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At least 27 significant changes already have been made to ObamaCare

November 14, 2013 *ObamaCare* *Commentary*

By Grace-Marie Turner

More than 27 changes already have been made to ObamaCare, including at least 15 that have been signed into law by President Obama. A large number of changes have been made to a law that has not yet fully taken effect, but they haven't stopped the cascade of failures we are seeing today.

Measures are gaining bi-partisan support in Congress to help the millions of people who are losing their health insurance. The Keep Your Plan Act, sponsored by Energy and Commerce Committee Chairman Fred Upton, R-MI, will be considered in the House this week. A companion measure is being offered in the Senate by Sen. Ron Johnson, R-WI. Sen. Mary Landrieu, D-LA, is offering the Keeping the Affordable Care Act Promise Act, which takes a different approach but has a similar goal.

Some who have been vigilant in helping the American people see ObamaCare's manifold failures are opposing these measures, worrying about making "a fix" to this fatally flawed law. But the Keep Your Plan Act will not alter the corrupting core of ObamaCare; instead, it will provide some real-time relief to people who are being hurt by this law, people who are losing health insurance that they value because it doesn't comply with strict ObamaCare rules.

It is incumbent on public servants, whatever their political affiliation, to protect people from clear harm whenever they can. If the president continues to resist changes to the law, it is clear he is putting preservation of his legacy ACA program above protecting actual people.

The HealthCare.gov website is unlikely to be fixed by the end of November, as the president has assured the American people it would be. The Upton bill being considered by the House is a first step to try to stem the tide of cancellations that have been occurring, and which will continue to occur, as a result of ObamaCare. This will not "fix" the law in any way, but it could give people a chance to keep coverage they might otherwise have lost.

ObamaCare must go, but in the meantime, the American people's elected representatives can help as many families as possible keep the health insurance they

like.

The 27 “fixes” that already have been made to the law have not made it better but have indeed protected some Americans from even further damage.

Here is the list. It shows changes made by the Obama administration; changes made by the 111th Congress (under Democratic control of the House) and signed by President Obama; changes made by the 112th and 113th Congresses (under Republican control of the House) and signed by the president; and changes made by the U.S. Supreme Court.

Changes to the health law by administrative action:

1. **Congressional opt-out.** The administration gave Members of Congress and their staffs the option of exempting themselves from the ObamaCare exchanges created by the ACA, contrary to the language in the law. (September 30, 2013)
2. **Exchange enrollment:** The administration extended by six weeks – from February 14 to March 31, 2014 – the period in which people can enroll for coverage and avoid the individual mandate tax penalty. (October 23, 2013)
3. **Employer mandate delay:** By an administrative action that also is contrary to statutory language in the ACA, the reporting requirements for employers were delayed by one year. (July 2, 2013)
4. **Self-attestation:** Because of the difficulty of verifying income after the employer reporting requirement was delayed, the administration decided it would allow “self-attestation” of income by applicants for health insurance in the exchanges. (This was later partially retracted after congressional and public outcry over the likelihood of fraud.) (July 15, 2013)
5. **Small businesses on hold:** The administration said that the federal exchanges for small businesses would not be ready by the 2014 statutory deadline. Instead, officials delayed until 2015 implementation of federal SHOP exchanges for small businesses. (March 11, 2013)
6. **Close high-risk pool:** The administration decided to halt enrollment in federal high-risk pools, blocking coverage for an estimated 40,000 new applicants, and decided, rather than using money from a fund under HHS Secretary Sebelius’ control to extend coverage for Americans with pre-existing conditions, to instead use the money to pay for advertising for ObamaCare enrollment. (February 15, 2013)
7. **Medicare Advantage patch:** The administration ordered an advance draw on funds from a Medicare bonus program in order to provide extra payments to Medicare Advantage plans to temporarily forestall cuts in benefits and therefore delay exodus of MA plans from the program. (April 19, 2011)
8. **Reports for employee:** The administration, contrary to the legislation, instituted a delay by one year in the requirement that employers must report to their employees on their W-2 forms the full cost of their employer-provided health

insurance. (January 1, 2012)

9. **Doubling allowed deductibles:** Because some group health plans use more than one benefits administrator, plans are allowed to apply separate patient cost-sharing limits to different services, such as doctor/hospital and prescription drugs on group health plans. (February 20, 2013)
10. **Low-income basic plan delayed:** The administration delayed implementing the Basic Health Program until 2015. It would have provided more affordable health coverage for certain low-income individuals not eligible for Medicaid. (March 22, 2013)

Changes to the health law by Congress and signed into law by President Obama:

1. **1099 repealed:** Congress repealed the paperwork (“1099”) mandate that would have required businesses to report to the IRS all of their transactions with vendors totaling \$600 or more in a year. (April 14, 2011)
2. **CLASS out:** Congress repealed the unsustainable CLASS (Community Living Assistance Services and Supports) long-term care government “insurance” program which even the Democratic chairman of the Senate Finance Committee dubbed a “Ponzi scheme of the first order.” (January 2, 2013)
3. **Cut Co-ops:** Congress cut \$2.2 billion from the “Consumer Operated and Oriented Plan” (CO-OP) program, which had been called a “stealth public plan,” blocking creation of co-ops in about half the states after early reports showed many co-ops were very troubled financially. (January 2, 2013)
4. **No free-choice vouchers:** Congress repealed a program, supported by Oregon Sen. Ron Wyden, D, that would have allowed “Free Choice Vouchers,” which *The Hill* warned “could lead young, healthy workers to opt out” of their employer plans, “driving up costs for everybody else.” The same law barred additional funds for the IRS to hire new agents to enforce the health care law. (April 15, 2011)
5. **No Medicaid for rich seniors:** Congress saved taxpayers \$13 billion by changing how the eligibility for certain programs is calculated under ObamaCare. Without the change, a couple earning as much as \$64,000 would still have been able to qualify for Medicaid. (November 21, 2011)
6. **CO-OPs, IPAB, IRS:** Congress made further cuts to agencies implementing ObamaCare. It trimmed another \$400 million off the CO-OP program; cut another \$305 million from the IRS to hamper its ability to enforce the law’s tax hikes and mandates; and rescinded \$10 million in funding for the controversial Independent Payment Advisory Board. (December 23, 2011)
7. **Slush fund savings:** Congress slashed another \$11.6 billion from the Prevention and Public Health slush fund and \$2.5 billion from ObamaCare’s “Louisiana Purchase.” (February 22, 2012)
8. **More Louisiana cash:** One of the tricks used to get ObamaCare through the Senate was the special Louisiana Purchase deal for Sen. Mary Landrieu, D-LA. Congress saved another \$670 million by rescinding additional funds that gave a

special deal to her home state. (July 6, 2012)

9. **Medicare trust transfer:** Congress rescinded \$200 million of the \$500 million transfer from the Medicare Part A and Part B trust funds for the Community-Based Care Transition Program established and funded by ACA. (March 26, 2013)
10. **Military benefits:** Congress clarified that health care provided under TRICARE constitutes minimal essential health care coverage as required by ACA. (April 26, 2010)
11. **VA benefits:** Congress also clarified that health care provided by the Department of Veterans Affairs constitutes minimal essential health care coverage as required by ACA. (May 27, 2010)
12. **Drug clarification:** Congress modified the definition of average manufacturer price (AMP) to include inhalation, infusion, implanted, or injectable drugs that are not generally dispensed through a retail community pharmacy. (August 10, 2010)
13. **Doc Tax Fix:** Congress modified the amount of excess premium tax credits that individuals would have to repay to help offset the costs of the postponement of cuts in Medicare physician payments called for in the ACA. (December 15, 2010)
14. **Adoption credit:** Congress extended the nonrefundable adoption tax credit through tax year 2012. (December 17, 2010)
15. **Adult children:** TRICARE coverage was extended to dependent adult children up to age 26. (January 7, 2011)

Changes to the health law by the U.S. Supreme Court:

In its landmark decision challenging the ACA's individual mandate and other provisions, the U.S. Supreme Court modified by judicial edict two key provisions of the law:

1. **Medicare expansion voluntary:** The court made it voluntary rather than mandatory for states to expand Medicaid eligibility to people with incomes up to 138% of the federal poverty level.
2. **Individual mandate is a tax:** The court determined that the mandate that Americans must purchase government-approved health insurance could be avoided if individuals choose instead to pay the penalty "tax," making it optional for people to either comply or pay the tax.

And in addition, a number of other provisions have strong bi-partisan support for repeal and could be next in line. A few examples:

1. Delay of the individual mandate by at least a year, supported by West Virginia Democratic Sen. Joe Manchin
2. Repeal of the Independent Payment Advisory Board, supported by Rep. Henry Waxman, D-CA and many others
3. Repeal/delay the tax on medical devices, with bi-partisan support from Democratic Sen. Amy Klobuchar and others
4. Repeal/delay the other taxes, including the health insurance tax and tax on policies

outside the exchanges to pay for risk adjustments inside the exchanges.

Clearly, this law is being dismantled even before it takes full effect because it is so fatally flawed.

Tyler Hartsfield, Policy Analyst, assisted in the research for this list.

The Galen Institute, Inc., is a not-for-profit, free-market research organization devoted exclusively to health policy. It was founded in 1995 by Grace-Marie Turner to promote a more informed public debate over individual freedom, consumer choice, competition, and diversity in the health sector.

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