



Written by [Michael Tennant](#) on November 10, 2016

## Will President Trump Finally Rid Us of ObamaCare?

“If we don’t repeal and replace ObamaCare, we will destroy American health care forever,” Donald Trump told a Pennsylvania crowd one week before he was elected president of the United States. On his campaign website, The Donald [pledged](#) that on his first day in office he would “ask Congress to immediately deliver a full repeal of ObamaCare.”



Can Trump deliver on his promise? It would seem to be a slam dunk given that both houses of Congress will remain in the hands of Republicans, who have not only vowed to repeal the Affordable Care Act (ACA) but attempted to do so, in whole or in part, numerous times over the past six years. “Trump’s election creates the most potent risk of repeal yet,” warns [Politico](#).

Truth be told, Trump, as *Politico* observes, “didn’t make Obamacare repeal ... a focal point of his campaign,” though he talked about it more often in the days leading up to the election. He is surely well aware that the healthcare law is — and has always been — [extraordinarily unpopular](#), so vowing to scotch it was likely to win him far more votes than it cost him. Yet it still appears not to be among his top priorities, as evidenced by the fact that “he didn’t give it even a passing mention in his victory speech,” according to *Politico*.

But even if both Trump and congressional Republicans are serious about repealing the ACA — “It’s pretty high on our agenda,” Senate Majority Leader Mitch McConnell (R-Ky.) told [Politico](#) — it is unlikely that they will be able to do so on January 20.

Obstacle number one to scrapping ObamaCare is deciding exactly what the “replace” part of “repeal and replace” will look like. Previous GOP replacement suggestions have been less ObamaCare repeal and more [“ObamaCare Lite.”](#) That is largely because the public has made it clear to pollsters that they don’t hate the entire ACA. They want to repeal the portions that infringe on *their* liberty, such as the individual mandate, but want to retain the parts that they believe benefit them, such as the prohibition on denying insurance to people with pre-existing conditions, even if those provisions infringe on *others’* liberty and would have highly detrimental effects. For example, forcing insurers to cover the very ill at rates comparable to those charged to the healthy without simultaneously coercing the healthy into buying coverage would lead to a concentration of high-cost beneficiaries without sufficient premium revenue to pay for their care, i.e., a “death spiral.”

Nevertheless, Trump and congressional Republicans have offered some general suggestions as to their idea of an ObamaCare replacement. Among their proposals: allowing individuals to buy insurance across state lines, making individual health-insurance premiums tax-deductible, and expanding the availability of tax-free Health Savings Accounts. It seems likely that a Republican Congress and the



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incoming Republican president will be able to come to some agreement. Whether or not that agreement passes constitutional muster is another matter.

The bigger obstacle to repealing ObamaCare will be the GOP's slim majority in the Senate. A bill sent through the normal channels would likely be filibustered by Democrats. Republicans may therefore have to fall back on the budget reconciliation process, where filibusters are prohibited. They used that tactic last year to get a partial-repeal bill on President Barack Obama's desk, where it was predictably vetoed. They could probably employ it again next year and at least get rid of significant portions of the law, with the understanding that this time the bill would be signed by the chief executive. The irony, of course, is that Democrats used exactly the same backdoor maneuver to get the ACA on the books in the first place over the objections of every single Republican.

But would the GOP want to pass that same bill when they knew it would become law, possibly causing havoc in the healthcare sector, which has been largely reoriented around ObamaCare, and costing some voters their newly obtained insurance?

"I think the Congress will end up being unable to pass that again if it were real. People who supported it would want to make sure their [constituents] are protected," American Enterprise Institute resident fellow Jim Capretta, who opposes the ACA, told *Politico*. "They won't be able to do that without thinking through what to do instead."

Should Congress be unable to pass a bill, or very slow to do so, Trump would still have other ways to put some serious crimps in ObamaCare. After all, "its limited achievements have depended on action by the Executive branch that a new executive can immediately undo," notes *Forbes'* [Seth Chandler](#).

*Politico* points out that Trump's administration "could have a huge impact on the law even without Congress," by, for instance, "relax[ing] requirements on Medicaid, or relax[ing] rules so states can set up alternatives to the ACA."

Chandler suggests some even more forceful ways Trump could "bring Obamacare to its knees on day one" of his administration.

First, he could announce that he will cease the Obama administration's practice of paying "cost sharing reductions" to insurers out of funds that Congress has not appropriated for such payments. These payments help cover the cost of exchange policies for Americans who earn between 100 percent and 250 percent of the federal poverty level, who, Chandler observes, are "most of the purchasers buying policies on the Exchange." Congress did not fund this program, so the Obama administration, with typical disregard for the Constitution, has diverted funds from another appropriation to help keep the exchanges afloat. Insurers, knowing these payments were the only thing keeping them from losing big bucks on exchange policies, negotiated a provision in their contracts with the federal government saying they could leave the exchanges if they didn't get their cost sharing reductions, an option they will probably exercise if Trump cuts off their gravy train.

Second, writes Chandler, Trump "can also make clear that insurers who wrote policies in 2016 are ... not going to receive reinsurance payments until, as the ACA itself requires, the government pays the United States Treasury first." Reinsurance payments, which tax some insurers to cover other insurers' losses, were supposed to raise \$25 billion over three years, of which the first \$5 billion was to go to the Treasury to recover money spent on an earlier reinsurance program. Again the Obama administration chose to ignore the law, collecting too little money and then paying it all to insurers, not the Treasury. Trump could simply announce that his administration is going to abide by the law, which would give



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insurers another incentive to bolt the exchanges.

Although he could do both of these things on Inauguration Day, Trump, despite his promise to end ObamaCare “very, very quickly,” might not want to start his administration off by essentially canceling the health-insurance policies of millions of Americans. He could, however, live up to his vow by announcing that at some point in the near future — say, next year or the year after — he would take such actions. That would give insurers time to adjust for the reduced revenue and Congress time to make appropriate changes to the law. Who knows? By then, to paraphrase Gerald Ford, our long national nightmare of ObamaCare just might be over.



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