

Obamacare Repeal and Replace – In the Heat of the Night Now You See it, Now You Don't

In one of the more dramatic series of events in healthcare reform, attempts by the U.S. Senate to *repeal* and *replace* the 2010 *Patient Protection and Affordable Care Act* (ACA), a/k/a Obamacare, have failed after the most recent U.S. Senate bill, a so-called “*skinny repeal*” of the ACA, was rejected at approximately 2:00 a.m. on July 28, 2017, after approximately 20 hours of negotiations and debate on the Senate floor.¹ The bill was voted down 49-51 when every Democratic senator and three (3) Republican senators, John McCain (R-AZ), Susan Collins (R-ME), and Lisa Murkowski (R-AZ) cast “no” votes.² Rejection of this version of the bill follows the dismissal of a more comprehensive “*repeal and replace*” version of the bill, as well as a “*repeal only*” version of the bill.³ The failure to pass any one of these versions of a “*repeal and replace*” bill is likely to be a major setback for GOP healthcare reform efforts.⁴ This *Health Capital Topics* article reviews: the policy proposals included within each version of the Senate bill; the nonpartisan *Congressional Budget Office’s* (CBO) scoring of these proposals; past milestones related to Obamacare “*repeal and replace*” actions in the U.S. House of Representatives; and, the response by lawmakers and industry stakeholders to each version of the Senate bill.

The Better Care Reconciliation Act (BCRA)

Subsequent to the May 4, 2017 passage of the *American Health Care Act* (AHCA) in the House, the Senate introduced a comprehensive “*repeal and replace*” bill, entitled the *Better Care Reconciliation Act* (BCRA), which original version was subsequently revised. Both the original and revised versions of BCRA *repealed* several provisions of the ACA, including:⁵

- (1) Financial penalties associated with the *Individual Mandate*⁶ – the ACA currently requires most Americans to have health insurance coverage, or pay a tax penalty.⁷ Under the new bill, individuals who have not been continuously covered would need to wait six months before purchasing a new insurance plan;⁸
- (2) Taxes used to fund the ACA, such as those for medications, medical devices, health insurance, and indoor tanning; and,⁹
- (3) Cost-sharing subsidies, such as deductible and copays, for individuals between 100 percent and 400 percent of the *federal poverty line* (FPL).¹⁰

Additionally, both the original and the revised versions of BCRA *replaced* several provisions of the ACA, including:

- (1) Medicaid, such that the current funding structure under the ACA would be replaced with *block grant* funding, or a fixed amount of money allocated to each state every year.¹¹ The amount of funding granted each year would increase annually by the percentage increase in the *consumer price index* (inflation rate).¹² This rate is lower than the rate presented in the House bill, meaning there would be a significant reduction in federal Medicaid funding;¹³
- (2) Tax credits for insurance premiums, such that those up to 350 percent of the FPL would be eligible for premium subsidies, instead of those up to 400 percent of the FPL under the ACA;¹⁴
- (3) Changes to the allotted *adjusted community rating* ratio, such that insurers could charge the oldest group of enrollees five (5) times more for insurance premiums than the youngest group of enrollees.¹⁵ Under the ACA, insurers can only charge the oldest group three (3) times more than the youngest group for insurance premiums; and,¹⁶
- (4) *Health savings accounts* (HSA), such that individuals could contribute more than is currently allotted under the ACA.¹⁷

The revised version of BCRA included new amendments, including:

- (1) The allotment of \$45 billion to states to combat the opioid epidemic, which is an increase from the \$2 billion amount for one year, in the original version of BCRA; and,¹⁸
- (2) An amendment introduced by Senators Ted Cruz (R-TX) and Mike Lee (R-UT) allowing insurers to offer lower-cost, “*bare-bone*”¹⁹ insurance plans as long as insurers offer at least one plan that qualifies under the ACA.²⁰

In the CBO’s June 26th scoring of the original version of BCRA, it was estimated that 22 million more individuals would become uninsured by 2026 than currently uninsured under the ACA, approximately 2 million fewer than the estimates related to the House bill.²¹ This was largely attributed to Medicaid spending cuts of up to \$772 billion between 2017 and 2026, lower subsidies for

coverage in the individual marketplaces, and the revocation of insurance mandates and penalties.²² Average premiums in the individual market place were to increase by approximately 20 percent in 2018, but decrease by 30 percent by 2020.²³ Overall, the original draft of BCRA was expected to reduce the federal deficit by \$321 billion between 2017 and 2026, mainly due to the above-mentioned reduction in Medicaid spending and subsidy allocation for individual marketplace insurance.²⁴

The “Repeal Only” Version of the Senate Bill

In an attempt to keep the Senate bill alive, the *Obamacare Repeal Reconciliation Act*, was then introduced to the Senate floor debate, in which the ACA would be repealed, and lawmakers would have a two-year window in which to pass a replacement law.²⁵ Although Majority Leader Mitch McConnell resisted separation of the “repeal” and the “replace” provisions within BCRA, President Donald Trump, as well as many conservative Republican senators, supported this measure, with President Trump affirming, “Republicans should just REPEAL the failing ObamaCare now [and] work on a new Healthcare Plan that will start from a clean slate.”²⁶ According to the CBO’s July 19th scoring of the “repeal only” Senate bill, it was estimated that the federal deficit would be reduced by \$473 billion between 2017 and 2026, which is \$152 billion more than the estimated reductions resulting from the original version of BCRA.²⁷ However, under this “repeal only” bill, 32 million more individuals would become uninsured by 2026 than currently uninsured under the ACA (10 million more than the estimates under BCRA).²⁸

The Senate “Skinny” Bill

The “skinny” version of the Senate bill, formally titled the *Health Care Freedom Act*, which was introduced and subsequently voted down on July 28th, repealed and replaced several provisions of the ACA, including:²⁹

- (1) The repeal of financial penalties associated with the *Individual Mandate* – The ACA currently requires most Americans to have health insurance coverage, or pay a tax penalty.³⁰ Under the “skinny” bill, individuals who were not continuously covered would have not faced any financial penalties for an indefinite amount of time;³¹
- (2) The repeal of the employer mandate, such that employers with 50 or more employees would have not had to provide affordable insurance for at least of eight (8) years;³²
- (3) The repeal of taxes for medical devices, such that taxes for medical device manufacturers would have been suspended for three (3) years;³³
- (4) Revisions to the maximum contribution limits of *health savings accounts*, such that contributions to these funds for deductibles and *out-of-pocket* (OOP) expenditures would have increased from \$2,250 to \$4,500 for three (3) years;³⁴

- (5) The revocation of funding for *Planned Parenthood* and similar providers.³⁵ The funding would have instead been allocated to *community health centers*;³⁶ and,
- (6) The authorization for states to waive certain provisions of the ACA, including *essential health benefits* and annual and lifetime coverage limits.³⁷

In the CBO’s July 26th scoring of the “skinny” bill, it was estimated that the federal deficit would have decreased by about \$142 billion, but increased the number of uninsured individuals to 16 million by 2026.³⁸ Furthermore, the bill would have increased health insurance premiums by 20 percent.³⁹ These projected increases in uninsured Americans and OOP expenditures raised concerns from several trade associations, including the *Blue Cross Blue Shield Association* (BCBS) and *America’s Health Insurance Plans* (AHIP).⁴⁰ BCBS issued a statement warning against the repeal of the individual mandate, stating, “A system that allows people to purchase coverage only when they need it drives up costs for everyone.”⁴¹ AHIP reiterated this statement by explaining, “Targeted proposals that would eliminate key elements of current law without new stabilizing solutions...will not solve the problems in the individual market and, in fact, will result in higher premiums, fewer choices for consumers and fewer people covered next year.”⁴²

History of GOP Repeal & Replace Efforts in the House

On May 4, 2017, the U.S. House of Representatives passed their version of “repeal and replace,” the *American Health Care Act* (AHCA), 217-213 (see the May 2017 *Health Capital Topics* article entitled “House Votes to Repeal & Replace Obamacare” for further details).⁴³ Introduced on March 6th, the original draft of the House bill had little support, with all Democrats and many Republican congressmen and women opposing the bill, and was pulled from a scheduled floor vote on March 24th.⁴⁴ While moderate House Republicans voiced concern regarding the extent of coverage losses, conservative Republican members of the *House Freedom Caucus*⁴⁵ argued for less regulation than what is currently mandated under the ACA.⁴⁶ To pass the AHCA, Republican House leaders amassed support from more conservative Republican members by strategically revising the bill to cater to their demands, eventually leading to a (slim) majority vote in favor of the revised bill.⁴⁷

History of GOP Repeal & Replace Efforts in the Senate

The AHCA then moved to the Senate, where it underwent several significant revisions and faced numerous challenges, including maneuvering around *reconciliation* and Byrd rules.⁴⁸ Under these rules, Senate Republicans could only pass the bill with a simple majority (i.e., 51 votes) if it primarily focused on decreasing the U.S. deficit, potentially interfering with any Republican attempts to make broader health policy changes that would not decrease the deficit.⁴⁹ Furthermore, Senate bills consistently struggled to gain support from at least

50 senators, the requisite threshold to pass the bill.⁵⁰ After BCRA was introduced for the first time, Senators from both parties, including conservative and moderate Republicans, voiced discontent, albeit for different reasons. Senate Minority Leader Chuck Schumer (D-NY) harshly criticized the plan, stating, *“The Senate Republican [healthcare] bill is a wolf in sheep’s clothing. Only this wolf has sharper teeth than the House bill.”*⁵¹ On the other side of the aisle, four (4) conservative Republican senators – Rand Paul (R-KY), Ron Johnson (R-WI), Ted Cruz (R-TX), and Mike Lee (R-UT) – released a joint statement explaining their dissatisfaction with BCRA:

*“Currently for a variety of reasons, we are not ready to vote for this bill, but we are open to negotiation and obtaining more information before it is brought to the floor...There are provisions in this draft that represent an improvement to our current health care system, but it does not appear this draft as written will accomplish the most important promise that we made to Americans: to repeal Obamacare and lower their health care costs.”*⁵²

Moderate Republican senators, such as Senators Collins, Murkowski, Rob Portman (R-OH), and Shelley Moore Capito (R-WV), voiced their misgivings, with Senator Capito articulating, *“As drafted, this bill will not ensure access to affordable healthcare in West Virginia, does not do enough to combat the opioid epidemic that is devastating my state, cuts traditional Medicaid too deeply, and harms rural healthcare providers.”*⁵³ While conservative Republicans advocated for the dismantling of coverage mandates and higher limits on tax exemptions for HSAs, moderate Republicans supported more generous tax credits for the working class and a longer phase-out period for Medicaid spending cuts.⁵⁴

As a response to these criticisms, two notable supporters of BCRA, Senator McConnell and Seema Verma, Administrator of the *Centers for Medicare and Medicaid Services* (CMS), engaged in backroom negotiations with undecided Republican senators.⁵⁵ Several revisions were made to BCRA, including increased funding for opioid addiction treatment and the addition of an amendment introduced by Senators Cruz and Lee allowing for *“bare bone”* insurance plans.⁵⁶ After the revisions were made, Cruz announced that he would vote *“yes”* in a motion to proceed with BCRA; however, several senators were still in opposition of the revised version of BCRA, including Senators Paul and Collins.⁵⁷ Senator Collins was specifically opposed to the deep Medicaid funding cuts, stating:

“We should not be making fundamental changes in a vital safety net program that’s been on the books for 50 years, the Medicaid program, without

*having a single hearing to evaluate what the consequences are going to be.”*⁵⁸

Additionally, Senator Paul expressed concern that the revised version of BCRA retained too many of the ACA’s provisions, stating that the bill, *“keeps the insurance mandates that cause the prices to rise, which chase young, healthy people out of the marketplace, and leads to what people call adverse selection, where you have a sicker and sicker insurance pool and the premiums keep rising through the roof.”*⁵⁹

Despite opposition from Republican senators, a procedural vote to continue debate over the healthcare bill was approved on July 25th.⁶⁰ However, shortly after the motion to proceed was approved, the Senate Republican’s most comprehensive *“repeal and replace”* bill was rejected 43-57.⁶¹ Furthermore, the *“repeal only”* version of the bill was rejected 45-55.⁶² It was then that a narrow version of the *“repeal only”* bill, nicknamed the *“skinny”* bill, was introduced to the debate. On July 26th, five Republican governors and five Democratic governors sent a letter to Senator McConnell, and Senate Minority Leader Chuck Schumer, urging the Senate to vote *“no”* on the *“skinny”* bill,⁶³ which bill was ultimately rejected late on July 28th, 49-51, when every Democratic senator and three (3) Republican senators, John McCain (R-AZ), Susan Collins (R-ME), and Lisa Murkowski (R-AZ) casted *“no”* votes, obstructing the latest Republican attempt to dismantle the ACA.⁶⁴

The next steps related to the Republican Obamacare *“repeal and replace”* efforts are currently unknown, although President Trump has threatened to revoke (1) cost-sharing reductions to health insurance companies; and, (2) healthcare benefits to *“lawmakers,”* if Republicans do not continue their efforts to undermine Obamacare.⁶⁵ Despite the President’s threats, as of the time of publication, lawmakers have responded in one of three ways: (1) some lawmakers have signaled their intention to abandon their efforts on healthcare for now; (2) some Senators have suggested that they want to resume their attempts to *“repeal and replace”* Obamacare after the August recess, utilizing one of the several other proposals drafted by Republican senators; and, (3) some Senators have proposed working with Democrats to make changes to the ACA.⁶⁶ The public has indicated, in numerous polls, their preference that Congress abandon their efforts. As of July 14th, the Kaiser Health Tracking Poll found that 61 percent of the population *“continue to hold unfavorable views of the plan to repeal and replace”* the ACA, and over 70 percent of people would prefer that Republicans and Democrats work together to tweak the ACA.⁶⁷ Failure to pass any sort of healthcare reform in the Senate under reconciliation rules may also foreshadow challenges for the GOP’s future policy initiatives, such as tax reform.⁶⁸

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