



Inside The Latest GOP Thinking On How To Repeal Obamacare

Lauren Fox

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Most members of Congress might be home for the holidays, but the difficult GOP staff work of hammering out how to repeal Obamacare is underway on Capitol Hill.

And resistance is already building against what Republican leaders are beginning to plan, TPM has learned.

In multiple interviews with conservative and libertarian health care experts who have been meeting with GOP offices on Capitol Hill, there are two lines of thinking about how best to approach the Obamacare repeal.

The first line of thinking, which predominates among Senate Republicans and has been cited by both House and Senate members over the last few weeks, is that the easiest path to repealing Obamacare is to use the 2015 budget reconciliation model to gut the law. The bill would only need 51 votes to pass in the Senate and would scrap major chunks of Obamacare that Republicans have been campaigning against for seven years, including the individual and employer mandates, federal funding for Medicaid expansion and the Cadillac tax, which seeks to rein in high-end employer health plans.

"The one thing we know about the package last year was it cleared the parliamentarian and 51 Republicans who are currently here voted for it," Sen. Roy Blunt (R-MO), a member of Senate leadership, told reporters last week.

Senate Republicans are the key here because in order to pass the repeal bill at all they cannot afford to lose many members. They have to be able to have unity if repeal is going to work.

Robert Laszewski, a health care expert and author of Health Care Policy and Market Place Review, said that in conversations he's had he's gleaned that Senate Republicans want to pass the budget reconciliation resolution immediately, then the actual legislative work of repeal would go through the committees, with a repeal bill on President Trump's desk in about 10 weeks.

"It seems to me that Republicans have pretty much decided what they are going to do," Laszewski told TPM.

The second line of thinking on how to proceed is being pushed by outside conservative and libertarian health care policy experts who have recently spent time on the Hill. In interviews with TPM, they describe advising against a narrow budget reconciliation approach because it could be a political and policy disaster. Republican lawmakers have argued that Trump's pick for Secretary of Health and Human Services Tom Price (R-GA) might be able to smooth out the transition using administrative tools. That, they argue is malpractice.

"What they are planning to do is absolutely insane," Michael Cannon, the director of health policy studies at the Libertarian Cato Institute, told TPM.

What the health care policy experts consulting with GOP staff have been arguing is that repealing Obamacare's subsidies and individual mandate – but leaving market regulations that require insurers to cover people with pre-existing conditions (which the 2015 reconciliation model would do) – would have catastrophic effects for the insurance market. They aren't alone. Both the **Brookings Institution** and **Kaiser Family Foundation** have laid out how the repeal – even with a two- or three-year transition – could be devastating for the Obamacare exchanges.

"Passing it by itself is politically expedient, but would create a series of headaches very quickly for the Republicans," said Joshua Blackman, an **associate professor of law** at the South Texas College of Law in Houston and the author of several books about Obamacare, including his latest "Unraveled."

Instead, Cannon and some conservative health care policy experts are suggesting Republican lawmakers immediately repeal more of the law, including the individual mandate, the subsidies and the market reforms. The key hurdle for that approach is the Senate parliamentarian. Here's why.

By rule, reconciliation can only be used for budget-related matters. Many believe the Obamacare regulations have no direct effect on the budget (some conservatives and libertarian health care experts dispute this.) That is why the market reforms were left out of the 2015 repeal bill. The parliamentarian would, therefore, be expected to object to a broader repeal package using reconciliation. But Heritage Action and others have suggested Republicans could vote to override her with a simple majority vote, in essence changing the reconciliation rule.

"There is no question they can get at the regulations through reconciliation," Cannon said.

Blackman argues "it is the Senate Republicans, not the parliamentarian, who determine the fate of this law."

By repealing the entirety of the law, Blackman argues that Republicans will be in a far more flexible place to replace it with their own Republican ideas. The 2015 budget reconciliation package took away the individual mandate but left the requirement to insure people with pre-existing conditions. Blackman argues that isn't sustainable and it severely limits what alternatives

Republicans could explore. They'd be left still having to find a way to get healthy people to sign up for health care in order to cover the sick.

"If you simply take it all out now, parliamentarian be damned, you set yourself up for a much better replace later," Blackman said.

But the momentum in the Senate is that using the 2015 reconciliation blueprint as the model is good for two reasons. One, the 2015 bill has already passed the House and the Senate, and it was approved by the parliamentarian. That's critical. While budget reconciliation is a vastly powerful tool, it is restrictive. This way, Republicans know what they have is good to go. Starting from scratch could take a lot of time in the Senate.

The other reason the strategy is gaining momentum is that members are already on record supporting it. Mainstream health care policy experts warn Obamacare repeal could leave 20 to 30 million people uninsured even with a long transition, but Republican members who voted for the 2015 bill cannot easily back out of their vote now. On the other hand, making significant changes to the 2015 repeal bill could open the legislative process to extensive and protracted negotiations among Republicans over the details of repeal, and even give some GOP members an excuse to vote against repeal. Using the same repeal approach, as it was written, is the path of least resistance. Repealing bigger chunks of the bill by overriding the parliamentarian could also cause some key Republicans to peel off.

"Once you start opening up the door to changes, everyone is going to want their little change," one Republican aide said. "That kind of dynamic points to just going with the 2015 bill."