



Here's how Republicans plan to repeal Obamacare within weeks of Trump taking office

Philip Klein

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In the weeks following the presidential election, there's been some debate about whether Republicans would actually go through with repealing Obamacare as opposed to getting cold feet. But after a number of conversations with senior GOP leadership aides in both chambers of Congress, this is the message I've received: Republicans are moving full-speed ahead on Obamacare, and could have a bill repealing much of the law on President Trump's desk within weeks of him being sworn into office.

In my conversations with GOP Hill staffers in both chambers, I was actually a bit surprised at their certainty. The basic approach to repeal wasn't portrayed as something that they're still debating, but it was spoken about as something that is definitely going to happen, and as quickly as possible. "The commitment to repealing this thing is ironclad," one House leadership aide said.

As is always the case, there is the risk of roadblocks and delays arising when the House, Senate, and administration all have to agree on something. But here's how Congressional leadership expects the process to play out, if everything goes according to plan.

The new Congress will be sworn in on Jan. 3 and will immediately get to work on a mid-year budget resolution. The budget resolution would require just a simple majority, and because it's only a resolution, it doesn't require **President Obama's** signature. All that's necessary is for the House and Senate to pass the same resolution. As a result this part of the process could take place when Obama is still in office – and Republicans expect to have it finished by the end of their second week back, or around mid-January.

As an actual budget document, it won't have much meaning, as the federal government will already be in the midst of the 2017 fiscal year and spending levels have already been set through the appropriations process — so it's unlikely to be very contentious. Even though it won't have an effect on spending itself, it will be significant procedurally, because the document will be the vehicle for Republicans to include reconciliation language. That language will be necessary for Republicans to pass a repeal bill through the Senate with just a simple majority, thus avoiding any attempt by Democrats to block the bill.

However, because Obama will still have veto power until January 20, Republicans cannot actually pass a repeal bill before Trump is sworn in.

The plan, then, is to move quickly post-inauguration to pass legislation similar to the one they passed this past January, which was vetoed by Obama. That legislation repealed the law's major spending provisions – ending the Medicaid expansion and getting rid of the subsidies for individuals to purchase insurance on government-run exchanges. In addition, the repeal bill scrapped the individual and employer mandate penalties, eliminated the law's taxes, and defunded Planned Parenthood. If all goes smoothly, such a bill could reach Trump's desk in short order, as early as February – or weeks after Inauguration Day. Though it's possible that this could slip as certain details get ironed out, there is a determination, among leadership in both chambers, to move with speed.

Setting aside any modifications to the strategy that may be pushed by the Trump administration – always a possibility – the main areas of contention among Congressional Republicans are likely to concern how broadly the law is repealed, and when the repeal actually goes into effect.

As far as the scope, some conservatives are likely to push for the repeal bill to go further than it does. The repeal bill that was vetoed by Obama, which would have gutted Obamacare's taxes and much of its spending, did not fully repeal the law, including significant insurance market regulations. Traditionally, reconciliation has been used for provisions with a budgetary impact. Under the complex process, the Senate parliamentarian must determine all provisions that have a budgetary impact, or else those provisions could be struck down, forcing the bill to go all the way back to the House to be tweaked, thus delaying the process considerably.

Obamacare opponents including the conservative activist group Heritage Action, and Michael Cannon of the libertarian Cato Institute, have argued that it's possible to fully repeal the law through reconciliation – including all of the regulations. Options range from asking for the Congressional Budget Office to score the financial impact of regulations to the bolder option, which is to fire the parliamentarian and install a new one who interprets the rules in a way that would allow Republicans to use the maneuver to repeal the whole law.

But among the Senate leadership, there isn't much appetite for such moves. The thinking is that the previously passed reconciliation bill was already pored over by Senate staffers, who considered many different scenarios. What they ultimately came up with repealed much of the

law, had the votes, and passed muster with the parliamentarian. Upsetting this delicate balance by adding or subtracting major elements, the thinking goes, would delay the repeal process, potentially significantly.

The other issue that is likely to cause conflict is the length of the period between the time when the repeal bill is passed and when it goes into effect – i.e., when the federal government formally stops collecting the taxes and cuts off funding for the Medicaid expansion and the insurance subsidies. The temptation of waiting longer is that, in theory, it buys more time for Republicans to come up with an alternative before Obamacare's enrollees start losing their benefits, thus avoiding an endless stream of negative headlines. The downside is that delaying it too long makes conservatives start to worry if repeal is ever actually going to take effect, and in addition, Republicans' power could diminish after the 2018 elections. These tradeoffs will continue to be debated among policy aides on the Hill throughout the repeal process.

Many health care experts across the ideological divide have raised potential problems with the "repeal and delay" tactic. Most notably, insurers are currently losing money in Obamacare, and contemplating whether to continue participating. But if they know that the subsidies for people to purchase insurance are going to disappear, there's no reason to stick around. Speeding up the exodus of insurers from Obamacare would mean more people would see their coverage disrupted, likely generating a fierce political backlash as Republicans get blamed for the disintegration of the market.

Republicans I spoke to were dismissive of this criticism. Were such a market collapse to occur, they would argue that Obamacare is really the culprit. That is, under the Obamacare status quo, the individual market is already collapsing. Insurers cannot attract enough young and healthy people to offset the cost of covering older and sicker enrollees, they are losing billions of dollars, and they are rapidly exiting markets, leaving Americans with higher premiums and fewer choices. Left to its own devices, Obamacare as we know it won't survive – and repeal is the first step in fixing the problem, they argue.

One senior Senate leadership aide cited Secretary of Health and Human Services Sylvia Mathews Burwell's description of Obamacare as being like the game of Jenga, as she put it, "if you pull a piece out, you can make the thing tumble." The aide noted that such a statement merely displays the fragility of Obamacare.

Regardless of what happened in the election, one policy aide for House leadership said, the law was already falling apart. "You were looking at exchanges collapsing," the aide said, adding, "There was a lot of work that needed to be done regardless of the actions that were going to happen in the next Congress. Now we view this as stepping into the breach and stopping the pain, frankly, that people are about to experience."

Another issue with a reconciliation bill that wouldn't repeal Obamacare in its entirety is that it would leave in place regulations that could still wreak havoc with the insurance market. One

particularly costly regulation is known as community rating, which says that, among other things, insurers can't charge older Americans more than three times as much for insurance than they charge younger Americans. Though in theory this works out well for those who are older, it also makes insurance much more costly for younger Americans – to the point at which they are having trouble justifying purchasing it, despite the mandate to do so. Keeping this regulation in place while repealing the mandate would exacerbate problems in the individual market.

Republicans I spoke with say that such regulatory changes could be tweaked by HHS, as well as handled in subsequent replacement legislation.

When it comes to "replace," Republicans tell me that people need to disabuse themselves of the idea that "replace" means that there will necessarily be one large "replacement" bill. Instead, replacement is going to happen over time through the regulatory process and legislative changes that could be enacted in a series of shorter bills. This is consistent, I might add, with what Republicans have been telling me for years.

Republicans have long thought that one of the drivers of Obamacare's unpopularity has been that it was a massive, complicated bill, that was shoved into law on a partisan basis without people understanding what was in it. Back in 2012, when I **prodded** Rep. Paul Ryan about replacing Obamacare (as a **Supreme Court** ruling loomed), he told me, "I don't think it's a good idea to put out some big bill, thump it on the table, that's thousands of pages, and then try ramming it through. That's precisely the process that angered the country so much." Though Ryan is going to let the replace process play out at the committee level, and that could result in a larger bill, this is clearly motivating his thinking, and Senate leadership seems to be in a similar place.

As one senior Senate leadership aide told me, "Replace starts the moment that Tom Price is sworn in as Secretary of Health and Human Services." The text of Obamacare gives the HHS Secretary vast power to interpret and implement the law. During the Obama administration, regulatory workarounds have been used to prop up Obamacare, and bureaucrats have picked and chosen which parts of the law to implement (for instance, the employer mandate was delayed and modified without Congress). Republicans now believe that Price, who in the House has been an outspoken critic of Obamacare, will be in a position to turn the tables, using regulatory power to eliminate remaining portions of Obamacare and to start making changes to move the healthcare system in a more market-oriented direction.

Meanwhile, Republicans will work to enact legislative changes that replace aspects of Obamacare — for instance, one bill could theoretically be passed to address individuals with pre-existing conditions.

One problem Republicans are likely to encounter is that any replacement bills not handled through the reconciliation process would require 60 votes, meaning they'd need support of eight

Democrats based on the size of the incoming Republican majority. Republicans say that Democrats would be under pressure to join with them, or risk being blamed for not solving problems with the healthcare system. They dismiss talk by Senate Minority Leader Chuck Schumer, **who told** the Washington Post's Greg Sargent recently, "If they repeal without a replacement, they will own it. Democrats will not then step up to the plate and come up with a half-baked solution that we will partially own. It's all theirs."

Though the debate over the scope and timing of repeal is likely to get passionate, the temptation to quickly get a bill into law that repeals the major tax and spending provisions of Obamacare along with its mandate penalties, may be too great for Republicans to resist, making it easier than usual for them to overcome their differences and swiftly pass repeal, leaving the more difficult task of "replace" until after.