 and 2020, when it could lead to a Democratic wave election like the one we saw in 2008. Only then, Democrats won't have ObamaCare on their mind but single-payer.

First, let's look at how the main features of this bill fall short of repeal.

Medicaid Expansion

ObamaCare expanded Medicaid to able-bodied adults below 138 percent of the federal poverty level. The federal government covers a much larger share of the cost of covering Medicaid-expansion enrollees than enrollees in the "old" Medicaid program—currently 95 percent, bottoming out at 90 percent in 2020. So far, 31 states have chosen to implement the Medicaid expansion; 19 have declined.

The House leadership's bill would not even start to repeal ObamaCare's Medicaid expansion until 2020, more than two and a half years from now, and even then would repeal it only one enrollee at a time. In 2020, states could no longer enroll new able-bodied adults into the Medicaid expansion. Yet the federal government would continue to pay for each and every continuously covered able-bodied adult who enrolled in the expansion before then. And it would do so at the enhanced ObamaCare matching rate, in perpetuity, until an enrollee leaves the program. If the House leadership has its way, we may be decades away from full repeal of the Medicaid expansion.

For the two-plus years between enactment and 2020, the House leadership bill would continue to allow states both to opt into the expansion and to go on an enrollment binge, for which the federal government could be paying for decades. It is likely that the number of states participating, and the number of people enrolled in the Medicaid expansion will be higher *after* "repeal" than before.

Which means the Medicaid expansion may never disappear at all. By 2020, the constituency for preserving the Medicaid expansion would be much larger than it is now. More states, more voters, and more special interests will resist repealing the expansion than do today. As I discuss below, Congress will likely be more Democratic than it is today.

When eventually we see a Congressional Budget Office score of the bill (House leadership has numbers, but they're not sharing them), it may show a reduction in federal spending on the Medicaid expansion after 2020. I would not bet on that happening.

Medicaid Reform

Currently, Congress matches states' spending on their Medicaid programs. When a state spends $1 on its program, Congress contributes between $1 and $3. This creates a pay-for-dependence incentive. It encourages states to expand both enrollment and benefits far beyond what they would if states bore the full marginal cost.

The House leadership bill would reform the Medicaid program by converting it to a system of "per capita block grants." It would give each state a fixed amount of money per enrollee, with the amount varying by the type of enrollee (aged, blind, disabled, children, non-expansion adults, and expansion adults).

A per-capita block grant would therefore resemble ObamaCare's Medicaid expansion. States would get additional federal dollars for each additional person they enroll in their programs. But states would face the full marginal cost of providing new or existing benefits to enrollees. Just as ObamaCare's Medicaid expansion creates incentives for states to expand their programs to able-bodied adults, while reducing access to care for the aged, blind, disabled, children, and pregnant women, the House leadership bill would create (or preserve) an incentive to expand enrollment to less vulnerable populations while cutting benefits for more vulnerable populations.

Private-Insurance Overhaul

Economists describe the basic architecture of ObamaCare's overhaul of private health insurance as a three-legged stool. The three legs of the stool are (1) "community rating" price controls that

force insurers to charge healthy and sick people of a given age the same premium, and only allow premiums to vary from older to younger enrollees by a ratio of 3 to one, (2) an individual mandate that penalizes taxpayers who do not purchase a government-designed health plan, and (3) subsidies to help low-income people purchase that compulsory, overpriced health insurance. The House leadership plan retains all three legs of the stool, as well as many other ObamaCare provisions designed to mitigate the damage done by the community-rating price controls.

The first thing the House leadership's bill does is *expand* ObamaCare by appropriating funds for the law's so-called "cost-sharing" subsidies, something no previous Congress has ever done.

The House leadership bill retains the very ObamaCare regulations that are threatening to destroy health insurance markets and leave millions with no coverage at all. ObamaCare's community-rating price controls literally penalize insurers who offer quality coverage to patients with expensive conditions, creating a race to the bottom in insurance quality. Even worse, they have sparked a death spiral that has caused insurers to flee ObamaCare's Exchanges nationwide, including driving all insurance companies from the market in 16 counties in eastern Tennessee. As of next year, 43,000 Tennesseans in those counties could have no way to obtain coverage. Nearly 3 million Exchange enrollees have just one more carrier exit from the same fate.

The leadership bill would modify ObamaCare's community-rating price controls by expanding the age-rating bands (from 3:1 to 5:1) and allowing insurers to charge enrollees who wait until they are sick to purchase coverage an extra 30 percent (but only for one year). Even with these changes, however, premiums would remain high, ObamaCare would continue to make it easier for people to wait until they are sick to purchase coverage, and the law would continue to penalize high-quality coverage for the sick. In fact, the House leadership's decision to leave ObamaCare's community-rating price controls in place while relaxing its "essential health benefits" requirements would cause coverage for sick to deteriorate even faster than ObamaCare does.

It is because the House leadership would retain the community-rating price controls that they also end up retaining many other features of the law. Observers have started to notice that successive iterations of the bill look increasingly like ObamaCare.

For example, the House leadership bill retains and modifies another leg from the three-legged stool: ObamaCare's advanceable, refundable, and means-tested tax credits for health insurance. Though they sound like tax cuts, ObamaCare's tax credits are actually 94 percent government outlays and only 6 percent tax reduction. The House leadership's tax credits are likely to be similarly lopsided.

House leaders are retaining all that government spending—again, we don't yet know how much ObamaCare spending the bill retains—largely because retaining community rating drives premiums unnecessarily high. Ironically, due to congressional budget rules, the fact that there are tax credits in the bill makes it impossible for Republicans to repeal ObamaCare's community-rating price controls and other regulations. The CBO reportedly has projected that if the bill repealed those regulations, the price of insurance would fall so much that many more people would take advantage of the tax credits, and the bill would run afoul of budget rules by

increasing federal deficits. Republicans evidently cannot repeal ObamaCare's regulations if they hold on to health-insurance tax credits.

The tax credits could create a very thorny problem for both House and Senate Republicans. The House leadership bill prohibits the use of its tax credits for health plans that cover abortion. Due to an arcane Senate rule, Democrats likely can and will strip any such restrictions from the bill before final passage. This means that if the House bill ever makes its way to President Trump's desk, it could subsidize abortion even more than ObamaCare does.

To the extent the bill's modified tax credits are tax reduction, however, they are the functional equivalent of ObamaCare's individual mandate. The flip side of tax credits that are available solely to those who purchase health insurance is that those who do not purchase insurance must pay more to the IRS than those who do. Just like a mandate. And since the effective penalty is just an increase in the taxpayer's income-tax liability, tax credits for health insurance are actually *more* coercive than ObamaCare's individual mandate, because the IRS has many more tools it can use to collect the penalty.

Conservatives deny any similarities between an individual mandate and a tax credit for health insurance. But consider the following. ObamaCare's individual mandate penalty for single adults is $695 or 2.5 percent of income, whichever is greater. Suppose that instead, Congress had simply enacted a tax with those features, and then come back and provided an equivalent tax credit for anyone who purchases health insurance. The end result would be identical to ObamaCare's individual mandate. But which would it be, a tax credit or a mandate?

Like ObamaCare's tax credits, the House leadership's tax credits would involve burdensome projection and verification of the taxpayer's income (taxpayers above a certain threshold are ineligible for credits) as well as whether the taxpayer has an offer of qualified health insurance from an employer (taxpayers with an offer of coverage from an employer are ineligible).

Finally, the House leadership creates a new program of matching grants to states to fund things like Exchange subsidies, insurer bailouts, high-risk pools, and perhaps a "public option," even after Republicans spent years railing against many of these things. If states don't use the money, the federal Centers for Medicare & Medicaid Services can use the funds for insurer bailouts. The funding formula for this new grant program appears to reward high-cost states.

Taxes

The House bill zeroes out the individual and employer mandates and outright repeals all manner of ObamaCare taxes, including: the tax on over-the-counter medications; the additional 10-percent tax on non-medical HSA withdrawals; the limits on health flexible spending arrangement contributions; the medical device tax; the tax on poor and/or sick patients (the AGI threshold for the medical-expenses deduction reverts from 10 percent to 7.5 percent); the "Medicare" "payroll" tax; the net-investment tax; the tanning tax; the tax on insurance-executive compensation; the health-insurance tax; and the pharmaceutical-manufacturers tax.

In a pretty crass budget gimmick, the bill retains the "Cadillac tax" on high-cost health plans but delays its onset until 2025.

Swallowing the Republicans' Agenda

Republicans don't seem to have any concept of the quagmire they are about to enter with this bill.

ObamaCare's Exchanges are already on the brink of collapse. Since this bill does not repeal the community-rating price controls, repeals the individual mandate, shifts the benefits from ObamaCare's tax credits up the income scale, and tasks states with devising new bailout schemes of uncertain timing and efficacy, the threat of death spirals will remain. Even where the individual market does not collapse, the coverage will get increasingly worse for the sick. If the tax credits (read: subsidies) for low-income Americans are less than under ObamaCare, many more low-income patients will lose coverage. Premiums will continue to rise. Republicans will take the blame for all of it, because they will have failed to repeal ObamaCare, or learn its lessons, when they had the chance.

The leadership bill therefore creates the potential, if not the certainty, of a series of crises that Congress will need address, and that will crowd out other GOP priorities, in late 2017 before the 2018 plan year begins, and again leading up to the 2018 elections. If Congress gets health reform wrong on its first try, health reform could consume most of President Trump's first term. Pressure from Democrats, the media, and constituents could prevent Republicans from moving on to tax reform, infrastructure spending, or even Supreme Court nominees.

Partial Repeal Is the Road to Single Payer

Flubbing ObamaCare would at once united and embolden Democrats while dividing the GOP base, driving the former to the polls in 2018 and 2020 while causing the latter to stay home. If ObamaCare is not doing well, and Republicans take the blame, it will create the potential for the sort of wave election Democrats experienced in 2008, when they captured not just the House and the presidency, but a filibuster-proof, 60-vote supermajority in the Senate. If that happens, and ObamaCare is not doing well, Democrats will be less interested in rescuing ObamaCare than repealing and replacing it themselves—with a single-payer system.

ObamaCare opponents often muse that supporters designed the law to fail because it would give them the excuse to enact a single-payer system. Republicans have a choice. They can either prevent that future from unfolding, or they can help it along.

Conclusion

Widespread voter dissatisfaction with ObamaCare produced Republican gains in 2010 and 2014, and a GOP sweep in 2016. President Trump and congressional Republicans pledged full repeal of the law, and to replace it with free-market reforms. The parts of the country that stood the most to gain from ObamaCare swung the most to President Trump. That looks suspiciously like a mandate. The good kind.

If Republicans care about covering people with expensive medical conditions, they should stick to that promise. Making health care better, more affordable, and more secure requires first

repealing all of ObamaCare's regulations, mandates, subsidies, and taxes. Next, Congress should block-grant the Medicaid program, giving each state a fixed sum of money that does not change from year to year, combined with full flexibility to target those funds to the truly needy. (If states want to cover less-needy populations, like able-bodied adults, they can pay 100 percent of the marginal cost of that coverage.)

Finally, and crucially, Congress needs to enact reforms that make health care more affordable, rather than just subsidize unaffordable care. To make health insurance more affordable, Congress should free consumers and employers to purchase health insurance licensed by states other than their own. To drive down health care prices, Congress should expand existing tax-free health savings accounts into "large" HSAs. Large HSAs would be a larger effective tax cut than the Reagan and Bush tax cuts combined, adding $13,000 to the wages of a typical worker with family coverage. Large HSAs would drive down prices by making consumers cost-conscious at every margin, and would reduce the problem of preexisting conditions by freeing consumers to buy portable coverage that stays with them between jobs. Sen. Jeff Flake (R-AZ) and Rep. Dave Brat (R-VA) have introduced legislation to create Large HSAs.

The House Republican leadership bill does not replace ObamaCare. It merely applies a new coat of paint to a building that Republicans themselves have already condemned. Since the most important asset health reformers have is unified Republican opposition to ObamaCare, at least in theory, it would set the cause of affordable health care back a decade or more if Republicans end up coalescing around this bill and putting a Republican imprimatur on ObamaCare's core features. If this is the choice, it would be better if Congress simply did nothing.

But this can't be the only choice. Right?

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