



*A not-for-profit health and tax policy research organization*

## Seventy Changes to ObamaCare...So Far

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By our count at the Galen Institute, more than 70 significant changes have been made to the Patient Protection and Affordable Care Act, at least 43 that the Obama administration has made unilaterally, 24 that Congress has passed and the president has signed, and three by the Supreme Court.

### CHANGES BY ADMINISTRATIVE ACTION

1. *Employee reporting:* The IRS announced that, contrary to statutory language, it was [delaying](#) the ACA requirement that employers must report to their employees on their W-2 forms the full cost of their employer-provided health insurance. (Oct. 12, 2010)
2. *Medicare Advantage patch:* The administration ordered an [advance draw](#) on funds from a Medicare bonus program to provide payments to Medicare Advantage plans. This temporarily forestalled payment cuts called for in the ACA that could have led to cuts in benefits and an early exodus of MA plans from Medicare. The GAO later said the administration [did not have authority](#) for its action. (Nov. 11, 2010)
3. *Tax credits for unlawful immigrants:* Section 36B of the ACA grants credits to some non-citizens with low-incomes only if they are themselves lawfully present in the U.S. and cannot obtain Medicaid coverage. [IRS regulations](#) contradict the statute and [allow](#) subsidies if “the taxpayer *or a member of the taxpayer’s family* is lawfully present in the United States,” and “the lawfully present taxpayer *or family member* is not eligible for the Medicaid program.” (Aug. 17, 2011)
4. *Delaying auto-enrollment for certain large employers:* The administration [delayed](#) for at least two years an ACA requirement that employers with more than 200 full-time employees must automatically enroll their employees in health coverage, unless the employee opts out, and keep them enrolled. (Feb. 9, 2012. The provision was [permanently repealed](#) Nov. 2, 2015)
5. *Delaying Conscience Mandate Safe Harbor:* The administration issued a rule in February 2011 exempting only churches from its mandate that private health insurance plans provide coverage for contraception, sterilization, and abortifacients. After a firestorm of protest, the administration [delayed](#) the rule until August 1, 2013, later extended to January 1, 2014. (At least 60 cases are making their way through the courts to challenge the rule.) (Feb. 10, 2012; Jan. 1, 2014)
6. *Subsidies may flow through federal exchanges:* The IRS [issued](#) a rule that allows premium assistance tax credits to be available in federal exchanges although the law specified that they only would be available through an “Exchange established by the State.” (May 23, 2012)
7. *Tax credit subsidies for some people under 100% FPL:* Section 36B of the ACA plainly provides refundable premium tax credits to citizens only when their household incomes are within a specified range (100% to 400% of the poverty line). IRS [regulations](#) disregard the statutory limitation and [grant credits](#) to potentially [several million persons](#) below the 100% statutory floor. The Treasury regulation effectively provides the largest tax credits to persons who don’t satisfy the statutory criteria for eligibility. (May 23, 2012)
8. *Extension of credits to people receiving employer-sponsored coverage:* Section 1511 of the ACA instructs the Labor Department to issue regulations requiring businesses with more than 200 employees to automatically enroll their employees in any health benefits plan offered by the employer. Section 36B denies credits to employees covered by an employer plan.

IRS regulations [contradict](#) the statutory language and allow credits to taxpayers when they are automatically enrolled in employer minimum essential coverage, potentially subjecting employers to penalties. Treasury implicitly acknowledges there is [no statutory authority](#) for its regulatory change. (May 23, 2012)

9. *Delaying low-income plan:* The administration [delayed](#) until 2015 implementation of the Basic Health Program designed to provide more affordable coverage for certain low-income people not eligible for Medicaid. (Feb. 7, 2013)
10. *Closing the high-risk pool:* The [administration](#) [decided](#) to prematurely halt enrollment in transitional federal high-risk pools created by the law, blocking coverage for an estimated 40,000 new applicants, citing a lack of funds. The administration had money from a fund under then-HHS Secretary Sebelius' control to extend the pools, but instead used the money to pay for advertising for Obamacare enrollment and other purposes. (Feb. 15, 2013)
11. *Doubling allowed deductibles:* Because some group health plans use more than one benefits administrator, plans [were allowed](#) to temporarily apply separate patient cost-sharing limits to different services, such as doctor/hospital and prescription drugs, allowing maximum out-of-pocket costs to be twice as high as the law intended. (Feb. 20, 2013)
12. *Small businesses on hold:* The administration said federal exchanges for small businesses will not be ready by the 2014 statutory deadline, and instead [delayed](#) until 2015 the provision of SHOP (Small-Employer Health Option Program) that requires exchanges to offer a choice of qualified health plans. (March 11, 2013)
13. *Employer mandate delay:* The administration announced via Treasury blog post, followed by [IRS notification](#), it was delaying for one year until 2015, contrary to statutory language, the requirement that employers provide qualified health insurance to workers or pay a fine. (July 2, 2013)
14. *Employer reporting delay:* By an administrative action contrary to ACA language, reporting requirements for the employer mandate were [delayed](#) by one year until 2015. (July 2, 2013)
15. *Delaying Electronic Notices for Medicaid and Exchange Subsidies:* The administration [delayed](#) for a year until 2015 a requirement that state Medicaid programs provide applicants with electronic notification of their eligibility for Medicaid and exchange subsidies. (July 5, 2013)
16. *Self-attestation:* Because of the difficulty of verifying income after the employer-reporting requirement was delayed, the administration said it would [allow](#) "self-attestation" of income and eligibility by applicants for health insurance in the exchanges. (July 15, 2013)
17. *Congressional opt-out:* The administration [decided](#) to offer employer contributions to Members of Congress and their staffs when they purchase insurance on the exchanges created by the ACA, a subsidy the law doesn't provide. (Sept. 30, 2013)
18. *Delaying the individual mandate:* The administration [changed](#) the deadline for the individual mandate by declaring that customers who purchased health insurance by March 31, 2014, would avoid the tax penalty. The law says they would have had to purchase a plan by mid-February to avoid penalties. (Oct. 23, 2013)
19. *Insurance companies may offer canceled plans:* The administration [announced](#) that insurance companies may reoffer plans that previous regulations had forced them to cancel, if states allow it. (Nov. 14, 2013)
20. *Delaying the online SHOP exchange:* The administration first [delayed](#) for a month and later for a year until [November 2014](#) the launch of the online insurance marketplace for small businesses that originally was scheduled to launch on October 1, 2013. (Sept. 26, 2013) (Nov. 27, 2013)
21. *Exempting unions from reinsurance fee:* The administration gave unions an [exemption](#) from the reinsurance fee. To make up for this exemption, non-exempt plans will have to pay a higher fee, which will likely be passed onto consumers in the form of higher premiums and deductibles. (Dec. 2, 2013)
22. *Extending Preexisting Condition Insurance Plan:* The administration [extended](#) the federal high risk pool until January 31, 2014 and again until [March 15, 2014](#) to prevent a coverage gap for the most

vulnerable. The plans were scheduled to expire on December 31, but were extended because it has been impossible for some to sign up for new coverage on [healthcare.gov](http://healthcare.gov). (December 12, 2013) (Jan. 14, 2014)

23. *Expanding hardship waiver to those with canceled plans:* The administration [expanded](#) the hardship waiver – which exempts people from the individual mandate and allows some to purchase catastrophic health insurance – to people who have had their plans canceled because of ObamaCare regulations. The administration later [extended](#) this waiver until October 1, 2016. (Dec. 19, 2013) (March 5, 2014)
24. *Bay State bailout:* More than 300,000 people in Massachusetts gained temporary Medicaid [coverage](#) in 2014 without verification of eligibility, with the Obama and Patrick administrations using a taxpayer-funded [bailout](#) to mask the failure of the commonwealth's disastrously malfunctioning website. (Dec. 30, 2013)
25. *Equal employer coverage delayed:* Tax officials will not be [enforcing](#) in 2014 the mandate requiring employers to offer equal coverage to all employees. This provision of the law was supposed to go into effect in 2010, but IRS officials have “yet to issue regulations for employers to follow.” (Jan. 18, 2014)
26. *Employer-mandate delayed again:* The administration [delayed](#) for an additional year provisions of the employer mandate, postponing enforcement of the requirement for medium-size employers to provide coverage until 2016. (Feb. 10, 2014)
27. *Transition relief for large employers:* The administration [relaxed some requirements](#) for larger companies, allowing them to offer insurance to only 70% of their full-time workers in 2015, rather than 95%, as the statute requires. The higher threshold will begin in 2016. (Feb. 10, 2014)
28. *Extending subsidies to non-exchange plans:* The administration released a bulletin through CMS [extending](#) subsidies to individuals who purchased health insurance plans outside of the federal or state exchanges. The bulletin also requires retroactive coverage and subsidies for individuals from the date they applied on the marketplace rather than the date they actually enrolled in a plan. (Feb. 27, 2014)
29. *Non-compliant health plans get two year extension:* The administration [pushed](#) forward by two years the deadline requiring health insurers to cancel plans that are not compliant with ACA mandates. These “illegal” plans can be offered until 2017. This extension prevented a wave of cancellation notices from going out before the 2014 midterm elections. (March 5, 2014)
30. *Reducing out-of-pocket maximum payments:* The ACA calls for out-of-pocket maximums to be lowered for enrollees with incomes between 100-400% FPL (Sec. 1402), but the provision proved unworkable for those 250-400% of FPL in combination with prescribed actuarial value requirements. The law was illegally changed through [regulation](#) to apply to only those [100-250% of poverty](#). (March 11, 2014)
31. *Basic Health Plan for immigrants:* The ACA creates a “Basic Health Program” (BHP) an optional program states may adopt to make subsidized coverage available to lawfully-present immigrants <133% FPL. Federal subsidies equal 95% of the subsidy individuals would have received on an exchange. The HHS’ [final rule](#) extends BHP payments to “aliens lawfully present” with incomes >133% FPL. (The ACA permits BHP subsidies for U.S. citizens with incomes from 133-200% FPL and legal aliens with incomes from 0-133% FPL.) (March 12, 2014)
32. *Delaying the sign-up deadline:* The administration [delayed](#) the March 31 deadline until mid-April to sign up for insurance without penalty. Applicants were to check a box on their application to qualify for the extended sign-up period. (March 26, 2014)
33. *Canceling Medicare Advantage cuts:* The administration [canceled](#) further scheduled cuts to Medicare Advantage. The ACA calls for \$200 billion in cuts to Medicare Advantage over 10 years. (April 7, 2014)
34. *More funds for insurer bailout:* The administration [said](#) it will supplement risk corridor payments to health insurance plans with “other sources of funding” if the higher risk profile of enrollees means the plans would lose money. (May 16, 2014)

35. *Exempting U.S. territories:* Despite earlier administration claims that "HHS is not authorized to choose which provisions [of the ACA] might apply to the territories," HHS [waived](#) six major requirements – such as guaranteed issue, community rating, and essential benefit mandates – that were causing serious disruption to health insurance markets covering 4.5 million residents of U.S. territories. (July 18, 2014)
36. *Failure to enforce abortion restrictions:* A GAO [report](#) found that many exchange insurance plans don't separate charges for abortion services as required by the ACA, showing the administration is not enforcing the law. In 2014, abortions were being financed with taxpayer funds in more than 1,000 exchange plans. (Sept. 16, 2014)
37. *Risk corridor coverage:* The Obama administration plans to illegally distribute risk corridor payments to insurers, despite studies by both the [Congressional Research Service](#) and the [GAO](#) saying a congressional appropriation is required before federal agencies can make the payments. (Sept. 30, 2014)
38. *Transparency of coverage:* CMS [delayed](#) statutory requirements for insurance companies to disclose the number of people enrolled, disenrollment, number of claims denied, costs to consumers of certain services, etc. (Oct. 20, 2014)
39. *Tax penalty pass:* Taxpayers who filed returns based upon inaccurate subsidy data they received from the federal government [will not have to repay](#) the government if they received too large of a subsidy, the [IRS ruled](#). (Jan. 26, 2015)
40. *Illegal rule regarding out-of-pocket costs:* HHS [issued a rule](#) changing annual limits on employee cost-sharing as defined in the ACA, forcing many employers to [increase premiums](#) to accommodate the requirements. It [failed to cite a single statute](#) providing the administration authority to make the change. (Feb. 27, 2015)
41. *Illegal use of exchange grants:* CMS issued guidance saying that states operating their own exchanges can use money from federal grants to do [outreach and education](#) to increase enrollment, even though the ACA stipulates the grants are to be used only to set up exchanges. (June 8, 2015)
42. *Illegal rule on biosimilar payment:* CMS [finalized](#) a rule to pay for complex-molecule biosimilar drugs as though they were generics, in direct contradiction of congressional intent to require unique payment codes for the drugs. (Oct. 30, 2015)
43. *Employer mandate reporting requirements delayed again:* The IRS further [delayed](#) some ACA reporting requirements for employers about health coverage offered to employees until as late as June, 2016, contrary to statutory language. (Dec. 28, 2015)

#### **CHANGES BY CONGRESS, SIGNED BY PRESIDENT OBAMA**

44. *Military benefits:* [Congress clarified](#) that plans provided by TRICARE, the military's health-insurance program, constitutes minimal essential health-care coverage as required by the ACA; its benefits and plans wouldn't normally meet ACA requirements. (April 26, 2010)
45. *VA benefits:* [Congress also clarified](#) that health care provided by the Department of Veterans Affairs constitutes minimum essential health-care coverage as required by the ACA. (May 27, 2010)
46. *Drug-price 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 pharmacy. (Aug. 10, 2010)
47. *Doc-fix tax:* [Congress modified](#) the amount of premium tax credits that individuals would have to repay if they are over-allotted, an action designed to help offset the costs of the postponement of cuts in Medicare physician payments called for in the ACA. (Dec. 15, 2010)
48. *Extending the adoption credit:* [Congress extended](#) the nonrefundable adoption tax credit, which happened to be included in the ACA, through tax year 2012. (Dec. 17, 2010)
49. *TRICARE for adult children:* [Congress extended](#) TRICARE coverage to dependent adult children up to age 26 when it had previously only covered those up to the age of 21 — though beneficiaries still have to pay premiums for them. (Jan. 7, 2011)

50. *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)
51. *No free-choice vouchers*: [Congress repealed](#) a program, supported by Senator Ron Wyden (D., Ore.) that would have allowed “free-choice vouchers,” that *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)
52. *No Medicaid for well-to-do 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 a year would have been able to qualify for Medicaid. (Nov. 21, 2011)
53. *CO-OPs, IPAB, IRS defunded*: Congress [made cuts](#) in funding to [programs and agencies](#) implementing the ACA including the IRS, the “Consumer Operated and Oriented Plan” program (CO-OP), and the controversial Independent Payment Advisory Board. (April 15, 2011; Dec. 23, 2011)
54. *Slush-fund savings*: Congress [cut](#) \$6.25 billion from the Prevention and Public Health slush fund through 2021, and \$2 billion each year thereafter. (Feb. 22, 2012)
55. *Less cash for Louisiana*: One of the tricks used to get Obamacare through the Senate was the special “[Louisiana Purchase](#)” deal to win the vote of then-Sen. Mary Landrieu. [Congress saved](#) taxpayers \$2.5 billion by rescinding some funds from this deal. (Feb. 22, 2012)
56. *CLASS Act eliminated*: Congress [repealed](#) the unsustainable CLASS (Community Living Assistance Services and Supports) program of government-subsidized long-term-care insurance, which Sen. Kent Conrad (D-ND) [dubbed](#) a “Ponzi scheme of the first order.” (Jan. 2, 2013)
57. *Defunding CO-OPs*: [Congress cut](#) an additional \$2.2 billion from the CO-OP program, blocking creation of any new plans. (Jan. 2, 2013)
58. *Trimming the Medicare trust-fund transfer*: [Congress rescinded](#) \$200 million of the \$500 million transfer from the Medicare Part A and Part B trust funds for the 5 year Community-Based Care Transition Program and rescinded \$10 million of IPAB’s FY2013 appropriation. (March 26, 2013)
59. *Eliminating caps on deductibles for small group plans*: [Congress eliminated](#) the cap on deductibles for small group plans as part of the SGR “doc fix.” This gives small businesses the freedom to offer high deductible plans that may be paired with a Health Savings Account. (April 1, 2014)
60. *Protecting small businesses*: Congress passed and [the president signed](#) the Protecting Affordable Coverage for Employees (PACE) Act to protect businesses with 51-100 employees from ACA rules that would have led to premium increases of 18%, impacting 150,000 businesses and 3 million workers. (Oct. 7, 2015)
61. *Repeal of Automatic Enrollment*: [The Bipartisan Budget Act of 2015](#) repealed an ACA provision which would have required employers with more than 200 full-time employees to automatically enroll their employees in health coverage, unless the employees opted out, and to keep them enrolled. (Nov. 2, 2015)
62. *Making the risk corridor program budget neutral*: The [Consolidated and Further Continuing Appropriations Act of 2015](#) provides that CMS may not transfer funds from other accounts to pay for the risk corridor program. Expenditures cannot exceed the funds collected in 2014, blocking CMS from making multi-year calculations. (Dec. 16, 2014) The budget-neutrality provision for the risk corridor program was extended to payments for 2015 in the [Consolidated Appropriations Act](#) for 2016. (Dec. 18, 2015)
63. *Two-year Cadillac Tax delay*: The [Consolidated Appropriations Act](#) delayed for two years, from 2018 to 2020, the effective date of the excise tax on high-cost employer-sponsored coverage. (Dec. 18, 2015)
64. *Cadillac tax allowed as a business expense*: The [Consolidated Appropriations Act](#) repeals an

ACA provision saying that the excise tax was not deductible as a business expense. (Dec. 18, 2015)

facilitated exchanges as well. (June 25, 2015)

65. *Two-year Medical Device Tax delay*: [The Protecting Americans from Tax Hikes Act of 2015](#) delayed for 2016 and 2017 the 2.3% ACA excise tax on sales by medical device makers. (Dec. 18, 2015)

66. *Delay in Health Insurance Tax collection*: The [Consolidated Appropriations Act](#) set a moratorium for one year, 2017, on the collection of the annual health insurance provider fee that has been in effect since 2013 and which [increases premiums](#) for a family by \$530 a year. (Dec. 18, 2015)

67. *No IPAB in 2016*: The [Consolidated Appropriations Act](#) for 2016 defunds the Independent Payment Advisory Board for 2016. (Dec. 18, 2015)

#### **CHANGES BY THE SUPREME COURT**

68. *Medicaid expansion made voluntary*: The court [ruled](#) in *NFIB v. Sebelius* that it was voluntary, rather than mandatory, for states to expand Medicaid eligibility to people with incomes up to 138% of poverty. The court rewrote the statute to say the federal government could not block funds for existing state Medicaid programs if states choose not to expand the program. (June 28, 2012)

69. *The individual mandate made a tax*: The court also [decided](#) that violating the law's mandate that Americans must purchase government-approved health insurance would not produce a "penalty," as stated in the legislation, but rather would result in individuals' paying a "tax." Paying a tax would make it, legally speaking, optional for people to comply and therefore would not violate the U.S. Constitution. (June 28, 2012)

70. *The law doesn't mean what it says*: In *King v. Burwell*, the court [overruled](#) the plain meaning of the ACA limiting tax credits to people living in states that created their own exchanges – cited seven times in the law – and instead allowed tax credits for insurance purchased through federally-