



THE AFFORDABLE CARE ACT IN THE 112TH CONGRESS: BEYOND THE HR 2 REPEAL VOTE

*As the 112th Congress convened, the new Republican leadership in the House of Representatives established dismantling the **Patient Protection and Affordable Care Act (PL 111-148)**, and the health-related provisions of the **Health Care and Education Reconciliation Act of 2010 (PL 111-152)**, as a top legislative priority. With the failure of the heavily GOP-backed HR 2, **To Repeal the Job-Killing Health Care Law and Health-Care Related Provisions in the Health Care and Education Reconciliation Act of 2010**, to advance to the Senate for consideration, Republicans are expected to adopt a variety of strategies to push their agenda forward, such as those outlined below: *The Committee Strategy, The Appropriations Strategy, and The Bipartisan Strategy.**

The Committee Strategy. Crafted in large part to draw attention to GOP promises to work towards repeal, the vote also sets the stage for a series of more narrowly targeted efforts to block the implementation of the law. With bipartisan support not required to hold hearings, as it is to pass legislation through both chambers, the next move by the House leadership is likely to turn largely on committee oversight hearings that will help draw support to more focused repeal bills, and how to best block implementation through the appropriations process.

Following through with the recent GOP campaign pledge to ‘repeal and replace’ the ACA, there will likely be a Thursday vote on measure introduced earlier this month, [Instructing Certain Committees to Report Legislation Replacing the Job-Killing Health Care Law \(H Res 9\)](#), which requires the House Committees on Education and Workforce, Energy and Commerce, the Judiciary, and Ways and Means, to propose specific changes to the ACA, in accordance with a set of objectives enumerated in the resolution, along with an expected amendment to the criteria sponsored by Jim Matheson (D-UT), requiring these committees to also address the Medicare doc fix in their proposals, as established by H Res 26.

Once the GOP-controlled House approves H Res 9, Republicans are expected to hold hearings to carefully develop replacement legislation that corresponds to the criteria outlined in the bill, including fostering economic growth, increasing the number of insured Americans, and lowering health care premiums through increased competition and choice. These hearings, which could continue for months, could bring to light frailties in the law as well as garner support for repeal or defunding from key lobbies and interest groups who backed the ACA in 2010.



Democrats, meanwhile, hope to use the opportunity for debate to gradually educate the public about the positive aspects of the current law, thereby increasing support for the ACA and, simultaneously, opposition to its repeal. Thus, in response to the Republican focus on committee hearings, Senate Democrats are planning their own series of hearings to promote the benefits of the ACA. The Senate Health, Education, Labor and Pensions (HELP) Committee will begin the hearings, which are expected to include testimony from individuals positively impacted by the law, as well as experts and administration officials involved in implementing the law. According to HELP Chairman Tom Harkin (D-Iowa), the Committee will focus on such issues as the law's consumer protections; the new rules on medical payouts and the premium rate review process; benefits for small business owners under the ACA; the law's impact on deficit reduction; as well as the provisions in the ACA focused on enhanced quality of care, prevention, and expanded access to coverage.

The Appropriations Strategy. GOP efforts to scale back the health reform law are also expected to focus on 'starving the beast' by withholding funding for ACA implementation. To do so, Republican lawmakers are likely to target the parts of the law whose funding must be approved by Congress through the appropriations process, also known as discretionary spending.

However, most of the funding for the ACA provisions fundamentally opposed by Republican lawmakers, such as the creation of state-based insurance exchanges, the Independent Payment Advisory Board, and the Medicaid expansion, received mandatory appropriations in the law and thus will not be funded through the appropriations process. Thus, the provisions that rely on annual appropriations from Congress are less essential to the law than those with mandatory appropriations, and less politically controversial, such as workforce training programs and funding to prevent elder abuse, neglect and exploitation. According to a September 2, 2010 CRS Report, [Discretionary Funding in the Patient Protection and Affordable Care Act](#), provisions in the law that will need discretionary appropriations include improvements in measuring quality of care, coordinating care for the chronically ill, and combining primary care and mental health care services in the same treatment centers.

In its December 2010 report, [Selected CBO Publications Related to Health Care Legislation, 2009-2010](#), the CBO estimated that potential discretionary spending under the law would be a minimum of \$115 billion over ten years, compared to their estimate that the law will cost a total of \$930 billion over the same time period. Democrats emphasize that according to the CBO's report, most of the discretionary spending, \$86 billion, is to continue existing programs, such as the Indian Health Service and health professional training program for doctors and nurses, which have received bipartisan support in the past. Additionally, any House-cleared appropriations bill will also have to pass the Democratic-controlled Senate in order to become law.

Alternatively, Republicans could support the rescission of the budget authority for the ACA provisions with mandatory appropriations, but this is a very difficult process requiring the support of the White House and approval in both Houses of Congress. In light of these potential challenges, the GOP will probably seek to limit discretionary appropriations to the two agencies charged with the majority of ACA



implementation, HHS and IRS. Though these agencies would be able to fund portions of the ACA administratively if funds were withheld, the [CBO's December report](#) estimates that each agency would need between \$5 billion to \$10 billion over 10 years to implement the law, providing Republicans with an opportunity to slow the implementation process.

The Bipartisan Strategy. Republicans are also likely to shift their focus to efforts with the potential for bipartisan support, such as dropping a new tax reporting requirement included in the ACA, the 1099 form requirement. Scheduled to take effect in 2012, this provision requires businesses to file a 1099 form with IRS for any vendor to whom they pay more than \$600 per year. The unpopular provision is designed to promote tax compliance, and is estimated to raise \$19.2 billion to help pay for the implementation of the ACA over ten years; its repeal is seen by some as one of the few that might withstand a Presidential veto.

In the 111th Congress, members of both parties made attempts to eliminate the requirement, but were unable to reach to do so, in part due to disputes over replacing the lost revenue. Currently, Democrats and Republicans are signaling potential support for a measure reintroduced in the House on January 5, 2011 by Dan Lungren (R-CA) to repeal the provision ([HR 4](#)). Although it includes no offsets, Lungren's proposal has more than enough cosponsors to clear the lower chamber, 13 of whom are Democrats. Senator Mike Johanns (R-Neb.) plans to reintroduce a previously unsuccessful companion bill in the Senate on January 25, which is expected to include offsets of \$39 billion in spending rescissions; Joe Manchin III (D-W.Va.) has pledged to cosponsor the measure.