

POLICY NOTE

Key Findings

1. *The Affordable Care Act, as passed by Congress in 2010 along partisan lines, is flawed legislation, yet most people do not realize how radically the ACA law has been changed in the brief six years it has been in force.*
2. *To date, Obamacare has undergone 70 significant policy changes, including important deletions and delays.*
3. *Changes were made unilaterally by the Obama administration, by Congress and by the U.S. Supreme Court.*
4. *The 70 policy changes made since it passed confirm both how poorly conceived the law was from the start and how dismal its implementation has been.*

Constant changes highlight flaws in Affordable Care Act

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Background

The Affordable Care Act (ACA, or Obamacare), as passed by Congress in 2010 along partisan lines, is flawed legislation. Even its strongest supporters admit that. Yet most people, including policymakers, do not realize how radically the ACA law has been changed in the brief six years it has been in force. In fact, it is very unlikely the ACA could have been enacted, even with the President's predominance in Congress at the time, in its current form. This Policy Note reviews the main alterations made to the ACA law since it was enacted.

When the ACA passed, the United States was still recovering from the Great Recession of 2008-2009. Americans were much more concerned with jobs and the economy, not health care reform.¹

The ACA began as a complex, 2,700 page law. Government officials felt obligated to add over 20,000 pages of new regulations to clarify or make the legislation workable.

Changes to the ACA

To date, Obamacare has undergone 70 significant policy changes, including important deletions and delays.² The Obama Administration unilaterally made 43 of these policy changes, Congress passed and the president signed 24 policy changes, and the U. S. Supreme Court made three significant rulings on the original law. This policy review will begin with the court rulings.

The U.S. Supreme Court rulings

The rulings of the Supreme Court were the most significant changes and determined the constitutionality of the law. The first case, *NFIB vs Sebelius* in 2012, had two rulings. The Court upheld the law by declaring

1 "The impact of the Affordable Care Act in Washington state," by Dr. Roger Stark, Policy Brief, Washington Policy Center, January 21, 2014 at <http://www.washingtonpolicy.org/publications/detail/the-impact-of-the-affordable-care-act-in-washington-state>.

2 For a complete listing of all 70 changes, please see "70 changes to Obamacare...so far," by Grace-Marie Turner, Galen Institute, January 28, 2016 at <http://galen.org/newsletters/changes-to-obamacare-so-far/>.

the fine or penalty the government imposed on people for not owning health insurance was actually a “tax.” Congress unquestionably has the power to tax Americans, so the Court decided the individual mandate did not force people to purchase a private product, health insurance. Instead, the law penalized people for not buying insurance, by imposing a “tax.” This decision guaranteed the constitutionality of the ACA.

The second ruling in *NFIB vs Sebelius* was that the federal government could not force the states to expand the Medicaid entitlement. To date, 31 states, including Washington, have expanded Medicaid under the ACA.³

The other Supreme Court decision that significantly impacted the ACA was *King vs Burwell* in 2015.⁴ The language of the law clearly says that only “states” can administer taxpayer subsidies in the ACA health insurance exchanges. The federal government established an exchange for the 31 states that did not set up their own. The Court ruled that the officials who drafted the law really meant either “states” or the “federal government.” This ruling was handed down in spite of the fact that the architects of the law are on record saying they really meant “states” only. The goal was to force states to participate in the ACA exchanges.

Both court cases were decided by a split court. The justices voted 5-4 in *NFIB vs Sebelius* and 6-3 in *King vs Burwell*.

Several other lawsuits against parts of the ACA are slowly working their way through the court system, so legal challenges filed by citizens against the law will continue.

Administrative changes

The unilateral changes made by the Obama administration are the most controversial. Many of these policy changes are significant, yet were made with no input from Congress. Constitutional scholars refer to the separation-of-powers and question the constitutionality of these changes since the responsibility to make laws resides with Congress.

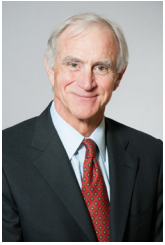
Many of the administrative changes dealt with the impact of the ACA on the rights of employers. Specifically, the employer mandate to purchase health insurance for employees and the required documentation of employees’ health plans were both delayed until 2015 without input from Congress.⁵

Money taken from Medicare, the health insurance program for seniors, funds a significant portion of the ACA. To lessen the impact on seniors, and arguably to

3 “Current status of state Medicaid expansion decisions,” Kaiser Family Foundation, March 14, 2016 at <http://kff.org/health-reform/slide/current-status-of-the-medicaid-expansion-decision/>.

4 “Ruling in the latest challenge to the Affordable Care Act released today,” Blog, Washington Policy Center, by Dr. Roger Stark, June 25, 2015 at <http://www.washingtonpolicy.org/publications/detail/ruling-in-the-latest-challenge-to-the-affordable-care-act-released-today>.

5 “President Obama’s top ten constitutional violations of 2015,” by Ilya Shapiro, *National Review*, December 23, 2015, at <http://www.nationalreview.com/article/428882/obama-violate-constitution-top-ten-2015>.



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retain their votes during the 2014 election, the Obama administration cancelled, or at least delayed, the scheduled cuts to Medicare funding.

Changes made by Congress and signed into law by President Obama

Changes made by Congress and signed into law by the president legally amended the ACA and did so with bipartisan support.

Congress defunded several important parts of the law. Consumer Operated and Oriented Plans (CO-OPs) are essentially government health insurance plans and were placed in the ACA as an alternative to the “public option.” The law originally gave CO-OPs \$6 billion which Congress reduced to \$2 billion.

Money taken from the Medicare program accounted for almost half the funding of the ACA in the original budget. To make Medicare more efficient and to determine where these cuts should occur, the ACA provided money for a new committee, the Independent Payment Advisory Board (IPAB). One of the most controversial and inflammatory parts of the law, the IPAB became known as the “death panel” during the health care debate in 2008 and 2009. Congress has defunded the IPAB through 2016.

Congress also delayed the medical device tax until 2018, the tax on high-cost health insurance plans (the “Cadillac tax”) until 2020, and the tax on health insurance companies until 2018.

Conclusion

Congress routinely makes minor changes to federal laws. The ACA, however, was flawed from the beginning. The law was passed in a very partisan manner and ultimately required hundreds of regulations for clarification and implementation. Americans understand this and a majority has opposed the entire law or significant parts of it since it passed.

Unquestionably, the ACA has helped some people, but it has not come close to reaching the two goals supporters of “Health Care for All” promised; coverage for everyone and decreasing health care costs. The law is too complex, too expensive and clearly imposes too large a regulatory burden on Americans.

The 70 changes to the ACA confirm the questionable value of the law. The delay in the various taxes and the delay in Medicare cuts will need to be covered by increasing existing taxes or by adding significantly to the national debt.

Given the hard lessons of the last six years, Americans deserve better health care reform. They deserve patient-centered solutions that would allow them to make their own health care decisions and spend their own health care dollars. The ACA opted instead for more government central-planning. The 70 policy changes made since it passed confirm both how poorly conceived the law was from the start and how dismal its implementation has been.