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BACKGROUNDER

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After Repeal of Obamacare: Moving to Patient-Centered, Market-Based Health Care

Center for Health Policy Studies

Abstract

Obamacare moves American health care in the wrong direction by eroding the doctor–patient relationship, centralizing control, and increasing health costs. True health care reform would empower individuals, with their doctors, to make their own health care decisions free from government interference. Therefore, Obamacare should be stopped and fully repealed. Then Congress and the states should enact patient-centered, market-based reforms that better serve Americans.

For a better life, Americans need a health care system that they, not the government, control. Consumers should have the ability to choose how to meet their health insurance needs in a free market for insurance. Taxpayers should benefit from a more efficient and affordable system for helping those who need health care but cannot afford it. Above all, patients, with their doctors, should make their own health care decisions free from government interference.

The important first step is to repeal the Obamacare statute that puts the government in charge of health care. The second step is to let the country move to a patient-centered, market-based system that focuses on citizens and not on the government.

Principles for Reform

To allow Americans to reclaim control of their own health care and benefit from competition in a free market for insurance and health care, Congress should repeal the Obamacare statute and enact patient-centered, market-based reforms based on five principles:

Key Points

- Obamacare moves American health care in the wrong direction. It undermines the doctor–patient relationship, centralizes health care decisions, and increases health care costs.
- Therefore, Obamacare should be stopped and fully repealed.
- Once this is accomplished, Congress and the states should pursue patient-centered, market-based reforms that get health care reform back on track.
- Such reforms should focus on letting individuals choose and control their own health insurance; allowing the free markets to respond to consumer demand; encouraging employers to provide portable health insurance to their workers; helping those in need through civil society, the free markets, and the states; and protecting the right of conscience and unborn children.

This paper, in its entirety, can be found at **http://report.heritage.org/bg2847**

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- Choose, control, and carry your own health insurance;
- Let free markets provide the insurance and health care services that people want;
- Encourage employers to provide a portable health insurance benefit to employees;
- Assist those who need help through civil society, the free market, and the states; and
- Protect the right of conscience and unborn children.

The Patient Protection and Affordable Care Act (Obamacare) moves health care in the wrong direction. It puts government, not patients, in charge of individual health care decisions. Moreover, it fails to meet the promises laid out by President Barack Obama. With each passing day, it becomes clearer that Obamacare will not reduce premiums for average American families, bend the cost curve in health care spending, or bring down the deficit. For these reasons, among others, Obamacare must be repealed.

However, a return to the status quo before Obamacare is not the final step. Policymakers should pursue reforms based on five basic principles. Adopting such reforms would move American health care in the right direction: toward a patient-centered, market-based health care system.

Principle #1: Choose, control, and carry your own health insurance.

True health reform should promote personal ownership of health insurance. While Obamacare uses government-run insurance exchanges to limit individual choice, real reforms would focus on encouraging Americans to purchase insurance policies that they can take with them from job to job and into retirement in a competitive, free market. Policymakers should enact several key changes for this culture of personal health care ownership to take root.

Portability. Most Americans obtain coverage through their place of work. This allows employers to provide tax-free health benefits to their employees, while individuals purchasing health insurance on their own must use after-tax dollars. As a result, most individuals with private health insurance obtain that coverage from their employer.[1]

Rather than following Obamacare's example of forcing Americans into government-run health insurance exchanges, true patient-centered reform of health care would make insurance more portable. Individuals should be able to purchase an insurance policy when they are young and carry that policy with them throughout their working lives into retirement.

Equal Tax Relief. While Obamacare alters the tax treatment of health insurance, it does so in a way that increases burdens on taxpayers. Its 40 percent tax on so-called Cadillac health insurance plans is but one of 18 separate tax increases included in the law,[2] which, according to the Congressional Budget Office and the Joint Committee on Taxation, will raise $771 billion in revenue from 2013 to 2022.[3]

A better approach would equalize the tax treatment of health insurance *without* raising new revenues. The Heritage Foundation has previously proposed replacing the existing deduction for employer-provided health coverage with a flat tax credit that individuals could use to purchase a

1. According to the most recent census data, 86.2 percent of Americans with private health insurance coverage obtained that coverage through an employer. Carmen DeNavas-Walt, Bernadette D. Proctor, and Jessica C. Smith, *Income, Poverty, and Health Insurance Coverage in the United States: 2011*, U.S. Census Bureau, September 2012, p. 65, Table C-1, http://www.census.gov/prod/2012pubs/p60-243.pdf (accessed September 20, 2013).
2. Alyene Senger, "Obamacare's Impact on Today's and Tomorrow's Taxpayers: An Update," Heritage Foundation *Issue Brief* No. 4022, August 21, 2013, http://www.heritage.org/research/reports/2013/08/obamacares-impact-on-todays-and-tomorrows-taxpayers-an-update.
3. Joint Committee on Taxation, "Estimated Revenue Effects of a Proposal to Repeal Certain Tax Provisions Contained in the 'Affordable Care Act ("ACA")'," June 15, 2012, and Congressional Budget Office, "Table 2: CBO's May 2013 Estimate of the Budgetary Effects of the Insurance Coverage Provisions Contained in the Affordable Care Act," http://www.cbo.gov/sites/default/files/cbofiles/attachments/44190_EffectsAffordableCareActHealthInsuranceCoverage_2.pdf. The total amount of tax revenue collected from the individual mandate, employer mandate, and 40 percent excise tax on high-cost health plans comes from the CBO's May 2013 estimate. For all other taxes, the amount of tax revenue totaled comes from the Joint Committee on Taxation's June 2012 estimation.

health insurance policy of their own.[4] Another idea, first proposed by then-President George W. Bush, would give all Americans purchasing health coverage—whether through an employer or on their own—the same standard deduction for health insurance.[5] Both proposals assume revenue neutrality over 10 years. Unlike Obamacare, they do not propose using reform to increase net tax revenues.

Both of these proposals would accomplish two important objectives.

Providing equal tax treatment would remove a major obstacle that discourages individuals from buying and holding their own health insurance policy for years and taking that coverage from job to job.

First, they would equalize the tax treatment between health coverage provided through an employer and health coverage purchased by an individual. Providing equal tax treatment would remove a major obstacle that discourages individuals from buying and holding their own health insurance policy for years and taking that coverage from job to job. Tax equity would also encourage firms either to provide direct contributions toward their workers' health coverage or to increase wages in place of health benefits.

Second, limiting the amount of the tax benefit provided, either with a tax credit or with a standard deduction, would encourage individuals to become smarter purchasers of health insurance coverage. Studies have demonstrated that the current uncapped tax benefit for employer-provided health insurance encourages firms to offer richer health plans and individuals to overconsume health care. According to the Congressional Budget Office, reforming the tax treatment of health insurance "would provide stronger incentives for enrollees to weigh the expected benefits and costs of policies" when buying insurance, thus helping to reduce costs.[6]

Choice of Providers. Through its new system of government control, Obamacare restricts choice and access for many patients. The nonpartisan Medicare actuary concluded that the Medicare reimbursement reductions in Obamacare could make 40 percent of all hospitals unprofitable in the long term, thus restricting beneficiary access to care.[7] Moreover, preliminary reports suggest that Obamacare's insurance exchanges will feature limited provider networks in an attempt to mitigate premium increases for individuals purchasing exchange coverage.[8]

The most important element of any health care system is the trusted relationship between doctor and patient. Any system of truly patient-centered health care should work to preserve those important bonds and to repair the damage to those bonds caused by Obamacare.

Encouraging Personal Savings. Since their creation in 2004, health savings accounts (HSAs) have become a popular way for millions of families to build savings for needed health care expenses. HSA plans combine a health insurance option featuring a slightly higher deductible—but catastrophic protection in the event of significant medical

4. Nina Owcharenko, "Saving the American Dream: A Blueprint for Putting Patients First," Heritage Foundation *Issue Brief* No. 3628, June 6, 2012, http://www.heritage.org/research/reports/2012/06/saving-the-american-dream-a-blueprint-for-putting-patients-first.
5. The White House, "Affordable, Accessible, and Flexible Health Coverage," 2007, http://georgewbush-whitehouse.archives.gov/stateoftheunion/2007/initiatives/healthcare.html (accessed September 20, 2013). Recently, the House Republican Study Committee included a standard deduction in its proposal for health reform. See U.S. House of Representatives, Republican Study Committee, "The American Health Care Reform Act," September 18, 2013, http://rsc.scalise.house.gov/solutions/rsc-betterway.htm (accessed September 25, 2013).
6. Congressional Budget Office, *Key Issues in Analyzing Major Health Insurance Proposals*, December 2008, pp. 84–87, http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/99xx/doc9924/12-18-keyissues.pdf (accessed September 20, 2013).
7. John D. Shatto and M. Kent Clemens, "Projected Medicare Expenditures Under Illustrative Scenarios with Alternative Payment Updates to Medicare Providers," Centers for Medicare and Medicaid Services, Office of the Actuary, May 31, 2013, pp. 8–10, http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/ReportsTrustFunds/Downloads/2013TRAlternativeScenario.pdf (accessed September 20, 2013).
8. Anna Wilde Mathews, "Many Health Insurers to Limit Choices of Doctors, Hospitals," *The Wall Street Journal*, August 15, 2013, http://online.wsj.com/article/SB10001424127887323446404579010800462478682.html (accessed September 20, 2013; subscription required).

expenses—with a tax-free savings account. As one of several new consumer-driven health options, HSAs encourage patients to take control of their own health care, providing financial incentives for consumers to serve as wise health care purchasers.

Over the past several years, millions of families have taken advantage of the innovative tools that HSA plans offer. The number of people enrolled in HSA-eligible policies has skyrocketed from 1 million in March 2005 to 15.5 million in January 2013.[9] Numerous studies have also shown that individuals with HSA plans have used tools provided by their health insurer to become more involved with their health care—for example, by using online support tools, inquiring about provider cost and quality, and seeking preventive care.[10] As a result, individuals had saved at least $12.4 billion in their HSAs by the end of 2011.[11]

However, HSA holders still face obstacles to building their personal savings. For instance, under current law, funds contributed to an HSA may not be used to pay for insurance premiums, except under very limited circumstances.[12] Changing this restriction and increasing HSA contribution limits would enhance both personal savings and personal ownership of health insurance.

Coverage for Pre-Existing Conditions. The problem of providing access to individuals with pre-existing conditions, while very real, did not necessitate the massive changes in America's health care system included in Obamacare. In 2011, the Obama Administration suggested that as many as 129 million Americans with pre-existing conditions were "at risk" and "could be denied coverage" without Obamacare's massive changes in America's insurance markets.[13]

That claim was wildly untrue. Under prior law, individuals with employer-sponsored coverage (90 percent of the private market) could not be subjected to pre-existing condition exclusions.[14] In fact, prior to Obamacare, the number of individuals with pre-existing conditions who truly could not obtain health coverage was vastly smaller, and the problem existed only in the individual market. It is therefore not surprising that, according to the most recent data, only an estimated 134,708 individuals have enrolled in the supplemental federal high-risk pool program since it was created under Obamacare to cover individuals with pre-existing conditions[15]—still less than the 200,000 individuals originally projected to enroll.[16]

States could use a variety of approaches to provide coverage to individuals who are unable to purchase insurance. For instance, 35 states already operate high-risk pools with a collective current enrollment of 227,000 individuals to ensure access to coverage for individuals with pre-existing conditions.[17] Alternatively, states could establish reinsurance or risk transfer mechanisms under which insurance companies would reimburse each other

9. America's Health Insurance Plans, Center for Policy and Research, "January 2013 Census Shows 15.5 Million People Covered by Health Savings Account/High-Deductible Health Plans (HSA/HDHPs)," June 2013, http://www.ahip.org/HSACensus2013PDF/ (accessed September 20, 2013).
10. America's Health Insurance Plans, Center for Policy and Research, "Health Savings Accounts and Account-Based Health Plans: Research Highlights," July 2012, http://www.ahip.org/HSAHighlightsReport072012/ (accessed September 20, 2013).
11. Devenir, "Health Savings Accounts Surpass $12.4 Billion in 2011," January 31, 2012, http://www.devenir.com/2012/devenir2011yearendsurvey (accessed September 20, 2013).
12. For the definition of "qualified medical expenses," see 26 U.S. Code § 223(d)(2). HSA funds can be used to purchase health insurance only for COBRA continuation health coverage, health insurance purchased during periods of unemployment, Medigap supplemental coverage, or long-term care insurance (within certain limits).
13. U.S. Department of Health and Human Services, Office of Planning and Evaluation, "At Risk: Pre-Existing Conditions Could Affect 1 in 2 Americans," November 2011, http://aspe.hhs.gov/health/reports/2012/pre-existing/index.shtml (accessed September 20, 2013).
14. Edmund Haislmaier, "HHS Report on Obamacare's Preexisting Conditions Impact: Say What???" The Heritage Foundation, The Foundry, January 19, 2011, http://blog.heritage.org/2011/01/19/hhs-report-on-obamacare's-preexisting-conditions-impact-say-what/.
15. Centers for Medicare and Medicaid Services, Center for Consumer Information and Insurance Oversight, "Covering People with Pre-Existing Conditions: Report on the Implementation and Operation of the Pre-Existing Condition Insurance Plan Program," January 31, 2013, http://www.cms.gov/CCIIO/Resources/Files/Downloads/pcip_annual_report_01312013.pdf (accessed September 24, 2013).
16. Douglas W. Elmendorf, letter to Senator Mike Enzi (R-WY), June 21, 2010, http://cbo.gov/sites/default/files/cbofiles/ftpdocs/115xx/doc11572/06-21-high-risk_insurance_pools.pdf (accessed September 20, 2013).
17. National Association of State Comprehensive Health Insurance Plans, "Pool Membership—2011," September 2012, http://naschip.org/2012/Quick%20Checks/Pool%20Membership%202011.pdf (accessed September 20, 2013).

for the cost of treating individuals with high medical expenses without added funding from state or federal taxpayers. Either approach would be far preferable to the massive amounts of regulation, taxation, and government spending under Obamacare.

Principle #2: Let free markets provide the insurance and health care services that people want.

Many individuals have already learned that, due in part to Obamacare, with its government-run health exchanges, new bureaucracies, and other forms of government control, they will not be able to retain their current health insurance.[18] There is a better way, and it involves providing more choice through market incentives rather than undermining markets through centralized bureaucracy.

Cross-State Purchasing. Currently, state insurance markets suffer from two flaws: Many markets are uncompetitive, with up to 70 percent of metropolitan areas considered "highly concentrated,"[19] and costly benefit mandates raise health insurance premiums. A prior Heritage Foundation analysis found that each benefit mandate raises costs by an average of approximately $0.75 per month.[20] Another study found that states have imposed a total of 2,271 benefit mandates—or approximately 45 per state.[21] Taken together, these two studies suggest that the cumulative effect of these mandates could raise premiums by $20–$40 per month, or hundreds of dollars per year.

Congress can help to mitigate these problems by removing federal barriers to interstate commerce in health insurance products. Individuals should have the ability to purchase insurance products across state lines, choosing the health plan that best meets their needs regardless of the location of its issuer.

Pooling Mechanisms. Another way to improve patient choice and make insurance markets more competitive would involve new purchasing arrangements and pooling mechanisms. Small businesses, individual membership associations, religious groups, and fraternal organizations should be able to sell health insurance policies through new group purchasing arrangements. The federal government's role should be to remove the barriers to such arrangements.

By extending the benefits of group coverage beyond the place of work, these new purchasing arrangements would also encourage portability of health insurance coverage. These reforms would allow individuals to obtain their health plan from a trusted source—one with which they would be likely to have a longer association than they have with their employer—thereby creating a form of health coverage that Americans could truly own.

Medicare Private Contracting. Seniors could also benefit from patient-centered Medicare reforms, one of which should help to restore the doctor–patient relationship. Congress should eliminate the anticompetitive restrictions that prevent doctors and patients from contracting privately for medical services outside of traditional Medicare.[22] Congress can also restructure the Medicare benefit, modernizing the design of a program that has remained largely unchanged since its creation nearly 50 years ago.[23] These changes would enhance patient choice while preserving the program's solvency for future generations of Americans.

Medicare Reform. Regrettably, Obamacare imposes many its most harmful effects on senior

18. Chris Jacobs, "Obamacare: Taking Away Americans' Health Coverage," The Heritage Foundation, The Foundry, August 6, 2013, http://blog.heritage.org/2013/08/06/obamacare-taking-away-americans-health-coverage/.
19. Press release, "New AMA Study Finds Anticompetitive Market Conditions Are Common Across Managed Care Plans," American Medical Association, November 28, 2012, http://www.ama-assn.org/ama/pub/news/news/2012-11-28-study-finds-anticompetitive-market-conditions-common.page (accessed September 20, 2013).
20. Michael J. New, "The Effect of State Regulations on Health Insurance Premiums: A Revised Analysis," Heritage Foundation *Center for Data Analysis Report* No. 06-04, July 25, 2006, p. 5, http://www.heritage.org/research/reports/2006/07/the-effect-of-state-regulations-on-health-insurance-premiums-a-revised-analysis.
21. Council for Affordable Health Insurance, "Health Insurance Mandates in the States 2012: Executive Summary," April 9, 2013, http://www.cahi.org/cahi_contents/resources/pdf/Mandatesinthestates2012Execsumm.pdf (accessed September 24, 2013).
22. Chris Jacobs, "Medicare's Sustainable Growth Rate: Principles for Reform," Heritage Foundation *Backgrounder* No. 2827, July 18, 2013, http://www.heritage.org/research/reports/2013/07/medicares-sustainable-growth-rate-principles-for-reform.
23. Robert E. Moffit and Rea S. Hederman, Jr., "Medicare Savings: Five Steps to a Down Payment on Medicare Reform," Heritage Foundation *Issue Brief* No. 3908, April 11, 2013, http://www.heritage.org/research/reports/2013/04/medicare-savings-5-steps-to-a-downpayment-on-structural-reform.

citizens.[24] According to the Medicare actuary, the Medicare reimbursement reductions in Obamacare will make 15 percent of all hospitals unprofitable within the decade and 40 percent unprofitable by 2050.[25] As a result, seniors may face significant obstacles to obtaining health care in the future.

There is a better way. Specifically, Congress should provide seniors with a generous subsidy to purchase a Medicare plan of their choosing. Seniors who choose a plan costing less than the subsidy would pay less, while seniors who choose a plan costing more than the subsidy would pay the difference in price.[26]

Consumer Choice and Competition. As part of its system of government control, Obamacare hinders patients' ability to choose their own health plan. One survey found that the mandates and requirements in the law mean that more than half of all insurance policies purchased directly by individuals will not qualify as "government-approved" under Obamacare.[27] As a result, many Americans are finding that they will not be able to keep the health plan they have and like[28]—despite President Obama's repeated promises.[29]

True patient-centered reform would bolster HSAs and other consumer-directed health products—such as health reimbursement arrangements and flexible spending accounts—that have the ability to transform American health care. One study published in the prestigious journal *Health Affairs* in 2012 found that expanding market penetration of consumer-driven health plans from 13 percent to 50 percent of all employers could reduce health costs by as much as $73.6 billion per year—a reduction in health spending of 9.1 percent.[30]

In other words, expanding consumer choice and competition could *reduce* health care costs and spending—the opposite of Obamacare, which restricts consumer choice and *increases* health costs and spending.

Principle #3: Encourage employers to provide a portable health insurance benefit.

Because most Americans traditionally have received health insurance from their employers, many individuals have few, if any, choices when selecting a health plan. According to the broadest survey of employer plans, nearly nine in 10 firms (87 percent) offer only one plan type, and only 2 percent offer three or more plan types.[31] As a result, employees have only a very limited ability to choose the plan that best meets their needs.

Defined Contribution. An ideal solution would convert the traditional system of employer-provided health insurance from a defined benefit model to a defined contribution model. Rather than providing health insurance directly, employers instead would offer cash contributions to their workers, enabling them to buy the plans of their own choosing. Combined with changes in the tax treatment of health insurance and regulatory improvements to enhance portability, moving to a defined contribution model for health insurance would allow workers to buy a health insurance policy in their youth and take that policy with them from job to job into retirement.

24. Alyene Senger, "Obamacare's Impact on Seniors: An Update," Heritage Foundation *Issue Brief* No. 4019, August 20, 2013, http://www.heritage.org/research/reports/2013/08/obamacares-impact-on-seniors-an-update.
25. Shatto and Clemens, "Projected Medicare Expenditures Under Illustrative Scenarios," pp. 8–10.
26. Owcharenko, "Saving the American Dream: A Blueprint for Putting Patients First."
27. Jon R. Gabel, Ryan Lore, Roland D. McDevitt, Jeremy D. Pickreign, Heidi Whitmore, Michael Slover, and Ethan Levy-Forsythe, "More Than Half of Individual Health Plans Offer Coverage That Falls Short of What Can Be Sold Through Exchanges as of 2014," *Health Affairs*, May 2012, http://content.healthaffairs.org/content/early/2012/05/22/hlthaff.2011.1082 (accessed September 20, 2013; subscription required).
28. Jacobs, "Obamacare: Taking Away Americans' Health Coverage."
29. For instance, see a 2008 campaign document answering the question "Will I have to change plans?" under the Obama proposal: "No, you will not have to change plans. For those who have insurance now, nothing will change under the Obama plan—except that you will pay less." Obama for America, "Background Questions and Answers on Health Care Plan," 2008, http://www.scribd.com/doc/191306/barack-obama-08-healthcare-faq (accessed September 20, 2013).
30. Amelia M. Haviland, M. Susan Marquis, Roland D. McDevitt, and Neeraj Sood, "Growth of Consumer-Directed Health Plans to One-Half of All Employer-Sponsored Insurance Could Save $57 Billion Annually," *Health Affairs*, May 2012, http://content.healthaffairs.org/content/31/5/1009.abstract (accessed September 20, 2013; subscription required).
31. Kaiser Family Foundation and Health Research and Educational Trust, *Employer Health Benefits: 2013 Annual Survey*, August 2013, p. 56, Exhibit 4.1, http://kaiserfamilyfoundation.files.wordpress.com/2013/08/8465-employer-health-benefits-20131.pdf (accessed September 23, 2013).

These changes would also enable workers and families to negotiate contributions from multiple employers rather than having just one employer foot the bill.

Principle #4: Assist those who need help through civil society, the free market, and states.

While some health reforms—such as changing the tax treatment of health insurance and reforming the Medicare program—remain fully within the purview of the federal government, states also play a critical role in enacting reforms that can lower costs, improve access to care, and modernize state Medicaid programs. By serving as the "laboratories of democracy," states can provide examples for other states—and the federal government—to follow. Because many state-based reforms do not rely on Washington's involvement or approval, states can move ahead with innovative market-based solutions even as federal bureaucrats attempt to implement Obamacare's government-centric approach.

State Innovation. If given proper time and space by an all-too-intrusive federal government, states can act on their own to open their insurance markets. A few states have already acted to open their insurance markets. In 2011, Georgia enacted legislation allowing interstate purchasing of health insurance, and Maine passed legislation allowing carriers from other New England states to offer insurance products to its citizens.[32] Just before Obamacare was enacted in 2010, Wyoming acted to permit out-of-state insurers to offer products.[33] While it may take some time before a critical mass of states creates a true interstate market for insurance, these nascent efforts demonstrate the nationwide interest in expanding health insurance choice and competition.

Medicaid Premium Assistance. Among various forms of health coverage, the Medicaid program is known for its poor quality and outcomes for patients. Numerous studies have found that Medicaid patients suffer worse outcomes than other patients suffer.[34] A recent study from Oregon concluded that after two years, patients in Medicaid did not achieve measurable health benefits from their insurance coverage.[35] Even participants—recognizing that many physicians, because of the program's low reimbursement rates, will not treat Medicaid patients—complain that the program is not "real insurance."[36]

> Moving to a defined contribution model for health insurance would allow workers to buy a health insurance policy in their youth and take that policy with them from job to job into retirement.

Obamacare makes Medicaid's problems worse, consigning millions more Americans to this poor government-run program. True reform would instead subsidize private health insurance for low-income Medicaid beneficiaries. The Heritage Foundation has previously promoted such a solution as part of its comprehensive reform of the Medicaid program.[37] Congress should take steps to encourage states to provide premium assistance. Such programs would promote health care ownership and provide beneficiaries with better access to care than the traditional Medicaid program does.

32. National Council of State Legislatures, "Out-of-State Health Insurance—Allowing the Purchase (State Implementation Report)," updated September 2012, http://www.ncsl.org/issues-research/health/out-of-state-health-insurance-purchases.aspx (accessed September 23, 2013).
33. Ibid.
34. For a summary of many of these studies, see Kevin D. Dayaratna, "Studies Show: Medicaid Patients Have Worse Access and Outcomes than the Privately Insured," Heritage Foundation *Backgrounde*r No. 2740, November 7, 2012, http://www.heritage.org/research/reports/2012/11/studies-show-medicaid-patients-have-worse-access-and-outcomes-than-the-privately-insured. See also Scott Gottlieb, "Medicaid Is Worse Than No Coverage at All," *The Wall Street Journal*, March 10, 2011, http://online.wsj.com/article/SB10001424052748704758904576188280858303612.html (accessed September 23, 2013).
35. Annie Lowrey, "Study Finds Health Care Use Rises with Expanded Medicaid," *The New York Times*, May 2, 2013, http://www.nytimes.com/2013/05/02/business/study-finds-health-care-use-rises-with-expanded-medicaid.html (accessed September 23, 2013).
36. Vanessa Fuhrmans, "Note to Medicaid Patients: The Doctor Won't See You," *The Wall Street Journal*, July 19, 2007, http://online.wsj.com/article/SB118480165648770935.html (accessed September 23, 2013; subscription required).
37. Nina Owcharenko, "Medicaid Reform: More Than a Block Grant Is Needed," Heritage Foundation *Issue Brief* No. 3590, May 4, 2012, http://www.heritage.org/research/reports/2012/05/three-steps-to-medicaid-reform.

Medicaid Reforms. Despite the looming presence of Obamacare, states should continue wherever possible to seek opportunities to reform their Medicaid programs, moving toward more personalized care and including strong incentives for personal responsibility. States can also seek additional flexibility from Washington to modernize care; many governors have already made such requests.[38]

Obamacare makes Medicaid's problems worse, consigning millions more Americans to this poor government-run program.

Congress also should act to reform and modernize Medicaid. Efforts in this vein would include comprehensive reforms—such as a block grant or per capita spending caps—that trade additional flexibility for states in exchange for a fixed spending allotment from Washington.[39] Other reforms could incentivize and subsidize Medicaid beneficiaries to move to private insurance policies that they can own and keep. All of these reforms would focus on modernizing Medicaid to provide better quality care, reduce costs, and promote personal responsibility and ownership.

Reducing Fraud. Regrettably, many government health programs are riddled with fraud. Some estimates suggest that as much as $60 billion in Medicare spending may involve fraud.[40] Similar problems plague many state Medicaid programs. A 2005 *New York Times* exposé on Medicaid fraud quoted James Mehmet, a former chief investigator in New York State, as saying that 10 percent of the state's Medicaid spending constituted outright fraud, with another 20 percent to 30 percent comprising "unnecessary spending that might not be criminal." Overall, Mehmet estimated that "questionable" Medicaid spending totaled $18 billion in New York State alone.[41]

Congress and the states should do more to crack down on the waste, fraud, and abuse that plague America's health entitlements. Reforms should end the current "pay and chase" model, under which investigators must attempt to track down fraudulent claims and providers after they have already received reimbursement. Other solutions would enhance penalties for those who engage in fraudulent activity—for instance, buying or selling personal patient information, which is often used to perpetrate fraud schemes. These and other reforms would save taxpayer dollars, helping to preserve Medicare and Medicaid for future generations.

Removing Barriers to Care. With studies indicating that America faces a doctor shortage in future years, policymakers should focus on removing barriers that discourage institutions from assisting those who need health care.[42] Regrettably, America's litigious culture has resulted in the widespread practice of defensive medicine by doctors and other health practitioners. In response, some states have changed their medical liability laws to discourage frivolous lawsuits, prompting doctors to move to those states to practice medicine. Were other states to adopt such reforms, this would encourage doctors—a majority of whom believe the practice of medicine is in jeopardy[43]—to remain in practice and would encourage students to join the profession.

In addition, reforms that improve the liability system could reduce the prevalence of defensive medicine practices and thereby help to reduce health costs. One government estimate found that

38. Republican Governors Public Policy Committee, Health Care Task Force, "A New Medicaid: A Flexible, Innovative, and Accountable Future," August 30, 2011, http://www.rga.org/homepage/gop-govs-release-medicaid-reform-report/ (accessed September 23, 2013).
39. Owcharenko, "Medicaid Reform: More Than a Block Grant Is Needed."
40. CBS News, "Medicare Fraud: A $60 Billion Crime," *60 Minutes*, September 5, 2010, http://www.cbsnews.com/8301-18560_162-5414390.html (accessed September 23, 2013).
41. Clifford Levy and Michael Luo, "New York Medicaid Fraud May Reach into Billions," *The New York Times*, July 18, 2005, http://www.nytimes.com/2005/07/18/nyregion/18medicaid.html (accessed September 23, 2013).
42. Nisha Nathan, "Doctor Shortage Could Cause Health Care Crash," ABC News, November 13, 2012, http://abcnews.go.com/Health/doctor-shortage-health-care-crash/story?id=17708473 (accessed September 23, 2013).
43. Deloitte, "Deloitte 2013 Survey of U.S. Physicians: Physician Perspectives About Health Care Reform and the Future of the Medical Profession," 2013, p. 3, http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/us_chs_2013SurveyofUSPhysicians_031813.pdf (accessed September 23, 2013).

reasonable limits on non-economic damages could reduce total health spending by as much as $126 billion per year by reducing the amount of defensive medicine practiced by physicians.[44] More recently, the Congressional Budget Office concluded that enacting comprehensive liability reform would reduce health care spending by tens of billions of dollars per year, reducing the federal budget deficit by tens of billions over the next decade.[45]

To help to eliminate barriers to care and reduce health costs, states should reform their liability systems, capping non-economic damages and taking other steps to reduce the incidence of frivolous lawsuits and ensure proper legal protections for health care providers.[46] However, because liability reform and torts in general are properly a state issue, Congress should not impose liability reforms except where the federal government has a clear, constitutionally based federal interest. Examples might include liability reforms with respect to medical products approved by the federal Food and Drug Administration or when the federal government is a payer of health care services, as it is with Medicare and Medicaid.[47]

Reforming Scope-of-Practice and Certificate of Need. State governments control the licensure of both medical professionals and medical practices. By removing artificial obstacles that restrict the supply of medical providers, states can expand access to health services across populations while unleashing new competition that can work to reduce costs.

States can reform their health care systems by re-examining scope-of-practice laws, which frequently limit the ability of nurse practitioners and other health professionals to care for patients. In 2010, the Institute of Medicine concluded that "state regulations often restrict the ability of nurses to provide care legally" and that policymakers should remove "barriers that limit the ability of nurses to practice to the full extent of their education, training, and competence."[48] Many states have begun to reform their scope-of-practice laws to allow physician assistants, nurse practitioners, and others to treat more patients even as entrenched interests have fought to preserve their preferential treatment.[49] States should follow the recommendations of the Institute of Medicine in reforming their scope-of-practice laws to allow all medical professionals to practice to the full extent of their training.

A total of 36 states also impose certificate-of-need requirements, which impede the introduction of new hospitals and medical facilities. These laws require organizations seeking to build new medical facilities to obtain a certificate from a state board that the facility is "needed" in a particular area.[50] As with scope-of-practice requirements, reforming or eliminating certificate-of-need restrictions would encourage the development of new medical facilities, expanding access to care and giving patients more choices.

Principle #5: Protect the right of conscience and unborn children.

Government should not compel individuals to undertake actions that violate their deeply held

44. U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, "Addressing the New Health Care Crisis: Reforming the Medical Litigation System to Improve the Quality of Health Care," March 2003, p. 16, http://aspe.hhs.gov/daltcp/reports/medliab.pdf (accessed September 23, 2013).
45. Douglas W. Elmendorf, letter to Senator Orrin Hatch (R–UT), October 9, 2009, http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/106xx/doc10641/10-09-tort_reform.pdf (accessed September 23, 2013).
46. Randolph W. Pate and Derek Hunter, "Code Blue: The Case for Serious State Medical Liability Reform," Heritage Foundation *Backgrounder* No. 1908, January 17, 2006, http://www.heritage.org/research/reports/2006/01/code-blue-the-case-for-serious-state-medical-liability-reform.
47. Hans von Spakovsky, "Medical Malpractice Reform: States vs. the Federal Government," The Heritage Foundation, The Foundry, March 19, 2012, http://blog.heritage.org/2012/03/19/medical-malpractice-reform-states-vs-the-federal-government/.
48. Institute of Medicine, "The Future of Nursing: Focus on Scope of Practice," *Report Brief,* October 2010, http://www.iom.edu/~/media/Files/Report%20Files/2010/The-Future-of-Nursing/Nursing%20Scope%20of%20Practice%202010%20Brief.pdf (accessed September 23, 2013).
49. Melinda Beck, "Battles Erupt over Filling Doctors' Shoes," *The Wall Street Journal*, February 5, 2013, http://online.wsj.com/article/SB10001424127887323644904578271872578661246.html (accessed September 23, 2013), and Melinda Beck, "Nurse Practitioners Seek Right to Treat Patients on Their Own," *The Wall Street Journal*, August 15, 2013, http://online.wsj.com/article/SB10001424127887323455104579013193992224008.html (accessed September 23, 2013; subscription required).
50. National Conference of State Legislatures, "Certificate of Need: State Laws and Programs," updated March 2012, http://www.ncsl.org/issues-research/health/con-certificate-of-need-state-laws.aspx (accessed September 23, 2013).

religious beliefs. Regrettably, Obamacare imposes just such a requirement on Americans, forcing many employers to offer, and individuals to purchase, health coverage that violates the core tenets of their faith regarding the protection of life.[51]

Congress should ensure that individuals never again are required to violate their religious beliefs to meet a government diktat.

As with scope-of-practice requirements, reforming or eliminating certificate-of-need restrictions would encourage the development of new medical facilities, expanding access to care and giving patients more choices.

Rights of Conscience. Congress should protect the rights of consumers, insurers, employers, and medical personnel to refrain from facilitating, participating in, funding, or providing services contrary to their consciences or the tenets of their religious faith. Enacting these protections would prevent Americans from facing the moral dilemma presented by Obamacare, which has forced individuals, employers, and religious organizations to choose between violating the law and violating their faith or consciences.

Permanent Prohibition on Taxpayer-Funded Abortion. Congress should make permanent in law the existing annually enacted prohibitions on the use of federal taxpayer funds to finance abortions or health insurance coverage that includes elective abortions. These protections, enacted as the "Hyde Amendment" every year since 1976, prevent the use of taxpayer dollars to fund elective abortions.[52] After nearly 40 years of renewing these protections on an annual basis, Congress should finally make them permanent in law.

A New Vision for Health Reform

Obamacare moves American health care in the wrong direction. Not only does the law raise health costs rather than lowering them, but it creates new bureaucracies that will erode the doctor–patient relationship.[53] The trillions of dollars in new spending for Obamacare will place a massive fiscal burden on future generations of taxpayers.[54] For these reasons and more, Congress should repeal the law in its entirety.

Once this has been done, policymakers should then advance health reforms that move toward patient-centered, market-based health care. Such reforms would promote personal choice and ownership of health insurance; enable the free market to respond to consumer demands; encourage portability of coverage for workers; help civil society, the free markets, and the states to assist those in need; and protect the rights of faith, conscience, and life.

51. The Heritage Foundation "Obamacare Anti-Conscience Mandate: An Assault on the Constitution," *Fact Sheet* No. 103, February 17, 2012, http://www.heritage.org/research/factsheets/2012/02/obamacare-anti-conscience-mandate-an-assault-on-the-constitution.
52. Chuck Donovan, "Obamacare: Impact on Taxpayer Funding of Abortion," Heritage Foundation *WebMemo* No. 2872, April 19, 2010, http://www.heritage.org/research/reports/2010/04/obamacare-impact-on-taxpayer-funding-of-abortion.
53. Alyene Senger, "Obamacare's Impact on Doctors—An Update," Heritage Foundation *Issue Brief* No. 4024, August 23, 2013, http://www.heritage.org/research/reports/2013/08/obamacares-impact-on-doctors-an-update.
54. Alyene Senger, "Obamacare's Impact on Today's and Tomorrow's Taxpayers: An Update," Heritage Foundation *Issue Brief* No. 4022, August 21, 2013, http://www.heritage.org/research/reports/2013/08/obamacares-impact-on-todays-and-tomorrows-taxpayers-an-update.