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January 12, 2017

Congress Draws Closer than Ever to Repealing the ACA, as Battle Lines Form in Vote-a-rama

Republicans are one step closer to repealing key Affordable Care Act (ACA) programs, with or without a replacement proposal in sight. On January 12, 2017 at 1:30 am, the Senate passed a budget resolution authorizing four Congressional Committees to develop proposals to repeal certain components of the ACA. The scope and timing of the budget proposals are unclear, but developments are expected to occur fairly rapidly. Advocates must act quickly to prevent a full repeal of the ACA without a simultaneous replacement plan and to influence the development of any such replacement plan. Additionally, Senate Democrats took advantage of the budget resolution voting process to force all Senators to take “on the record” positions on important health care issues, including some of the most popular components of the ACA. This allows advocates to hold Senators accountable for their voting records and also demonstrates the areas where advocacy has the potential to impact the ultimate outcome of the battle over the ACA.

Next Steps for Advocates:

1. Advocates should be vocal with Republican Senators about the importance of only moving forward with a repeal of the ACA once a fully fleshed out replacement plan has been proposed to minimize disruption of the health care system and protect our access to care. As such, advocates should ask these Senators to oppose any repeal effort that does not include replacement legislation.
2. Advocates should begin to influence the development of a replacement plan for the ACA by educating all Congressional delegations about the protections and programs their communities need. Because it is unclear when replacement legislation will be proposed, it is crucial that Congresspeople understand as early as possible what protections and programs are necessary for preserving access to care for vulnerable individuals, such as those who are lower income and those living with chronic illnesses and disabilities.
3. Advocates should examine the voting record generated by the budget resolution process to hold Senators accountable, if appropriate, for voting against popular health care protections and programs.

The ACA Repeal Moves Forward, with Uncertainty

Republicans are using the budget reconciliation process to undo the ACA by circumventing the filibuster that Democrats would otherwise be able to mount to block proposals that go through the regular legislative process. The Senate, in a 51-48 vote, passed a [budget resolution](#) initiating this process on January 12, 2017.¹ The budget resolution is not a bill to directly repeal the ACA, but rather a set of instructions to four Congressional Committees to recommend legislation changing existing laws and programs in order to achieve at least \$1 billion per Committee in deficit reductions over fiscal years 2017

¹ The House will likely vote on the budget resolution on January 13, 2017. The budget resolution does not go into effect until after it passes both the Senate and the House. Because of the heavy Republican majority in the House, however, it is expected to pass without issue.

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through 2026. The legislative proposals generated by the Congressional Committees are expected to include a repeal of at least some key ACA provisions, such as the individual mandate, insurance subsidies, and Medicaid expansion.² The budget resolution, however, creates a significant amount of uncertainty around the scope and the timing of the Congressional Committees' proposals to repeal the ACA.

Originally, the budget resolution was expected to generate proposals that would look similar to [2015's H.R. 3762](#). This previous bill repealed the ACA's insurance subsidies, Medicaid expansion, certain tax increases, and the individual mandate, but did not propose any replacement programs. Pressure placed by advocates, however, has highlighted the incredibly disruptive nature "repeal only" legislation would have on the health care system, potentially eliminating health care coverage for 22 million Americans and destabilizing the entire system. In response to this pressure, some Republican Senators, such as [Bob Corker](#) (TN), [Johnny Isakson](#) (GA), and [Susan Collins](#) (ME), have stated that the repeal and replacement of the ACA must occur simultaneously. Even President-Elect Trump, in a [press conference on January 11, 2017](#), stated that repeal and replace should occur in tandem. This indicates that repeal only legislation may fail to pass the Senate. At this point, however, including replacement legislation in the as-passed budget reconciliation process will likely prove challenging. Congressional Republicans have yet to coalesce around a replacement plan for the ACA, although several Representatives such as [Tom Price](#) (R-GA) and [David Roe](#) (R-TN) have proposed plans.

As it currently stands, the demanding deadline set by the budget resolution makes the effort for simultaneous repeal and replacement even more challenging. Under the terms of this budget resolution, the authorizing Committees would be required to submit their proposed legislation to Congress by January 27, 2017. Senator Corker, along with four other Republicans, had sought to extend that deadline to March 3, 2017 in an amendment to the budget resolution. Senator Corker, however, withdrew his amendment at the last moment, stating that January 27, 2017 is just a "placeholder." Senator [Rob Portman](#) (R-OH), also stated during the debate on the budget resolution that the January 27 deadline "is not a date that is set in stone." Adding to the confusion, President-Elect Trump [stated](#) that he will put forth his own plan to repeal and replace the ACA once his nominee for Secretary of Health and Human Services, Representative Price, is confirmed. However, Representative Price is not expected to be confirmed until the middle of February. This leaves the timing of any legislative proposals on health care unclear.

In light of the uncertainty, advocates must act quickly. They should assume that the Congressional Committees will return proposed legislation by January 27 to avoid running the risk of missing the window of opportunity to impact the substance of any proposals. **Advocates should reach out to members of their state's delegation who serve on the [Ways and Means](#) and the [Energy and Commerce](#) Committees in the House, and the [Finance](#) and [Health, Education, Labor and Pensions](#) Committees in the Senate as soon as possible** (click on the links to see the member rosters of each Committee). Advocates should educate the members of these Committees on the devastating impact that repeal without replacement could have on the health care system as well as the types of consumer protections and programs needed to preserve access to care for millions of Americans.

The proposed legislation that has come out of the budget reconciliation process will need a simple majority to pass in the Senate. As a result, repeal legislation could be stopped if just three out of the 52 Republican Senators object to the legislation proposed by the Committees. If that occurs, it will be more difficult to repeal the ACA. As stated above, several leading Republican Senators, including [Lamar Alexander](#) (TN), [Bob Corker](#) (TN), and [Susan Collins](#) (ME), have expressed

² For a more detailed explanation of the budget resolution, please see the Center for Health Law and Policy's previous Health Care in Motion update [here](#). For a more detailed explanation of the reconciliation process, please see the Center for Health Law and Policy Innovation's summary of the reconciliation process available [here](#).

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concerns about repealing without simultaneously putting forward a replacement. Other potential “swing” Senators include [Lisa Murkowski](#) (AK), [John McCain](#) (AZ), [Chuck Grassley](#) (IA), [Dean Heller](#) (NV), [Rob Portman](#) (OH), and [Shelley Moore Capito](#) (WV). **If you live in a state with a [Republican Senator](#), or know advocates in these states, it is important to call their offices before January 27, 2017 to let them know that they should oppose any repeal of the ACA without an accompanying replacement plan and ask them to ensure that necessary consumer protections and programs are included in any replacement plan.** It is also important to call [Democratic Senators](#) to educate them on your concerns and ask them to fight for important health care programs.

Vote-A-Rama Fails to Protect Popular Components of the ACA but Forces Senators to Take on the Record Positions on Key Health Care Issues

Through a process known as “vote-a-rama,”³ Congressional Democrats prolonged the budget resolution process briefly and forced Republican Senators to take “on the record” positions on key health care issues. Democrats used this process, which went late into the night of January 11, 2017, to introduce more than 160 amendments to the budget resolution. Many of those amendments would have explicitly protected popular components of the ACA from repeal. Among amendments that were proposed and failed were a measure to allow young adults to stay on their parents insurance until age 26; a measure to protect funding for the Children’s Health Insurance Program; a measure to block decreased access to preventive health care, birth control, and maternity care; and several measures to ensure that individuals with pre-existing conditions can keep insurance coverage, including one that would prevent health insurers from denying or placing lifetime caps on coverage for people with chronic illnesses or disabilities. Almost uniformly these amendments were supported by Democrats and opposed by Republicans, although Senator [Susan Collins](#) (R-ME) voted for the measures to protect young adults and access to preventative and reproductive care, and Senator [Dean Heller](#) (R-NV) voted to protect preventative and reproductive care.

While these amendments were never expected to pass, they were an important strategic move that forced Senators to take official positions on important health care issues. While some Republicans have voiced support for including these popular provisions in eventual replacement legislation, the largely party-line vote leaves these critical programs vulnerable to repeal. Advocates should hold Senators accountable for failing to protect elements of the ACA that are popular and critically important to preserving access to care. Click [here](#) to find out how your Senators voted on these amendments.

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³ For a more detailed explanation of the vote-a-rama process, please see the Center for Health Law and Policy’s previous Health Care in Motion update [here](#).