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This is the first article in a series in which Ropes & Gray health care partner Tom Bulleit will compare and contrast various aspects of the latest Affordable Care Act "repeal and replace" proposals.

The Price of TrumpCare: Five Takeaways From the HHS Secretary and Other Republican Proposals



BY TOM BULLEIT

Introduction

President Trump and his Republican allies in Congress have promised to "repeal and replace" the Affordable Care Act/Obamacare. Repeal of many of the most disliked provisions—the individual mandate, the subsidies that help lower income persons buy insurance and pay for health care and various taxes, such as those on pharmaceuticals, medical devices and the Cadillac tax on insurance plans—can be accomplished without Democratic assistance. Under budget reconciliation, only 51 Senate votes are needed to repeal those provisions, and the Republicans hold 52 Senate seats. Replacement, however, will require 60 votes in the Senate, meaning at least eight Democrats must vote for it. But there is no clear consensus even among Republicans in Congress about what a replacement

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should look like, or on what timetable it should take place.

There are, however, a number of clues for some features that are likely to be part of the "replace" bill that ultimately reaches the Senate. Secretary of Health and Human Services Tom Price has been a long-time vocal opponent of the ACA. While in Congress, he introduced his version of a replacement—"The Empowering Patients First Act"—four times since 2009. It is widely thought to be one of the blueprints. At the same time, there are competing proposals including Speaker Paul Ryan's (R-Wis.) "Better Way" proposal and the recently released House Republican "Policy Brief" (called the "Blueprint for Obamacare Repeal and Replace"), both of which resemble the Price proposal in many but not all particulars, and the Patient Freedom Act from Senators Susan M. Collins (R-Me.) and Bill Cassidy (R-La.), which seems to recognize the need for recruiting some Senate Democratic support by pushing ACA reform to the states and allowing them the option of retaining Obamacare.

Here are five takeaways from Price's proposal, with some notes about how some of the competing proposals might differ.

Takeaway 1: A Philosophy of Universal Access, Not Universal Coverage

Price said in one of his confirmation hearings that everyone should have "access" to health insurance. Senator Bernie Sanders (I-Vt.) pointed out the difference between *access* to a thing and *having* a thing in economic terms, noting that he might have "access" to a \$10 million house, but that didn't mean much if he couldn't afford it. All the Republican proposals seem to share Price's "access" philosophy: that the role of the federal government is to facilitate individuals making their own choices about health insurance, not to make sure everyone has it. The ACA uses mandates, minimum benefit

requirements, and taxpayer subsidies to ensure that more people have health insurance. The Price proposal relies almost entirely on the idea that removing the mandates and requirements will lower the cost of health insurance so more people will choose to buy it.

Takeaway 2: Allow the Market to Decide What Health Insurance Will Cover

The Republican proposals likewise share the idea that removing requirements for insurance policies will allow insurers to offer plans that are cheaper because they cover less, so people will buy plans that suit their needs. Price's plan, as last proposed, would eliminate mandatory benefits, eliminate the prohibition on annual and lifetime caps, remove the requirement for plans to allow children to stay on their parents' policies to age 26 and allow coverage denials based on pre-existing conditions, protecting only the previously insured who maintain continuous coverage. The federal government would provide \$3 billion over three years in funding to the states to fund high-risk pools for those who don't qualify due to pre-existing conditions. The original Ryan plan was more generous: it would have provided states with \$25 billion over ten years. The recent Blueprint would replace high-risk pool funding with State Innovation Grants that states could use not only to support high-risk pools, but for other purposes as well, like reducing patient cost-sharing. No doubt the resulting plans will be cheaper, but that will be in part because they will cover less. Both the original Ryan and Collins-Cassidy proposals would retain the pre-existing condition and age 26 mandates; the Blueprint is silent on the subjects.

Takeaway 3: Replace Means-Tested Taxpayer Subsidies for Premium and Cost-Sharing Support With Tax Benefits

Both the Price and Ryan proposals would replace the ACA's income-tested taxpayer subsidies for premium and cost-sharing support with fixed, advanceable, age-adjusted refundable tax credits that could be used to purchase insurance. Both also would expand the availability of health savings accounts, which provide tax-deductible spending for health care. Refundable tax credits means that lower income individuals could keep the money above their tax liabilities and deposit it in health saving accounts. One issue of course is the amount of credit. Price's plan would offer credits of \$1,200 per month for young people up to \$3,000 per month for those 50 and over, which is considerably less than the average \$3,500 subsidy provided under Obamacare. As noted above, the Republican answer to this is that absent the essential benefit and other ACA requirements, plans will be cheaper. The recent Blueprint also states expressly that the credits could not be used to buy health plans that cover abortion.

Takeaway 4: Deregulate Age-Rating of Premiums

The ACA requires that health insurance premium charges for older people be no more than three times the premiums for younger people. Some people have

complained that the effect of this age-rating is to drive up the cost of insurance for younger people, instead of lowering the cost for seniors. Ryan's original plan would retain this requirement, but increase the ratio to 5:1. Both the Price proposal and the Collins-Cassidy proposal would eliminate the age-rating requirement. The recent Blueprint is silent on the subject.

Takeaway 5: Block-Grant Medicaid, but Defer Medicare Reform

Both the Price and Ryan proposals, including the Blueprint, would eliminate the federal entitlement for Medicaid, instead providing the states with fixed sums of money, leaving it largely up to the states to sort out who should be covered and to deal with expenses in excess of the federal contribution. Both also would give the states the choice to take their money in the form of a block grant or a per capita payment. Collins-Cassidy doesn't talk about Medicaid reform, and actually offers those states that expanded Medicaid under Obamacare the ability to keep that expansion. While the original Ryan proposal has a grand vision for turning Medicare into a premium support program, neither Price nor President Donald Trump supports this approach, and it is not mentioned in the Blueprint, so it is, if anything, further down the road.

The Way Forward?

These takeaways, of course, describe only the shape of the bill that the House will send to the Senate. In order to get to Trump for his signature, absent a radical—and still unanticipated—change in Senate rules, the bill will require at least eight Democratic votes to overcome the filibuster. To date, not one of these ideas appears to have any support among Senate Democrats.

Democrats from states that gave Trump wide margins of victory and who have to face re-election in two years—for example, Jon Tester (D-Mont.), Heidi Heitkamp (D-N.D.), Claire McCaskill (D-Mo.), Joe Manchin (D-W.Va.)—stood with their caucus Jan. 12 in protesting the Senate budget resolution setting up the prospect of a 51-vote repeal. And Minority Leader Charles E. Schumer (D-N.Y.) has in effect dared Republicans to repeal without a bi-partisan replacement plan in effect. His standard is a high one: To garner Democratic support, any replacement bill must be negotiated before repeal, and must cover as many people as the ACA, help to bring health-care costs down, and not “move our healthcare system backward.” Even Collins-Cassidy, the one Republican proposal that actually attempts to reach out for Democratic support, drew from Schumer the statement that it is “an empty façade that would create chaos.”

What appears to be developing is a game of political “chicken,” with each side waiting for the other to blink. In an effort to paint Democrats as the obstructionists, Senator Ron Johnson (R-Wis.) recently started using the word, “repair,” rather than “replace” Obamacare. Ryan has difficulty with the conservative Freedom Caucus around this terminology, and somewhat tellingly, the recent Blueprint reverts to the “repeal and replace” language. As additional proposals continue to emerge over the next several months, their viability may be tested more by the Speaker's ability to bring consensus

to his caucus, and by pre-election polling in Trump states where Democrats stand to lose a Senate seat, than by their soundness as health care policy.