

# ISSUE BRIEF

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## Obamacare's Failings Go Well Beyond the Individual Mandate and Medicaid

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Obamacare is under review by the Supreme Court because of its constitutionally suspect provisions, namely the “individual mandate” and the coercive Medicaid provisions. Certainly, the Court would do the country an immense favor by striking down the entire law so the decks were cleared for a sensible, market-based reform plan. But in the event that the Court does not invalidate the entirety of Obamacare, it is important to remember that what might remain on the books is just as problematic as the provisions under legal scrutiny.

The following are just four of the worst features of Obamacare; there are many other aspects of the law that would be damaging. And all of these features could remain threats to the strength of the economy and quality of American health care if the Court upholds the law or severs

the unconstitutional provisions from the rest of the legislation. That is why Congress must stand ready to repeal the rest of Obamacare in the event that the Court does not invalidate the entire thing.

**1. The Taxes.** It is often forgotten that in addition to being a massive federal power grab, Obamacare contains one of the largest tax increases ever imposed on the American economy—at a time when job growth should be the nation’s number one priority. In total, the Congressional Budget Office estimated the Obamacare tax hikes would raise about \$800 billion in new revenue over a decade.<sup>1</sup> By 2035, these taxes are expected to raise an additional 1.2 percent of GDP in taxes.<sup>2</sup>

The tax sections of Obamacare read like a “who’s who” list of bad tax policy. It begins with an increase in the Medicare payroll tax of 0.9 percent for individuals with incomes above \$200,000 (\$250,000 for couples) in 2013. This tax will depress the demand for labor at a time when job creation is critical for jump-starting the economy. Some may think that this tax will not hit the middle class because of the relatively high initial income thresholds. They are wrong. The income thresholds were

purposely not indexed to inflation, so, as the years pass, more and more middle-income families will cross the thresholds because of normal wage growth.

Obamacare also includes an additional 3.8 percent tax on investment income; a new 2.3 percent excise tax on medical devices that will reduce the size of the industry; taxes on the drug and insurance industry that will be passed on to consumers in the form of higher premiums; and a tax on high-premium insurance plans that will also be passed on to consumers.

**2. Deficits and Debt.** Obamacare will exacerbate the nation’s already alarming entitlement spending and debt crises. Already, the dramatic rise in spending on Medicare and Medicaid is pushing the federal budget to the breaking point. Obamacare makes the problem much worse by creating two new additional entitlement programs in the form of a massive Medicaid expansion and a new premium credit entitlement for households with incomes between 138 percent and 400 percent of the federal poverty level. These two entitlement expansions are expected to add a minimum of 35 million Americans to the entitlement rolls

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when phased in, at an expense of more than \$200 billion annually by the end of the decade.<sup>3</sup>

Obamacare supposedly “paid for” this additional spending with offsetting cuts in Medicare. But the Medicare cuts have been exposed as unrealistic because they would result in the program’s paying even less for medical services than Medicaid does today.<sup>4</sup> If that actually occurred, it would severely jeopardize seniors’ access to care. But even if the offsetting cuts were made, the savings are double-counted under Obamacare. They are used once to pay for future Medicare commitments that are today counted as unfunded governmental liabilities, and then a second time to supposedly cover the costs of Obamacare’s entitlement expansions.<sup>5</sup> But of course, the same money cannot be spent twice. The result is that Obamacare will add hundreds of billions of dollars in new debts this decade, and trillions over the longer term.<sup>6</sup>

### 3. The HHS Mandate.

Obamacare has handed over immense regulatory power to the Department of Health and Human Services (HHS) to control just about every aspect of the nation’s health system. In January 2012, the Administration announced that it planned to use that power to impose

new benefit requirements on all employer-sponsored insurance in the name of “preventive health services” (now frequently termed the “HHS mandate”).

Among other things, the regulations issued by the Administration in this regard would require all employers, including religious employers such as Catholic hospitals and universities, to cover abortifacient products, contraceptives, and sterilization procedures in the health plans they offer to workers. Requiring all employers to offer these products and services in health insurance would directly violate the religious liberty rights of thousands of religious institutions around the country.

Quite appropriately, the Administration’s actions provoked a strong response among the nation’s religious leaders, some of whom have now sued the Administration for relief. In February, the Administration, looking to defuse the controversy, announced that it wanted to carve out an “accommodation” for these institutions to allow them to continue to offer health benefits in conformance with their consciences. But the so-called accommodation—which merely shifts the notional payment from the employer to the insurers—is an

accounting device that does not alter the moral equation at the heart of the problem. For these religious employers, it is not possible to be faithful and participate in organizing health insurance that covers the objectionable products and services.

The Administration has given no indication that it will reverse course and rescind the rule, which is the only way to solve the problem. Thus, if the balance of Obamacare survives the Supreme Court, the HHS mandate would almost certainly survive and thus continue to pose one of the most serious threats ever witnessed in this country to the long-standing religious liberty rights of institutions and individual citizens.

**4. The Bureaucratic Micromanagement of American Health Care.** Much of Obamacare, including many of its Medicare provisions, is based on the theory that the federal government has the capacity and know-how to micromanage American health care. That is the basis for the provisions establishing an unaccountable and unelected board—the Independent Payment Advisory Board (IPAB)—to oversee all aspects of how Medicare is run. It is also the theory behind Accountable Care Organizations (ACOs), which are authorized in Obamacare to give the federal

1. Congressional Budget Office, Letter to House Speaker Nancy Pelosi, March 20, 2010, Table 2, <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/113xx/doc11379/amendreconprop.pdf> (accessed June 19, 2012).
2. CBO, “The Long-Term Budget Outlook,” June 2010, p. 61, <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/115xx/doc11579/06-30-ltbo.pdf> (accessed June 19, 2012).
3. CBO, Letter to House Speaker Nancy Pelosi, March 20, 2010, Table 4.
4. John D. Shatto and M. Kent Clemens, “Projected Medicare Expenditures Under Illustrative Scenarios with Alternative Payment Updates to Medicare Providers,” Office of the Actuary, Centers for Medicare and Medicaid Services, May 18, 2012, <http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/ReportsTrustFunds/Downloads/2012TRAlternativeScenario.pdf> (accessed June 19, 2012).
5. Charles Blahous, “The Fiscal Consequences of the Affordable Care Act,” The Mercatus Center of George Mason University, 2012, [http://mercatus.org/sites/default/files/publication/The-Fiscal-Consequences-of-the-Affordable-Care-Act\\_1.pdf](http://mercatus.org/sites/default/files/publication/The-Fiscal-Consequences-of-the-Affordable-Care-Act_1.pdf) (accessed June 19, 2012).
6. James C. Capretta, “The Medicare Trustees’ Report and the \$8.1 Trillion Double-Count,” The Weekly Standard Blog, April 24, 2012, [http://www.weeklystandard.com/blogs/medicare-trustees-report-and-81-trillion-double-count\\_642030.html](http://www.weeklystandard.com/blogs/medicare-trustees-report-and-81-trillion-double-count_642030.html) (accessed June 19, 2012).

government a new role in influencing how doctors and hospitals are organized to deliver care to seniors.

But the government is not adept at micromanaging how health care should be delivered to patients. When the government is given this much authority and discretion, it does not result in higher-quality care for patients. Rather, it leads to price controls and one-size-fits-all regulations that misallocate resources and lead to access problems.

Obamacare compounds the problem by creating massive new and costly bureaucracy at the federal and state levels of government that will become permanent and unresponsive centers of power. The IRS and HHS will grow. A new agency in HHS is slated to spend \$10 billion supposedly testing new ideas, but already

there is indication that the money is being wasted on projects driven more by politics than substance.

Obamacare is also pouring hundreds of millions of dollars into the states to coax them into building the “exchanges” that will become the foundation of the Obamacare edifice. These exchanges, far from fulfilling the supposed mission of fostering a dynamic marketplace, will be the means by which the federal government will extend its reach to every corner of the health sector. Every American who does not obtain his or her insurance through an employer will have little choice but to go through Obamacare’s exchanges.

It will only be a matter of time before the federal government uses its new powers to impose even more top-down cost controls on the health

system, to the detriment of the quality of American health care.

**Repeal Is the Only Solution.** If the Supreme Court invalidates all of Obamacare, a huge cloud now hanging over the economy and health system would be lifted. But such a decision from the Court is not assured. And if the Court leaves any of Obamacare on the books, there will be continued threats to a robust economic recovery and the quality of American medicine. Congress needs to stand ready to perform its duty and repeal whatever remnants of Obamacare remain in place after the Court has rendered its verdict.

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