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Why Congress Should Not Preserve Flawed Obamacare Policies

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The U.S. Supreme Court is poised to rule on the constitutionality of the Affordable Care Act (commonly known as "Obamacare"). In anticipation of an unfavorable Court decision, liberals in Congress and elsewhere are arguing that a repeal of Obamacare would end reforms currently in effect and that these reforms enjoy broad popular support. But Congress should not fall into the trap of preserving bad policy.

The various provisions currently in effect fall short of expectations, further disrupt the market, and raise more concerns for the future.[1] Continuing them—even on a temporary basis—would be ill-advised. The danger of even temporarily endorsing the Obamacare approach is that it undermines the implementation of the right approach.

Conservatives especially should not be fooled into making short-term concessions that can undermine their long-term policy goals. Instead, Congress should use the opportunity to articulate clearly the shortfalls of the law and contrast them sharply with better solutions.

Real Problems That Need Real Solutions. While the law in general has never garnered majority approval, it is also true that specific provisions have polled well. Popular support for these provisions may point to popular understanding that there is indeed a problem rather than to an endorsement of the particular policy solution embodied in the law. In health care debates, there is often broad agreement on the problems but vastly different approaches to solving them. The debate leading up to Obamacare was no different.

Consider a few areas where short-term policy concessions could undermine long-term policy goals.

Prohibition on Pre-Existing Condition Exclusions. People with pre-existing conditions who are not enrolled in group insurance like the vast majority of their fellow citizens do indeed face serious obstacles in obtaining affordable health insurance. The problem is real, but it is small and manageable. Obamacare attempts to solve this problem not by adopting targeted reforms, but by scrapping existing protections and putting in place a sweeping, across-the-board regulation. Understanding that these radical regulations threaten to destabilize the market, authors of the law added the individual mandate to try to counter these adverse effects.

The Obamacare Record. The major prohibition on pre-existing condition exclusions (unrestricted guaranteed issue, narrow community rating, and the individual mandate) does not go into effect until 2014. Until then, there are two provisions currently in effect that address pre-existing conditions: the temporary federal high-risk pool and the prohibition on excluding pre-existing conditions for children.

After two years, the federal high-risk pools have enrolled only about 50,000 individuals, far below original projections.[2] On the other hand, state high-risk pools (established well before Obamacare) already cover more than 200,000 individuals.[3] These facts illustrate that the need for federal intervention was overstated.

Experience with the blanket prohibition on pre-existing conditions among children offers another warning. A 2011 report found that 17 states indicated insurers were no longer

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selling child-only policies to new enrollees, and 39 states responded that at least one insurer had exited the child-only market since the new law had taken effect.[4] Therefore, in this instance, removing the blanket prohibition would actually improve health insurance access for children.

A Better Solution. To help those struggling with pre-existing conditions to obtain coverage, Congress should adopt a more balanced approach. This can be done by extending to those individuals who have maintained coverage on their own in the individual market the same protections that those in the group market have. This means that they can change coverage when needed without facing new exclusions or penalties. Second, for those *without* continuous coverage, there should be a path toward earning similar protections. Individuals should gain protections as they maintain coverage. Third, there should be risk-adjustment or risk-pooling mechanisms in place to provide an additional backstop for hard-to-insure cases.

Mandatory Dependent Coverage for 26-Year-Olds. Today, young adults make up the largest group of Americans without health insurance. The 2010 Census data show that those between the ages of 18 and 24 are about 30 percent of the uninsured. Obamacare attempts to solve this problem by requiring insurance plans that offer dependent coverage to extend coverage for dependents up to age 26.

The Obamacare Record. While the federal mandate has increased dependent coverage, it has also come with unintended consequences, undercutting existing coverage for young Americans. Analysis of this group shows that the number of people purchasing coverage on their own has dropped. Twenty percent of individuals in this age group had a plan in their own name before Obamacare. After Obamacare, that share dropped to 17.5 percent, while the share of those with dependent coverage increased from 25 percent to 28 percent.[5] Further data analysis by The Heritage Foundation suggests that the number of those in this age group with employer-based coverage decreased as the number who dropped their own employer-based coverage and enrolled in dependent coverage of their parents increased.[6]

A Better Solution. Young adults should be encouraged to obtain coverage on their own when they are young and healthy. Federal tax law currently confines tax relief for the purchase of health insurance almost exclusively to those who have coverage through the workplace. Many younger adults, for example, are unemployed, work for an employer that does not offer coverage, are still in school, or find little incentive to buy coverage. Congress should replace the outdated employer-based model with individual tax credits for any person, including a young adult, who buys health care coverage. Having an individual tax credit available would create a direct financial incentive for individuals to obtain and keep their own health insurance, regardless of their job or job status. While insurance coverage for young people, including catastrophic coverage, is usually inexpensive, a tax credit would have the added benefit of making it even less expensive.

Medicare Prescription Drug "Donut Hole". Despite the opposition of fiscal conservatives, Congress enacted a universal drug entitlement with the Medicare Modernization Act of 2003. To offset the potentially explosive costs of the new entitlement, Congress engineered a deliberate "gap" in coverage where seniors would have to pay 100 percent of their drug costs. This is the Medicare "donut hole." However, plans are free to offer coverage that does not have a "donut hole." While some standalone prescription drug plans (PDPs) offer some coverage in the gap (for generics), 53 percent of enrollees in

1. Nina Owcharenko and Kathryn Nix, "The Obamacare Two-Year Checkup: More Reasons for Repeal," Heritage Foundation *Backgrounder* No. 2666, March 21, 2012, http://www.heritage.org/research/reports/2012/03/the-obamacare-two-year-checkup-more-reasons-for-repeal.
2. U.S. Department of Health and Human Services, Center for Medicare and Medicaid Services, Center for Consumer Information and Insurance Oversight, "Pre-Existing Condition Insurance Plan Data as of May 31, 2011," http://www.cciio.cms.gov/resources/files/pcipdatamay312011.html (accessed June 15, 2012).
3. National Association of State Comprehensive Health Insurance Plans, *Comprehensive Health Insurance for High-Risk Individuals: A State-by-State Analysis*, 22nd Edition, 2008/2009.
4. Michael B. Enzi, "Ranking Member Report: Health Care Reform Law's Impact on Child-Only Health Insurance Policies," U.S. Senate Committee on Health, Education, Labor and Pensions, August 2, 2011, http://www.help.senate.gov/imo/media/doc/Child-Only%20Health%20Insurance%20Report%20Aug%202,%202011.pdf (accessed June 15, 2012).
5. Paul Fronstin, Employee Benefit Research Institute, "The Impact of PPACA on Employment-Based Health Coverage of Adult Children to Age, 26," *EBRI Notes*, Vol. 31, No. 8 (January 2012), p. 2, http://www.ebri.org/pdf/notespdf/EBRI_Notes_01_Jan-12.PPACA-SpndDwn.pdf (accessed June 15, 2012).
6. Upcoming Heritage *Issue Brief* by Drew Gonshorowski.

Medicare Advantage are in plans that provide some level of coverage, especially for generics, in the gap.[7]

In Obamacare, Congress included a series of provisions (cash rebates, brand-name drug discounts, and additional taxpayer subsidies) to fill the donut hole and limit beneficiary costs with the objective of ensuring that by 2020, seniors would pay no more than 25 percent of their drug costs if they hit the donut hole.

The Obamacare Record. While Obamacare does provide relief for seniors who end up in the donut hole, the total effect of this policy is to increase the premium costs of drug coverage for all seniors. Annually, only 3 million to 4 million of the close to 50 million seniors in Medicare ever fall into the hole.[8] Low-income Medicare beneficiaries (roughly 10 million) are already eligible for premium assistance and protection from the higher out-of-pocket costs.

A Better Solution. The best solution to the donut hole problem is simply to transcend it and move Medicare from a defined-benefit to a defined-contribution model, where individuals are no longer bound by government-designed benefits, like the donut hole, and instead have access to plans whose benefits meet consumer demand. Under such a scenario, it is certain the donut hole would simply disappear.

First, Do No Harm. The failure of Obamacare is not only a matter of the public's continued opposition to it; the law is also a major policy failure. It is based on the false premise that more government, more regulations, and more mandates are the right solution to America's health care problems. To achieve a health care system where patients come first, Congress must not embrace the flawed and failed policies in Obamacare. Instead, Congress must use this opportunity to offer an alternative vision for the future of health care—a future where individuals get better care at lower cost without government controlling the dollars and decisions.

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7. Henry J. Kaiser Family Foundation, "Medicare Advantage 2012 Data Spotlight: Enrollment Market Update," *Data Spotlight*, June 2012, p. 9, http://www.kff.org/medicare/upload/8258.pdf (accessed June 15, 2012).
8. Henry J. Kaiser Family Foundation, "The Medicare Prescription Drug Benefit," *Fact Sheet*, November 2011, http://www.kff.org/medicare/upload/7044-12.pdf (accessed June 15, 2012).