

Fixes, not repeals, more typical for major legislation like Obamacare

January 20 2017, by John Mcdonough

The Affordable Care Act (ACA), also known as Obamacare, came closer to repeal as the U.S. Senate and House [last week](#) passed a "budget reconciliation" order to launch a formal legislative process that may lead to substantial repeal. Or maybe not.

The stakes could hardly be higher for 22-30 million Americans at risk of losing [health insurance](#), plus tens of millions more at risk of losing key health benefits. Also, the nonpartisan Congressional Budget Office on Monday said that [18 million people](#) would lose insurance in 2018 and 32 million by 2016 and that premiums could double if the law is repealed.

I'm a professor of public health who worked in the U.S. Senate on the enactment of the ACA and has written a book on the passage of the ACA. From my perspective, this attempt at repealing the ACA is without precedent, unlike other landmark social policy acts that have been passed in the 20th century. It's also clear that the president-elect does not realize how challenging the plan to "repeal and replace" the ACA will be.

A fast-track race to repeal

[Budget reconciliation](#) is a fast-track legislative process that allows certain bills – containing only federal budget-related provisions – to win passage in the Senate with only 51 rather than 60 votes. With all 48 Senate Democrats opposing repeal, reconciliation is how Republicans

aim to repeal key parts of the ACA as rapidly as possible. Republicans hope to move a reconciliation bill in [February or March](#) to achieve de facto ACA repeal.

But reconciliation can only facilitate repeal, not create a replacement. And [U.S. public opinion](#) strongly opposes ACA repeal without meaningful replacement. President-elect Donald Trump, Senate Majority Leader Mitch McConnell (R-KY) and House Speaker Paul Ryan (R-WI) have promised that a replacement plan will not leave millions without coverage – though without articulating any clear plan to achieve that. Any [replacement bill](#) will need at least 60 votes in the Senate to advance, a tall order.

After Trump's surprising White House win on Nov. 8, Republican congressional leaders quickly advanced a ["repeal and delay"](#) strategy to repeal the ACA early in 2017. The thinking was that it would take time to replace, delaying coverage disruption for two to four years.

Last week, in a press conference, Trump threw that strategy out the window, returning to ["repeal and replace" – "simultaneously."](#) Speaker Ryan echoed Trump's plan to do both at once. While Trump can be excused for not understanding the federal legislative process, Ryan gets no pass. "Repeal and replace" will not happen in weeks, and it will get harder with each passing day.

No Republican or Democrat knows where this will end; no one expected we would be in this position in 2017. Had Hillary Clinton won the White House, ACA repeal would have been undoable until 2021.

Just why did the ACA elicit such wrath?

Only two laws in U.S. social policy history rival the ACA in scope and ambition: the [1935 Social Security Act](#) and the [1965 law](#) establishing

Medicare and Medicaid. Both were [staunchly opposed](#) in their days by most, though not all, Republicans.

Public opposition to Social Security and Medicare continued for a time after passage, though nothing like the seven-year opposition to the ACA, which has included [two legal challenges](#) that reached the U.S. Supreme Court; [more than 60 House votes](#) for full or partial repeal; [deliberate implementation obstruction](#) in conservative states; and millions in opposition financing from wealthy donors. It's been a rough ride. Why?

When it was passed in 2010, the ACA received zero support from any Senate or House Republican. Because no Republicans voted for the ACA, many Republicans feel obligated to teach Democrats a lesson. Who is at fault is a he-said/she-said game.

Republicans claim to have been excluded so Democrats could enact a leftist bill. Democrats felt that Republican leaders such as Sen. Charles Grassley (R-IA) [left the scene](#) when the newly emergent Tea Party made political death threats to any collaborators.

Many Democrats, meanwhile, painfully recall the collapse of the [Clinton health reform plan](#) in 1994 when Republicans kept moving goal posts farther away. This argument has no end.

But there is a crucial difference between the ACA and the other two landmark laws that created Social Security and that established Medicaid and Medicare. After respective enactments in 1935 and 1965, both were (and still are) subject to regular improvements.

For example, the 1935 Social Security Act, signed by Franklin Roosevelt, initially excluded from any benefits all agricultural, domestic, hospital and government workers, plus employees at firms with fewer than 10 workers. About two-thirds of all African-American workers and

about half of all women workers got zero benefits under the original law. Beginning in 1939, though, Congress passed the first of many laws enacted over decades to expand the scope of beneficiaries, as I discuss in my book, ["Inside National Health Reform."](#)

Similarly, the 1965 Medicare law signed by President Lyndon Johnson included no coverage for outpatient prescription drugs, and included insanely inflationary formulas that paid physicians and hospitals their self-determined "usual and customary" charges. Nearly every year, Congress makes all manner of changes to Medicare, most receiving no public notice, and some that register substantially. Medicaid, also created in the 1965 law, is unrecognizable from its origin – a caboose on the Medicare train has become the nation's largest health insurance program.

I call this process "continuous policy improvement." When the policy process works well, it identifies problems, plans fixes, does the fix, studies the results and acts on the knowledge obtained (plan–do–study–act). Sometimes "act" requires total repeal, sometimes modification and sometimes permanent adoption or expansion, or both.

Fixes to major laws are normal

If the ACA had been implemented like Social Security and Medicare, it would receive continuous policy improvement. Indeed, policy experts can identify many provisions in need of fixing, improving, repealing, or expanding. The political backlash over "Obamacare" has strangled this opportunity, however. Republicans want to kill the ACA, not improve it. Any improvement, in their view, legitimizes its continuation.

Republicans charge that the ACA's insurance expansions, through federal or state health exchanges, are systemically flawed and unfixable. Democrats point to states such as [California](#), New York and Massachusetts where exchanges are operating affordably and effectively.

This past summer, [Alaska's individual market](#) was facing premium hikes of 42 percent, prompting the Republican-controlled Alaska legislature to enact a state "reinsurance" program to flatten the market, lowering premium hikes to about seven percent.

But congressional Republicans have been claiming systemic collapse for so long, they risk serious credibility losses if they joined in fixing the markets.

Would a new name help?

Ironically, because Republicans now recognize that collapse of the individual health insurance market in states across the nation would be seen as their fault, they will likely turn to reinsurance and other ACA tools such as risk corridors and risk adjustment that cushion insurers against destabilizing high costs to stabilize the markets – until they are ready to kill them. But stabilizing these markets may prove that they are not systemically damaged.

Some suggest, mostly in jest, that a fix could include renaming them "TrumpCare" exchanges, allowing the new president to bask in their success. That's hard because the Republican agenda is also determined to repeal the ACA's financing, especially the new payroll taxes on high-income households. Keeping them in place is anathema to the Republican base.

I hope this gives some idea of why the ACA/ObamaCare repeal and replace is far more vexing than meets the president-elect's eyes. It's a tough spot, most especially for 22-30 million at risk of losing their health insurance in this disappointing fracas.

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