

NEW FACES, NEW DYNAMICS: THE HEALTH CARE REFORM DEBATE

The relationship between the incoming HHS Secretary and the Senate Minority Leader may be the key to ACA overhaul.

BY JEFFREY J. KIMBELL AND KENNETH L. HODGE



One of the major planks in the platform of presidential candidate Donald Trump was the repeal and replacement of the Patient Protection and Affordable Care Act, also known as the ACA and as Obamacare.

The law has been contentious since it was signed into law in 2009; nearly a decade after its passage, there is still debate over the law's mandates, coverage expansion, and the question of whether the country's health care system is better off now than it was before the law's enactment.

Since assuming office, President Trump and congressional Republicans have laid the framework for repealing the ACA; how they will replace it remains uncertain. Much attention remains focused on the president and congressional leaders, but one of the most potent forces in any push to replace the ACA will come neither from the White House nor The Hill, but rather from Department of Health and Human Services (HHS) Secretary Tom Price.

SECRETARY PRICE

Before Secretary Price became a US Congressman from Alpharetta, Ga., he practiced medicine as an orthopedic surgeon. He built one of the largest orthopedic practices in the southeastern United States. His background as a practitioner informed his perspective on crafting health care policy as a member of the US House of Representatives. As a member of Congress, Price was an outspoken critic of the ACA, and he introduced several politically conservative plans to replace it. The most notable is the Empowering Patients First Act, which, if enacted, would allow individuals to opt out of the federal health care programs Medicare and Medicaid and instead use refundable tax credits to buy private health coverage.

The plan would also expand the use of health savings accounts (HSAs), allow insurance to be sold across state lines, and enact medical malpractice reforms. Price was also a leader in the fight to replace the sustainable growth rate (SGR) formula as part of the Medicare Access and CHIP Reauthorization Act (MACRA) of 2015.

During his Senate confirmation hearings, Secretary Price walked back some of the specific stances he has taken over the years. However, he held true to the tenets underlined by the Empowering Patients First Act, reducing federal regulation of the health care system and increasing individual flexibility and choice to control health coverage. The secretary's evolution on questions of federal health care regulation may foreshadow his plans to alter the administration's stance on the ACA. The HHS under Secretary Price may opt to use some of the same ACA authorities, such as delivery system demonstration authorities or the ACA-created Center for Medicare and Medicaid Innovation, which have sometimes burdened physicians when testing more conservative, flexible delivery models, meanwhile replacing other pieces of the ACA to provide patients, providers, and health plans more flexibility to design a better functioning health care market.

SENATOR SCHUMER Out with the old...

On the other side of the battle over health care reform, Senate Democrats have entered a new era with their selection of N.Y. Sen. Chuck Schumer to serve as Minority Leader of the Senate. He replaces longtime Democratic leader Harry Reid of Nevada, a former Las Vegas blackjack dealer who became one of the most powerful men in America during the Obama presidency.

After being swept into power with a filibuster-proof 60-vote majority in the Senate, Sen. Reid's Democrats pushed through major reforms along party lines, including the ACA.

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Sen. Reid was an intense partisan. Although rallying rank-and-file Democrats around party causes espoused by the administration was his greatest strength, in many respects it was also his weakness. In the face of an empowered opposition, Sen. Reid refused to waiver (or, as some would put it, refused to negotiate). This only caused Republicans—led by Sen. Mitch McConnell of Kentucky—to dig in their heels. As a result, Sen. Reid refused to allow his caucus to take votes on issues in which the party could be seen as less than wholly unified.

In 2014, Republicans regained control of the Senate. Many of the Democrats who had fought for Sen. Reid's causes such as the ACA were now gone. Facing this new reality—and with a 77th birthday on the horizon—Sen. Reid announced his retirement at the end of the 2016 session, bringing his era atop the chamber's Democrats to a close.

...in with the new.

Enter Sen. Schumer, a brilliant strategist and sharp talker from Brooklyn. Whereas Sen. Reid cared about ideology, Sen. Schumer cares about progress. He is known for being a dealmaker, in the past remarking that Democrats during the Obama administration should have focused on helping Americans through the recession before turning to piecemeal health care reform in a bipartisan fashion. Sen. Schumer has also been one of the leading Democratic voices supporting the repeal of the ACA's 2.3% excise tax on medical devices.

Now, with Sen. Schumer in charge of the minority, expect more deal making and voting—even on politically perilous subjects—paired with aggressive speeches and tactics to force Republicans into tough situations that give Senate Democrats more leverage for a deal that is

better for their side of the aisle. Whereas Sen. Reid would ignore the Republican opposition during negotiations, Sen. Schumer is more likely to keep communication lines open with Secretary Price, Sen. McConnell, and President Trump, and to pick his battles when and where he needs to in order to preserve his caucus.

Sen. Schumer will certainly attempt to use the words of President Trump against Secretary Price and Senate Republicans in this manner, particularly when it comes to replacing the ACA. Sen. Schumer will capitalize on Republicans' lack of unity on an ACA replacement plan in order to carve out wins for his party. He will likely not block a replacement bill in its entirety, but instead try to ensure that parts of the ACA stay preserved as part of a deal. Or he may seek to score on popular issues such as lowering high drug prices as a tradeoff for peeling back the law's mandates.

CAN THEY WORK TOGETHER?

The hope for a compromise does not look promising today. Discussions on Capitol Hill have deteriorated and relationships have soured, predominately over issues are not related to health care, such as immigration. Senate Democrats boycotted a procedural hearing to vote on Secretary Price's nomination in late January, forcing Senate Republicans to use rare tactics to advance the nomination despite the initial boycott. Secretary Price was eventually confirmed as HHS Secretary.

Ultimately, the ability of Secretary Price to work with Sen. Schumer during the upcoming debate on replacing the ACA may help to determine what the final ACA replacement plan looks like. As Secretary Price installs his team within HHS, he may provide an outlet for Sen. Schumer to avoid directly dealing with President Trump on ACA reform. Secretary Price has already signaled that he will take a less partisan approach as HHS Secretary than he did as a Congressman, and Sen. Schumer's innate desire to make a deal could provide interesting opportunities for compromise between two men who would seem to have had little common ground. ■

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