

ISSUE BRIEF

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If Obamacare Collapses: How States Can Protect Their Citizens

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As the case against Obamacare continues to amount, states should be ready to act. Despite the President's professions of confidence, recent concerns voiced by Members of Congress—added to lackluster support for and understanding of the law by the public—have further exposed Obamacare's real and practical vulnerabilities.

In preparation for the likely collapse of Obamacare, states should advance their own patient-centered, market-based solutions that stimulate more affordable coverage, better access, and superior quality and innovation.

Cracks in the Foundation of Obamacare. President Obama recently tried to downplay the law's implementation problems and their impact on everyday Americans. The reality, however, is that the massive disruption caused by this health care law has already started—and the worst is still to come. For instance, in the near future, Americans will see higher taxes, new penalties, and skyrocketing premiums; millions will be displaced from their current coverage, and millions will remain without health insurance.¹

Even among supporters of the law in Congress, there is growing concern and discontent. At a

recent hearing with a top Department of Health and Human Services (HHS) official, Senator Jay Rockefeller (D-WV) warned that the implementation is “so complicated and if it isn't done right the first time, it will just simply get worse.”² At a hearing with HHS Secretary Kathleen Sebelius, Senate Finance Committee chairman Max Baucus (D-MT) expressed similar concerns:

I am very concerned that not enough is being done so far—very concerned. When I'm home, small businesses have no idea what to do, what to expect, they don't know what affordability rules are, they don't know what penalties may apply....

A lot of people have no idea about all of this.... I just see a huge train wreck coming down, and you and I have discussed this many times and I don't see any results yet.³

The American people remain skeptical and confused. According to a new Kaiser Family Foundation Tracking Poll, 40 percent of Americans have an unfavorable view of the law.⁴ Moreover, 42 percent believe incorrectly that the law has been repealed or overturned by the Supreme Court or do not know.

The dismissiveness of the Administration, the lack of confidence in Congress, and the continued lack of public support and understanding of the law itself all add to the unavoidable structural challenges facing the law.

Getting the Right Health Care Reform Back on Track. Obamacare remains an obstacle to states advancing real health care reform. But states should be ready to act on the inevitable collapse of

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Obamacare and its full repeal. The following are a few among many state policy ideas that states could pursue and put them ahead of the reform curve:

- **Assess insurance rating rules and benefit mandates.** Rating rules and benefit mandates raise premium costs. States' experience with combining guaranteed issue (which requires insurers to accept all applicants) and community rating (which requires insurers to sell policies at the same price regardless of key factors) led to the deterioration of the individual market.⁵ Excessive and costly benefit mandates also affect the cost of health insurance. One study estimates that mandated benefits increase the cost of health insurance anywhere from 10 percent to 50 percent.⁶ Yet Obamacare imposes strict rating rules and new benefit mandates on health insurers. State policymakers should review their rating rules and benefit mandates and modify them to lessen their impact on the cost of insurance in their states.
- **Extend portability of coverage to individually owned policies.** Pre-Obamacare federal law provided protections for individuals who maintained credible group coverage, but those protections do not extend to non-group coverage.⁷ Rather than shuffling individuals into government-controlled exchanges and Medicaid, as

done under Obamacare, states should provide protections in the non-group/individual market similar to those provided in the group market. This would ensure that individuals who maintain credible coverage on their own can switch plans without risk of losing credible coverage protections.

- **Expand access through the harmonization of state rules.** Unlike in the purchase of other goods and services, individual health coverage options are limited to products that are available within each state. Obamacare further limits choice by, in essence, pre-empting state law and standardizing rules and benefits across the board. To increase the number and variety of products, states should harmonize their insurance rules, increasing the number of insurance products available to individuals within their borders. Of course, to put consumers truly in charge, it would be even more helpful if Congress would enact legislation to facilitate the interstate purchase of health insurance.
- **Integrate choice and competition in Medicaid.** Medicaid is consuming a greater portion of state budgets as demands grow, while access and quality remain problems. Obamacare ignores the structural problems facing Medicaid and makes matters worse by expanding the

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1. Robert E. Moffit, "The Prospects for Ending Obamacare: Learning from Health Policy History," Heritage Foundation *Backgrounder* No. 2424, June 21, 2010, <http://www.heritage.org/research/reports/2010/06/the-prospects-for-ending-obamacare-learning-from-health-policy-history>. See also The Heritage Foundation, "The Case Against Obamacare," <http://www.heritage.org/research/projects/the-case-against-obamacare>.
 2. Paul Bedard, "Obamacare Architect Rockefeller: It's 'Beyond Comprehension,'" *Washington Examiner*, April 11, 2013, <http://washingtonexaminer.com/obamacare-architect-rockefeller-its-beyond-comprehension/article/2526681> (accessed June 8, 2013).
 3. Alyene Senger, "Democratic Senator: Obamacare a 'Train Wreck Coming,'" Heritage Foundation, *The Foundry*, April 18, 2013, <http://blog.heritage.org/2013/04/18/dem-senator-obamacare-a-train-wreck-coming/>.
 4. Kaiser Family Foundation, "Kaiser Health Tracking Poll," April 2013, <http://www.kff.org/kaiserpolls/upload/8439-F.pdf> (accessed June 8, 2013).
 5. Leigh Wachenheim and Hans Leida, "The Impact of Guaranteed Issue and Community Rating Reforms on States' Individual Insurance Markets," Milliman, March 2012, <http://ahipcoverage.com/wp-content/uploads/2012/03/Updated-Milliman-Report.pdf> (accessed June 8, 2013).
 6. Council for Affordable Health Insurance, "CAHI Identifies 2,271 State Health Insurance Mandates," April 9, 2013, http://www.cahi.org/cahi_contents/newsroom/article.asp?id=1115 (accessed June 10, 2013).
 7. For a discussion of this issue, see Edmund F. Haislmaier, "Saving the American Dream: The U.S. Needs Commonsense Health Insurance Reforms," Heritage Foundation *Backgrounder* No. 2703, June 22, 2012, <http://www.heritage.org/research/reports/2012/06/saving-the-american-dream-the-us-needs-commonsense-health-insurance-reforms>; and Tom Miller and James Capretta, "How to Cover Pre-Existing Conditions," *National Affairs*, Summer 2010, <http://www.nationalaffairs.com/publications/detail/how-to-cover-pre-existing-conditions> (accessed June 10, 2013).

program to millions of new potential enrollees. It is critical that states reject the Medicaid expansion in Obamacare and consider reforms that will improve the quality of care, establish a path to independence, and harness the benefits of choice and competition to reduce overall costs. States that have pursued similar reforms have demonstrated the success of this course.⁸

- **Adopt medical liability reforms.** Rules governing medical malpractice and the cost of medical liability insurance are driving up the cost of medicine and jeopardizing access to care. Obamacare provides no legitimate path to reform. Moreover, this issue should reside with the states, not the federal government. Many states have already tackled this issue and provide a blueprint for others to follow. The states can and should be at the forefront of efforts to establish a more rational approach to addressing medical liability.⁹
- **Remove certificate of need (CON) restrictions.** CON laws empower state regulators to

limit the supply of health care facilities or services in communities. These restrictions impede access and are almost always anticompetitive. In a report on health care competition, the Federal Trade Commission and the Department of Justice found that “on balance, CON programs are not successful in containing health care costs, and...they pose serious anticompetitive risks that usually outweigh their purported economic benefits.”¹⁰ States should eliminate these types of policies.

States Should Lead the Way. The future of Obamacare remains uncertain. Higher premiums, exploding costs, and deteriorating coverage could ultimately lead to its downfall. Its repeal would pave the way for patient-centered, market-based reforms, and states should be ready to lead the way.

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8. Florida, for example, has recently received approval to expand its two-county Medicaid demonstration project statewide. See Tarren Bragdon, “Florida’s Medicaid Reform Shows the Way to Improve Health, Increase Satisfaction, and Control Costs,” Heritage Foundation *Backgrounder* No. 2620, November 9, 2011, <http://www.heritage.org/research/reports/2011/11/floridas-medicaid-reform-shows-the-way-to-improve-health-increase-satisfaction-and-control-costs>.

9. For a discussion of the issue and options, see 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>.

10. U.S. Federal Trade Commission and the U.S. Department of Justice, “Improving Health Care: A Dose of Competition,” July 2004, p. 22, <http://www.ftc.gov/reports/healthcare/040723healthcarerpt.pdf> (accessed June 10, 2013).