

ACA Repeal: Deciphering The Path Ahead

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The U.S. Senate's efforts to craft a health care reform bill that would fulfill the promise of dismantling the Patient Protection and Affordable Care Act (ACA) have been plagued by partisanship, secrecy, disagreement and mixed messaging.

Due in large part to the unorthodox strategy U.S. Senate Majority Leader Mitch McConnell, R-Ky., has employed throughout this process, there is simultaneously abundant content about Congress' recent health care reform efforts and minimal information that would assist the casual observer to make a confident assessment where these efforts are headed.



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However, the Senate offered some insight Tuesday when it voted 51-50 to move ahead with the health care debate, but then failed to pass a version of the Better Care Reconciliation Act shortly after.

In Case You Missed It

Even for those paying attention, it's helpful to revisit how we got here.

- March 6, 2017: The U.S. House of Representatives unveiled the American Health Care Act (AHCA), which purported to repeal and replace key pillars of the ACA.
- March 13, 2017: The Congressional Budget Office scored the AHCA and the CBO's report indicated the AHCA would result in 14 million uninsured Americans by 2018 and 24 million by 2026.
- March 24, 2017: Immediately prior to the vote on the AHCA, Republican leaders pulled the bill from the House floor because the House Freedom Caucus refused to support it.
- May 3, 2017: A revised version of the AHCA containing amendments designed to secure House Freedom Caucus votes was released.
- May 4, 2017: The House passed the revised AHCA prior to release of the CBO's report.

- May 24, 2017: The CBO score for the revised AHCA concluded 14 million Americans would be uninsured by 2018 and 23 million by 2026. Senate Republicans subsequently commenced work on their own health care reform bill.
- June 22, 2017: After many weeks of speculation about the content of the Senate bill, and strong political opposition from Democrats calling for hearings and regular order, the Better Care Reconciliation Act (BCRA) was unveiled. In the ensuing days, after public statements of opposition by both moderate and hard-right Republican Senators, it became clear that Senate Republicans likely could not achieve the 50 votes needed to pass the bill.
- June 26, 2017: The CBO provided a score for the Senate bill, concluding 15 million Americans would be uninsured by 2018 and 22 million by 2026. The CBO estimated the budget deficit reduction would be \$321 billion over 10 years.
- July 11, 2017: McConnell announced that the Senate's scheduled recess set to begin in August would be delayed two weeks, allowing additional time for Senate Republican leadership to secure votes for a revised version of the BCRA.
- July 13, 2017: A revised version of the BCRA was released, containing, among other changes, the controversial "Cruz Amendment," which proposes to require insurers to offer at least one vestigial ACA-conforming plan (containing the 10 essential health benefits provided under the ACA) as an alternative to private insurance. In the ensuing days, public statements in opposition to the bill once again signaled that Senate Republicans would not get the necessary votes to support a motion to proceed.
- July 18, 2017: McConnell announced Senate Republicans did not have the votes to support a bill that would replace the ACA and Congress should pass legislation that merely repeals it. The proposed "repeal only" bill, called the Obamacare Repeal Reconciliation Act (ORRA), mirrored a 2015 bill that passed both the Senate and House prior to veto by then-President Barack Obama.
- July 19, 2017: The CBO score for the ORRA predicted that it will leave 17 million Americans uninsured by 2018 and 32 million by 2026. Key Senate Republicans were called to the White House to meet with President Donald Trump, who indicated that the administration will not stabilize the insurance markets created by the ACA. Without addressing which bill will be brought to the Senate floor for the vote, McConnell announced that the Senate will hold a vote on a motion to proceed on July 25, 2017.
- July 21, 2017: The CBO scored the revised BCRA and concluded 15 million Americans would lose insurance coverage by 2018 and 22 million by 2026. However, the overall budget deficit reduction would be \$483 billion over 10 years. The bill was scored without the controversial Cruz Amendment.
- July 25, 2017: Vice President Mike Pence cast the tie-breaking vote in the Senate to move ahead with the health care debate. Shortly after, the Senate failed to pass a version of the BCRA containing the controversial Cruz Amendment with a vote of 43-57.

What Did the Senate Vote On?

While McConnell indicated that the Senate would vote on health care legislation July 25, 2017, it was anyone's guess as to what legislation would be presented for vote. After much speculation and uncertainty, McConnell made a motion to proceed on the House-approved AHCA. In the days prior to the vote, all eyes were on Sens. Shelley Moore Capito, R-W.Va., Lisa Murkowski, R-Alaska, Jerry Moran, R-Kan., Dean Heller, R-Nev., Mike Lee, R-Utah, Rand Paul, R-Ky., Rob Portman, R-Ohio, and Ron Johnson, R-Wis.

Paul, Lee, Capito, Portman and Heller made statements earlier in the day confirming they would vote in favor of a motion to proceed. This left uncertainty only as to Johnson, who was likely to support the motion, and Murkowski, who had signaled she might withhold support. The vote played out in dramatic fashion with impassioned remarks by McConnell to his Republican colleagues, urging them not to "let this moment slip by." Moments later, dozens of protesters could be heard from the Senate floor yelling, "kill the bill" and "shame." The drama continued into roll call as Sen. John McCain, R-Ariz., recently diagnosed with brain cancer, entered the chamber to a bipartisan standing ovation. While Murkowski voted "no," Johnson, as many thought he might, succumbed to the mounting pressure to vote "yes" just as many of his colleagues had. This yielded the 50-50 split that allowed Pence to cast the deciding vote in favor of the motion to proceed.

What Happens Now?

Having obtained the necessary votes on the motion to proceed, a number of options remain on the table as the Senate will continue to debate and consider amendments. Late Tuesday, the Senate voted on a version of the BCRA containing the controversial Cruz Amendment as well as an additional amendment offered by Portman. Since the amendments had not been scored by the CBO, the measure required a 60-vote count. It failed on a vote of 43-57. The next step is likely a vote on the ORRA, or a similar "repeal only" proposal. While Paul and other hard-liners are likely to support a full repeal of the ACA, those senators whose constituents rely heavily on Medicare (Capito, Heller, Murkowski, Portman, and others) are not likely to support such an effort.

In fact, it is reasonable to assume that both Murkowski and Sen. Susan Collins, R-Maine, will remain opposed to any proposed legislation, meaning Senate Republicans may be in the uncomfortable position of needing consensus without any further defections to obtain the 50 votes they need to pass a bill. Practically speaking, this means the Senate will have to craft legislation during the limited time, with only 20 hours allotted for debate, that appeases both moderate and hard-right Republicans in the Senate. Despite the challenge ahead, there is continued momentum toward a so-called "skinny" repeal bill. While the term is vague, a "skinny" repeal would essentially repeal key provisions of the ACA, such as the individual mandate and employer mandate, while leaving in place other provisions such as the ACA's Medicaid expansion provisions. While Senate Republicans may debate how "skinny" the measure should be, this appears to be the most likely path to getting 50 votes for any legislation.

If a "skinny" repeal bill passes, the Senate would then go to conference with the House of Representatives, where representatives from both chambers would work on a final bill. Once completed, both chambers would then have to vote on the reconciled bill. In short, there are still many additional hurdles to be surmounted before we see a final vote on repeal legislation.

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