

An Unhealthy Congressional Mess

By Craig B. Garner

“Genius is finding the invisible link between things.” — Vladimir Nabokov

The scope of medical technology is continually evolving. In 1967, a South African surgeon removed the heart from a 25-year-old female car-accident victim and placed it into the chest of a 55-year-old male dying of heart disease. The surgery was the first success of its kind, and the patient lived for an additional 18 days. Ten years later at Columbia-Presbyterian Medical Center in New York City, a heart transplant recipient survived 14 months after surgery. Seven years after that, Columbia surgeons performed the first successful pediatric heart transplant. Centuries in the making, this particular miracle of modern medicine today boasts 3,500 annual heart transplants world-wide who live an average of 15 years longer thanks to earlier trials.

The successes of modern medicine are the product of painstaking research, unprecedented and sometimes unavoidable patience, and a bit of good fortune, but the innumerable losses of the past lie in the shadows of each monumental breakthrough. The national infrastructure within which this fantasy becomes reality, however, appears to exist in stark contrast to the very reason behind its purpose.

In many ways, the chaos inherent in the current process by which Congress attempts to alter the course of the Patient Protection and Affordable Care Act (ACA) — aka Obamacare —exacerbated by any presidential “inspirations” delivered in messages of 140 characters or less, has transformed the stark reality of today’s health care structure into something far more surreal than swapping hearts, at least to those limited few who actually understand the status of the ACA as the Republican-controlled Congress attempts to unravel it.

On May 4, the U.S. House of Representatives passed the American Health Care Act of 2017 (AHCA) by the slim margin of four votes. On July 25, the original Senatorial counterpart to the AHCA, known as the Better Care Reconciliation Act of 2017 (BCRA), died in the hands of 52 Republican, 46 Democratic and two Independent U.S. senators, 57 of whom voted against it.

According to a Congressional Budget Office report issued last month on the BCRA, the legislation would have increased the number of uninsured by 15 million next year, with an added adjustment leveling off at 22 million over the next 10 years.

The AHCA and BCRA also sought to eliminate the individual mandate, the employer mandate, the essential health benefits requirement for qualified health plans (beginning in 2020), and taxes pertaining to over-the-counter and prescription medications, medical devices and tanning salons. Additionally, this proposed legislation expanded premium variation based upon age from the ACA’s 3-to-1 limitation to a new ratio of 5-to-1.

Nevertheless, on Tuesday, Vice President Mike Pence cast the Senate’s tiebreaking vote on health care reform, even if the details of what was actually passed by a 51-50 margin remain elusive. Should the BCRA die on the vine, which appears to be the fate of the Obamacare Repeal Reconciliation Act (would eliminate key parts of the ACA without offering a replacement and

causing 32 million Americans to lose health insurance) after yesterday's vote, the Senate is running out of options.

A final possibility has been referred to as the "skinny repeal," which keeps the ACA and its Medicaid expansion but eliminates a key ACA tax on medical devices as well as both the individual and employer mandates. This senatorial option could increase the number of uninsured by 15 million while forcing insurance companies to raise premiums by as much as 20 percent.

As for reconciliation, questions pertaining to "what" and "how" still remain. With no reasonable expectation to defeat a Democratic filibuster, which requires 60 votes, Republicans offer nothing in the senatorial health care reform arsenal to create a new or better health care system, as this action simply disembowels the ACA in its present form.

This reality is based in part on the "Byrd Rule," which stops legislation from exceeding reconciliation by preventing "extraneous matters" such as: (a) the legislation failing to produce a change in outlays or revenues; (b) the legislation producing an outlay increase or revenue decrease when a committee acts outside the scope of its instructions; (c) a committee acting outside its authority; (d) the legislation producing changes that are little more than incidental to the non-budgetary provisions; (e) the legislation increasing the deficit for a fiscal year; and (f) recommending changes in the reconciliation process with respect to old age, disability insurance and other similar benefits.

Should the Senate somehow pass legislation with a majority vote under the guise of reconciliation, Congress must still reconcile the Senate's final answer with the House's AHCA.

Depending on the divide between the two, this process alone might last months, and still force another vote in both House and Senate. President Donald Trump may be prepared to sign a new bill to restructure the nation's health care system, but even a Mike Pence-tiebreaking victory does not bring the Republican Party any closer to repealing the ACA.

To be sure, a congressional defunding of the ACA could be every bit as dangerous as a president with a smartphone. Outright elimination of ACA funding, however, still necessitates the authoring of viable alternatives before the next congressional election. The United States voting population will not look kindly upon any return of preexisting conditions coupled with a repositioning of insurance companies to the top of American health care hierarchy. To rectify reconciliation, Congress must rise to the challenge of drafting new health care regulations that incorporate the bold truth behind modern medical reality. Otherwise, the Obamacare legacy may well end up reshaping more than just America's health care system.

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