How Republicans Can Start to Dismantle Obamacare With a Trump Presidency

The GOP’s long-discussed dreams of repealing Obamacare became closer to reality early Wednesday morning when Donald Trump was elected president.

Six years after President Barack Obama signed the Affordable Care Act into law and after more than 60 attempts to repeal it, Republicans now have a good chance to advance their own agenda.

While on the campaign trail, Trump repeatedly promised voters that he would repeal Obamacare if he was elected president and even called on congressional Republicans to call a “special session” to move forward with rolling back the law.

“Obamacare has to be replaced,” Trump said earlier this month during a stop in Pennsylvania. “And we will do it, and we will do it very, very quickly. It is a catastrophe.”

Now, following Trump’s defeat of Democratic presidential nominee Hillary Clinton, Republicans are laying the groundwork for dismantling the Affordable Care Act next year.

“I don’t think it’s going to be a sentence-per-sentence destruction of the bill, but I do think that substantial chunks of it are in really grave danger,” Seth Chandler, a visiting scholar at George Mason University’s Mercatus Center and a professor at the University of Houston Law Center, told The Daily Signal.

Republicans need 60 votes in the Senate to pass a bill repealing the health care law and would fall short of that threshold in the new Congress, where the GOP will hold at least 52 seats.

But GOP lawmakers are likely to use a budget tool called reconciliation—a procedure used in the Senate that allows a bill to pass with 51 votes—to roll back key provisions of Obamacare and avoid a Democratic filibuster.

The GOP-led House and Senate passed a budget resolution last year that included instructions to use reconciliation to repeal Obamacare and were ultimately successful in getting it to Obama's desk, where it was vetoed.

The bill called for the repeal of the individual and employer mandates, Medicaid expansion, tax credits, medical device tax, and Cadillac tax. It also stripped the government of its authority to run the exchanges set up under the law and lessened the fine for failing to comply with the mandates to $0, which was needed to abide by Senate rules.

GOP leaders in the House and Senate haven't committed to using reconciliation again next year to dismantle the Affordable Care Act, but House Speaker Paul Ryan said Wednesday the law is "collapsing under its own weight."

"This Congress, this House majority, this Senate majority has already demonstrated and proven we're able to pass legislation and put it on the president's desk," Ryan, R-Wis., said during a press conference. "Problem is, President Obama vetoed it. Now, we have a President Trump who has promised to fix this."

Ryan's counterpart in the Senate, Majority Leader Mitch McConnell, also said Wednesday that Obamacare's repeal is a priority for the GOP-led Senate.

"It's pretty high on our agenda as you know," McConnell, R-Ky., said. "I would be shocked if we didn't move forward and keep our commitment to the American people."

As Congress considers and crafts a reconciliation bill rolling back key aspects of Obamacare, Trump can take steps on his own to “make the Affordable Care Act’s life miserable,” Chandler said.

The first thing the president-elect can do is end cost-sharing reductions, Chandler said, which are payments the federal government makes to insurance companies that provide silver-level plans to consumers.

“The Affordable Care Act is fragile enough that doing this one thing of refusing to pay the cost-sharing reduction payments will be enough to strike a mortal blow,” he said.

The House filed a lawsuit against the Obama administration in 2014 over the cost-sharing reductions on the grounds that the Department of Health and Human Services was using money that Congress never appropriated.

That lawsuit is currently weaving its way through the courts, but Chandler argued that Trump can stop cost-sharing reductions on his first day in office. Doing so would likely cause insurance companies to leave Obamacare’s exchanges and cancel policies, Chandler said.

Such action on the part of insurers would have a significant impact on consumers, but it could be used as a “starting point” for negotiations with congressional Democrats over a replacement for the health care law.

“Trump holds a very powerful card in his hand,” Chandler said.

In addition to ending cost-sharing reductions, Trump can also begin the rulemaking process to roll back several regulations implemented under Obamacare, including the contraception mandate and the essential benefits requirement.

The controversial contraception mandate, which was challenged before the Supreme Court this year, requires employers to provide their workers with health insurance plans that cover contraceptives and abortion-inducing drugs.

Under the essential benefits requirement, health insurance plans must cover a number of health care services, which include ambulatory patient services, emergency services, maternity and newborn care, and preventive and wellness services.

After Obamacare became law in 2010, Republicans pledged to repeal it while campaigning during the 2014 midterm and 2016 general elections but haven't been successful.

Obamacare's fourth open enrollment period began last week, and consumers have until Dec. 15 to purchase coverage that begins in January.

Though 20 million Americans gained health insurance coverage under Obamacare, many consumers have seen their premiums and deductibles increase over the last three years.

Monthly premiums for plans sold on Obamacare's federal exchange next year will rise by an average of 25 percent, and consumers have fewer choices than they have had in the past.

Ryan and House Republicans rolled out the House GOP's replacement plan for Obamacare in June, which starts with repealing the Affordable Care Act.

The plan, part of Ryan's "A Better Way" agenda, maintains few of Obamacare's provisions, such as a measure allowing those under the age of 26 to remain on their parents' plans, but would also reform Medicaid and loosen regulations on health savings accounts.

Trump unveiled his own health care plan during the campaign, which includes measures to allow insurers to sell policies across state lines and to turn Medicaid into a state block grant program.

Republicans haven't coalesced around one alternative to the health care law. But Sen. John Barrasso, R-Wyo., said Wednesday the GOP would ensure consumers have a “smooth transition” from the current health care system to a new one once Obamacare is repealed.

“People had significant disruption in their lives already,” Barrasso said. “We want a smooth transition—as smooth as possible. We’re moving away from Obamacare to patient-centered care and putting competition back in the system.”