Republicans in Congress have attempted to repeal the Affordable Care Act (ACA) over 60 times since 2010, but always with the safety net of knowing President Obama would veto the repeal. Now, with a GOP-controlled House of Representatives and Senate and a Republican President-elect who campaigned on repealing “Obamacare,” the potential for undoing the ACA just got real. And so did the follow-up question—what comes next?

First Things First

When people say “repeal,” they usually aren’t referring to eliminating all 900 or so pages of the legislation, but rather the more controversial parts of the ACA, like the individual and employer mandates, the health insurance marketplaces, and Medicaid expansion. Parliamentary rules, which will be discussed below, are a big reason the entire law cannot be repealed at once, but remember that the ACA contains lots of provisions and many that are popular:

<table>
<thead>
<tr>
<th>Examples of ACA Provisions</th>
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<tbody>
<tr>
<td>Part D Coverage Gap Discounts</td>
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<td>Medical Device Annual Fee</td>
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<td>Biosimilars Approval Pathway</td>
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<td>Health Insurance Marketplaces (Exchanges)</td>
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<td>Subsidies for premiums and coverage</td>
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<td>Center for Medicare and Medicaid Innovation</td>
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<td>Independent Payment Advisory Board</td>
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<td>Prohibiting pre-existing condition exclusions</td>
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And, no matter how much he’d like to, President-elect Donald Trump cannot repeal the ACA with the “stroke of a pen”—he will need legislation from Congress.

Budget Reconciliation/How This Repeal Thing Could Work

While it is unlikely that Congress could introduce, pass, and get a repeal measure on the President’s desk on Inauguration Day (January 20), it does appear that Republicans will move quickly.

Although Republicans hold majorities in both chambers of Congress, the 52-48 majority they have in the Senate is not enough to pass most bills without bipartisan support; Democrats can filibuster any bill and doom it to purgatory. (Filibuster = Senate rules currently require 60 votes to cut off debate before the Senate votes.) Without a super majority of 60 votes or more in the Senate, Republicans have another path forward—budget reconciliation.

Budget reconciliation is a congressional procedure allowing for expedited consideration of changes in law directly related to federal spending. Reconciliation bills only require a simple majority (51) to pass, and the scope of amendments is limited.

“We will move right after the first of the year on an Obamacare repeal resolution.”

Senate Majority Leader
Mitch McConnell (R-KY)
Repeal Parts of It (And Then What?)

Repeal through budget reconciliation could be the easy part; the open question is what comes next? After all, Republicans have acknowledged they don’t want tens of millions of Americans to suddenly be without health insurance—they would rather those individuals be insured under mechanisms that are not prohibitively expensive and inflexibly restrictive. Additionally, withdrawing health insurance would be incredibly unpopular and would challenge their re-election chances during the mid-term elections in 2018.

President-elect Trump has indicated that he sees a glide-path approach with one type of coverage ending and the new replacement option starting. There is no question that something will have to eventually come in to replace the elements that would be removed through repeal; otherwise, the government would have to raise new taxes, dramatically cut spending, or increase the deficit. As we know, there is no such thing as a free lunch, and any replacement will need to be balanced by “offsets” or paid for by other changes to taxes or mandatory spending that reduce deficits by an equivalent amount (thanks to the 2010 Statutory Pay-As-You-Go [PAYGO] Act).

The current marketplace is already precarious; adding to that uncertainty could tip the system into a death spiral of risk avoidance and premium increases. While potentially inflated, the Urban Institute has some dire warnings about what could happen to insurance coverage if reconciliation goes through.
Options on the Table for Replacement

Over the past 6 years, Republicans have proposed numerous ACA replacement concepts. House Speaker Paul Ryan (R-WI) spent several years crafting "A Better Way," a policy framework encompassing healthcare, tax and entitlement reform, and other issues. Rep. Tom Price (R-GA), nominated to be Secretary of Health and Human Services, sponsored Empowering Patients First Act (H.R. 2300), a bill that repeals the ACA and replaces it with "patient-centered solutions."

Getting either of these approaches into law would mean garnering enough Democrat support in the Senate to avoid a filibuster, but they could also get caught in Republican ideological crossfire in the House. The balance of courting a sufficient number of Democrats to reach a supermajority the old-fashioned way—by compromising and including Democratic-friendly elements while not losing Republicans—will be difficult. Not to mention that the Congressional Budget Office and Joint Committee on Taxation have already warned that coverage will have to protect adequately against catastrophic medical events to count as coverage. All of this leads to the idea that “Repeal and Replace” is really "Repeal and Delay."

Realistically, changing a social program as large as the ACA will take time. First, the political process is going to require bipartisanship—not an easy path during a time of such vast political division. And Washington is most efficient against a deadline, and there is none right now. The motto seems to be, "Why do something today if you can do it 6 months from now?"

But even once the ACA passed in 2010, and some provisions were effective immediately, the exchanges didn’t start until 2014. It takes time to promulgate rules and guidance and set up systems. The exchanges appear likely to remain for 2017 and 2018 but after that, we face a bit of the unknown. It is doubtful insurers would be able to craft health packages without studying the new regulations for several months. Therefore, it may not be until 2019 before the next healthcare reform is available, when a new Congress is elected, potentially complicating matters more.

It looks like the next 6 to 12 months are likely to be as unpredictable as the last 12 months. But consider yourself caught up and ready to face the questions that come your way; and have no worries—we’ll be watching Congress and the incoming Administration take on the role of contortionists.

What would a bipartisan ACA replacement look like? To be sure, it will likely feature provisions popular with Republicans, such as:

- Greater availability of health savings accounts (HSAs) and replace subsidies with contributions to HSAs
- More Medicaid authority granted to the states (block grants)
- Medical malpractice reform
- Portable healthcare
- Removal and/or reduction of the essential health benefits
- Larger cost differential between age bands
- Allow lower actuarial value plans
- Limit medical loss ratio restrictions

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