Republican ACA Repeal Bill Would Unravel the Market Even Before It Goes into Effect

By Topher Spiro and Thomas Huelskoetter November 2016

Last year, both the Senate and House of Representatives passed a bill to repeal major parts of the Affordable Care Act, or ACA; the bill was subsequently vetoed by President Barack Obama.[1] Unlike previous repeal attempts, this bill was able to reach the president's desk thanks to the budget reconciliation process, which allowed it to bypass a Senate filibuster.

Since a reconciliation bill does not require 60 votes in the Senate, it may represent the most likely vehicle for congressional Republicans and President-elect Donald Trump to repeal the ACA. Although it would not include a replacement for the ACA, Republicans may argue that delaying the date at which key provisions kick in would provide enough time for a smooth transition.

This is a fallacy. Even with a delayed effective date, the reconciliation bill approach would cause massive disruption and chaos in the individual market for health insurance. The complete unraveling of the market would occur by the end of 2017.

Even the prospect of repeal is already causing some ACA enrollees to consider leaving the market and abruptly changing their lives. For instance, Vox reported the story of a mother with a newborn who is changing her job search to prioritize employers that provide health insurance. The prospect of repeal is also causing fear and uncertainty. Paige Wilson, a college student with bipolar disorder, enrolled in the ACA's Medicaid expansion. "My life has turned around with the Medicaid expansion, and that was not even a year ago," she told Vox. "And now it's already about to be snatched away from me." James Schulman and his wife were able to start a marketing company because of the ACA. He has asthma, and she needs treatment related to her past experience with cervical cancer. Although they are facing steep premium increases, what worries them is having no coverage at all. Schulman told Vox, "I'm absolutely terrified."[2]

This is not abstract. Under Congress' repeal strategy, which would not simultaneously enact a replacement plan, many Americans are already living in fear.

What would be repealed

Last year's reconciliation bill would have repealed major provisions of the ACA. However, the use of the reconciliation approach meant that only budget-related measures could be included. As a result, the bill would not have repealed every provision of the ACA.

Most importantly, it would have rolled back the ACA's coverage by repealing Medicaid expansion and the premium tax credits that help eligible marketplace enrollees afford health insurance. In addition, it would have repealed the penalties associated with the individual mandate and the employer mandate.

However, some elements of the ACA were not included and likely cannot be included given the limits of the reconciliation framework. These include many of the ACA's consumer protections and insurance market reforms, such as the ban on discrimination based on pre-existing conditions and coverage for dependents up to age 26. As such, President-elect Trump's recent statement that he would be open to keeping these provisions rings hollow as it is not a change from the congressional Republicans' position.[3]

The problem of adverse selection—the death spiral

If these consumer protections remain without the premium tax credits or individual mandate penalties, it would cause chaos and spiraling costs in what is left of the individual market for health insurance.

In the ACA, these elements are paired together to prevent adverse selection, a scenario in which less-healthy people enroll in coverage while healthier people do not enroll until they become sick and need care. Because health insurance works by pooling risk, a less healthy population of enrollees leads to higher premiums, which further encourages healthier people to drop coverage—a vicious cycle called a death spiral.

Since the ACA requires insurers to offer coverage to anyone without discriminating based on health status, the premium tax credits and insurer mandate are essential carrots and sticks to ensure broad participation so that these essential consumer protections do not result in an unbalanced risk pool. This is not merely a hypothetical concern: Prior to the ACA, a number of states—such as New Jersey, New York, and Kentucky—attempted to enact insurance market reforms without the other half of the equation, resulting in adverse selection and skyrocketing premiums in the individual market.[4]

As the Congressional Budget Office, or CBO, and the Joint Committee on Taxation, or JCT, projected in their economic analysis of the 2015 reconciliation bill:

> *Repealing the subsidies and mandate penalties established by the ACA while leaving in place the insurance market reforms would result in a less healthy population in the nongroup market and correspondingly higher average premiums. In addition, the market for nongroup insurance, particularly in smaller states, could become unstable, leading to very low to no participation by insurers and consumers.*[5]

In other words, the reconciliation bill would lead to a death spiral of rising premiums and declining enrollment in the individual market.

Who would be affected

The 2015 reconciliation bill did not include any replacement for the ACA's coverage expansion. As a result, the CBO estimated that it would increase the number of uninsured Americans by 22 million after 2017.[6] This estimate includes loss of coverage due to repeal of the Medicaid expansion and premium tax credits, but it does not include further loss of coverage due to the death spiral.

Media reports since the election have painted a stark portrait of the human cost of repeal. Sarah Kliff of Vox interviewed a number of current enrollees who are "terrified" at the prospect of no longer having insurance and who are already making contingency plans in their lives.[7] For instance, one enrollee is racing to complete her breast cancer treatment before the ACA is repealed and considering putting off her plans to go back to school as a result.[8] Another, a small-business owner, is grappling with whether he can afford to hire a new employee as planned.[9]

Furthermore, repeal would have significant negative financial effects on health care providers, including hospitals. For example, many hospitals would face higher costs for uncompensated care, since some of their patients would now be uninsured and unable to pay the full rates paid by insurers. Although government funding offsets much of uncompensated care costs, a sizable portion would still be borne by providers. One analysis by the Urban Institute estimated that the share of uncompensated care costs borne by providers would more than double—from $21 billion to $44 billion—after a full repeal of the ACA.[10] Providers could shift these costs onto private health insurance, potentially increasing costs for the privately insured.

Over the long run, repeal of the Affordable Care Act's cost-control tools would also increase costs for all insured individuals. These tools include:

- The Center for Medicare and Medicaid Innovation, which tests and expands payment reforms that reduce costs while improving or maintaining the quality of care

- The Independent Payment Advisory Board, which provides authority to reduce Medicare spending without cutting benefits—for instance, Medicare could use this authority to negotiate prices for prescription drugs

Although the reconciliation repeal bill could not repeal these tools because doing so would increase budget deficits over time, Republicans have made clear their intention to put them on the chopping block in other legislation.

Even with a delay, repeal would unravel the market

The incoming administration and congressional Republicans have indicated that they would include a transition period when repealing the ACA.[11] For example, in the 2015 reconciliation bill, the repeal of the premium tax credits and Medicaid expansion would have taken effect two years after enactment.

Yet this ignores the business decisions that marketplace insurers have to make now. Given how far in advance insurance premium rates must be prepared, a delayed date or transition period would still cause massive chaos and disruption in the individual market. Insurers are already, or soon will be, in the process of preparing their rate proposals for 2018. Last week, the federal government notified insurers that the proposed deadline for initial rate filings for 2018 would be May 3, 2017.[12]

If there is not certainty before then about the state of the marketplaces in 2018, then few—if any—insurers would be willing to offer coverage in 2018 since their participation would carry the risk of significant financial losses for the year. And if a reconciliation repeal bill does pass and it becomes clear that the marketplaces soon will no longer exist, then healthier consumers would be less likely to enroll or re-enroll in coverage, leaving the marketplace with a less healthy, more expensive risk pool. Knowing this, many insurers would cut their losses and exit the marketplace after 2017.

Given the premium rate filing timeline, President-elect Trump would have to take the reconciliation approach off the table by May 3 of next year. If by that time the fate of the ACA is still in limbo, then few insurers are likely to take the risk amid such uncertainty. The result of the reconciliation approach would be massive disruption in the individual market as insurers exit and stop offering coverage after 2017.

Conclusion

After six years of nonstop attacks and deliberate political sabotage of the functioning of the Affordable Care Act, the ACA's critics have finally achieved the power to repeal the law. But repeal by reconciliation would be disastrous for the health and financial security of millions of Americans and would unravel historic progress toward the important goal of universal coverage. It would do so much sooner than congressional Republicans expect and well before any replacement plan is in place.

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Endnotes

1 *To provide for reconciliation pursuant to section 2002 of the concurrent resolution on the budget for fiscal year 2016*, H.R. 3762, 114 Cong. 1 sess. (Government Printing Office, 2015), available at https://www.congress.gov/bill/114th-congress/house-bill/3762.

2 Sarah Kliff, "'The first thing I thought about was health care': Trump's victory through the eyes of Obamacare enrollees," Vox, November 11, 2016, available at http://www.vox.com/2016/11/11/13592178/obamacare-trump-repeal-patients.

3 Monica Langley and Gerard Baker, "Donald Trump, in Exclusive Interview, Tells WSJ He Is Willing to Keep Parts of Obama Health Law," *The Wall Street Journal*, November 11, 2016, available at http://www.wsj.com/articles/donald-trump-willing-to-keep-parts-of-health-law-1478895339.

4 Neera Tanden and Topher Spiro, "The Case for the Individual Mandate in Health Reform" (Washington: Center for American Progress, 2012), available at https://cdn.americanprogress.org/wp-content/uploads/issues/2012/02/pdf/individual_mandate.pdf.

5 Letter from Keith Hall to Sen. Mike Enzi, December 11, 2015, available at https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/hr3762senatepassed.pdf.

6 Ibid.

7 Kliff, "'The first thing I thought about was health care.'"

8 Sarah Kliff, "Will Obamacare be repealed? Replaced? Amended? We have lots of clues, but they all point in different directions," Vox, November 14, 2016, available at http://www.vox.com/2016/11/14/13608516/trump-obamacare-plan-repeal.

9 Kliff, "'The first thing I thought about was health care.'"

10 Matthew Buettgens and others, "The Cost of ACA Repeal" (Washington: Robert Wood Johnson Foundation and Urban Institute, 2016), available at http://www.rwjf.org/content/dam/farm/reports/issue_briefs/2016/rwjf429806.

11 Jennifer Haberkorn, "Trump victory puts Obamacare dismantling within reach," Politico, November 9, 2016, available at http://www.politico.com/story/2016/11/trump-victory-obamacare-risk-231090.

12 Centers for Medicare and Medicaid Services, "Draft Bulletin: Timing of Submission and Posting of Rate Filing Justifications for the 2017 Filing Year" (2016), available at https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/RR-timeline-bulletin-proposed-final-11-9-16.pdf.