

# POLICY BRIEF

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## Update on the status of the Affordable Care Act

By Roger Stark, MD, FACS

December 2016

**Obamacare is “the craziest thing in the world.”**

– Former President Bill Clinton,  
October 3, 2016

**“The Affordable Care Act is no longer affordable.”**

– Governor Mark Dayton  
(D-Minnesota), October 12, 2016

### Key Findings

1. The Affordable Care Act (ACA), also called Obamacare, became law six years ago and is a clear policy failure according to the goals set by its supporters.
2. The ACA has not provided universal health insurance coverage, decreased rising health care costs, or allowed Americans to retain their existing health insurance plans and doctors.
3. So far Obamacare has undergone 70 significant policy changes, including important deletions and delays.
4. Half of the newly insured people under the ACA were put into the Medicaid entitlement program, which is not financially sustainable, and provides poor-quality health coverage.
5. Insurance premiums continue to rise and private insurance companies are dropping out of the ACA marketplace.
6. Policymakers must now decide whether to impose more government control or move toward less government interference and greater patient control over health care decisions.



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# Update on the status of the Affordable Care Act

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## Introduction

In March 2010, after 14 months of intense debate and with narrow partisan support and substantial bipartisan opposition in Congress, President Obama signed major health care legislation into law. After six years, polls consistently show the Affordable Care Act, or Obamacare, continues to be unpopular with the public.<sup>1</sup> At no point in U.S. history has such broad, sweeping social legislation become law by such a slim political margin.

This wide-ranging law empowers the federal government to manage the health care of the residents of Washington state, as well as all other Americans. The law has already generated thousands of pages of new federal regulations. This Policy Brief reports on the current status of Obamacare and how it continues to effect the health care of Washingtonians and Americans across the country.

## Brief overview of the Obamacare law

The non-partisan Congressional Budget Office (CBO) originally estimated the law, once enacted, would cost \$940 billion over the first 10 years, from 2010 to 2019. Revenue to pay for the ACA was to come from a \$500 billion cut in the Medicare entitlement program and \$440 billion in new or expanded taxes.

The CBO estimate was based on 10 years of revenue starting in 2010, but only six years of benefit payments starting in 2014. The most recent CBO projection was completed in 2016. The agency now estimates the ACA will cost \$1.4 trillion over the next ten years, with offsetting revenue coming from cuts to the Medicare entitlement and taxes.<sup>2</sup>

After removing five percent for administrative costs to pay for the 160 new agencies and government organizations created by the law, the balance of the \$1.4 trillion in spending is essentially being used to fund two programs: a huge expansion of the Medicaid entitlement program, and taxpayer subsidies for people

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1 “Survey: Obamacare disapproval surges; The latest Pew survey shows views of the Affordable Care Act are still more negative than positive,” by Kimberly Leonard, *U.S. News and World Report*, April 26, 2016, at [www.usnews.com/news/articles/2016-04-27/survey-shows-surge-in-disapproval-of-obamacare](http://www.usnews.com/news/articles/2016-04-27/survey-shows-surge-in-disapproval-of-obamacare).

2 “Federal subsidies for health insurance coverage for people under age 65: 2016 to 2026,” Congressional Budget Office, March 24, 2016 at [www.cbo.gov/publication/51385#section1](http://www.cbo.gov/publication/51385#section1).

to purchase health insurance in the newly-created state and federally-run health insurance exchanges.

The law is based on an individual mandate that requires every adult in the United States over the age of 17 to have government-approved health insurance or else pay a penalty or tax. The tax began at \$95 or 2.5 percent of a person's gross income (whichever was larger) per year in 2014 and will rise to \$700 or 2.5 percent of gross income per year in 2017. Individuals who do not have employer-provided or government-provided health insurance are forced to purchase their own individual insurance policy.<sup>3</sup>

In addition, the ACA requires employers with 50 or more employees to provide employee health insurance or pay a tax. There are various formulas, but essentially the tax is set at \$2,000 per employee per year. Employers need to decide whether it is financially better to purchase employee health insurance or simply pay the tax. In July 2012, President Obama announced that enforcement of the employer mandate would be delayed by one year to January 2015, so it is now in effect.

Health insurance companies face many new regulations under Obamacare. The least politically controversial regulation requires a company to sell insurance to any person regardless of pre-existing health condition. Essentially this means a person can wait until he becomes sick or injured before purchasing insurance. This concept is called guaranteed issue.

Another important regulation places everyone into a community-rated risk pool. There are small modifiers for age and smoking, but ultimately the law prohibits traditional insurance underwriting and requires that young and healthy people pay more, and that older, sicker people pay less for similar health insurance.

The ACA requires that all health insurance policies must contain benefit mandates determined by government bureaucrats. Many of these mandates are beneficial, but each one adds to the cost of an insurance plan and not everyone needs each of these mandates. For example, why should an unmarried 27 year-old man have to pay for obstetrical coverage?

The state and federal exchanges function as online insurance brokers through which individuals and small groups can buy health insurance, often with a federal taxpayer subsidy. Each exchange offers color-coded plans (bronze, silver, gold and platinum) with various levels of costs and deductibles. To date, only 14 states, including Washington state, plus the District of Columbia, have set up exchanges.<sup>4</sup>

The federal government has assumed responsibility for running the exchanges for the residents in the other 36 states. Federal-taxpayer subsidies are provided in

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3 "The impact of the Affordable Care Act in Washington state," by Roger Stark, MD, FACS, Policy Brief, Washington Policy Center, January 21, 2014, at [www.washingtonpolicy.org/publications/detail/the-impact-of-the-affordable-care-act-in-washington-state](http://www.washingtonpolicy.org/publications/detail/the-impact-of-the-affordable-care-act-in-washington-state).

4 "State health insurance exchanges: state run exchanges," Obamacare Facts, at [www.obamacarefacts.com/state-health-insurance-exchange/](http://www.obamacarefacts.com/state-health-insurance-exchange/).

the exchanges for people earning between 138 and 400 percent of the federal poverty level (FPL) to help them purchase health insurance. Today, 400 percent of the FPL is \$97,200 for a family of four.<sup>5</sup> Approved rates and benefit packages in the various exchange plans are set by government regulators.

## What Americans were told when Obamacare became law

The most famous quote in support of the Obamacare bill came from Rep. Nancy Pelosi (D-12th District, California), then Speaker of the House, who said “...we have to pass the bill so you can find out what is in it...” This statement is an excellent reflection of the complexity of the law and the fact that many, if not most, of the Democratic members who voted for the ACA had very little idea of what the law contained. All the Republican members of Congress opposed it.

President Obama told the American public that, “if you like your current doctor, you can keep him; if you like your current health plan, you can keep it.” These statements have proved to be grossly untrue, as insurance companies shift in and out of Obamacare exchanges and provider networks shrink. The number of people nationally who lost their health insurance is a moving target, but runs into the millions.<sup>6</sup>

The Washington State Office of the Insurance Commissioner lists 470,000 people overall as newly insured since Obamacare became law.<sup>7</sup> However, the OIC reports a total of 837,500 people enrolled in the exchange plus the expanded Medicaid. This suggests that 367,500 (837,500 minus 470,000) Washingtonians lost their existing health insurance and were forced into either the Medicaid entitlement program or the state exchange.

The president also famously told Americans that the average family would “save \$2,500 dollars per year on their health insurance premiums.” The president’s statement turned out to be untrue, and he no longer defends it. Health insurance premiums have increased substantially in virtually every market, including large and small group employer-paid markets.<sup>8</sup>

## Changes to the ACA

To date, Obamacare has undergone 70 significant policy changes, including important deletions and delays. The Obama Administration unilaterally made 43 of

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5 “Federal poverty level,” HealthCare.gov, at [www.healthcare.gov/glossary/federal-poverty-level-fpl/](http://www.healthcare.gov/glossary/federal-poverty-level-fpl/).

6 “How many people has Obamacare really insured?,” by Scott Gottlieb, *Forbes Magazine Online*, May 14, 2015, at [www.forbes.com/sites/scottgottlieb/2015/05/14/how-many-people-has-obamacare-really-insured/#6bbe2710777f](http://www.forbes.com/sites/scottgottlieb/2015/05/14/how-many-people-has-obamacare-really-insured/#6bbe2710777f).

7 “Uninsured rate in Washington state drops by half to 7.3 percent,” Office of the Insurance Commissioner, Washington state, February 3, 2016, at [www.insurance.wa.gov/about-oic/newsroom/news/2016/02-02-2016.html](http://www.insurance.wa.gov/about-oic/newsroom/news/2016/02-02-2016.html).

8 “Here’s how much your health insurance premiums could go up next year, they’ll probably rise more than your income will,” by Sy Mukherjee, *Fortune Magazine Online*, August 10, 2016 at [www.fortune.com/2016/08/10/employer-health-premiums-rise/](http://www.fortune.com/2016/08/10/employer-health-premiums-rise/).

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.<sup>9</sup> Even the ACA's strongest supporters now admit the law was seriously flawed when it was enacted.

## The “benefits” provided by the ACA

The recurring argument offered in support of the ACA is that 20 million people now have new health insurance.<sup>10</sup> When Obamacare was signed into law, 50 million Americans did not have health insurance for one reason or another.<sup>11</sup> The law's main goal was universal health insurance coverage. In this one important respect, the ACA has been a failure, since the law has provided coverage for only 40 percent of those previously uninsured.

Almost half of newly insured were put into the Medicaid entitlement program. The most recent scientific study shows that Medicaid provides no better medical results than having no health insurance at all.<sup>12</sup> The fact that a person has health insurance is no guarantee of timely access to health care or to better clinical outcomes. This is especially true of the government's Medicaid program, which tends to underpay doctors for their time and services.

Another argument is that the ACA has slowed increases in health care spending. The rate of increase in health care costs has slowed, but this slowing began in the mid-2000s, well before Obamacare became law.<sup>13</sup> It is likely that the rising cost of health care would have moderated without passage of the ACA.

## U.S. Supreme Court decisions

The U.S. Supreme Court has made three significant rulings on various parts of the ACA. The first case, *NFIB v. Sebelius*, was heard by the court in 2012, and essentially established the constitutionality of Obamacare.<sup>14</sup>

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- 9 “Constant changes highlight flaws in Affordable Care Act,” by Roger Stark, MD, FACS, Policy Note, Washington Policy Center, May 17, 2016, at [www.washingtonpolicy.org/publications/detail/constant-changes-highlight-flaws-in-affordable-care-act](http://www.washingtonpolicy.org/publications/detail/constant-changes-highlight-flaws-in-affordable-care-act).
  - 10 “20 million people have gained health insurance coverage because of the Affordable Care Act, new estimates show,” U.S. Department of Health and Human Services, HHS.gov, March 3, 2016, at [www.hhs.gov/about/news/2016/03/03/20-million-people-have-gained-health-insurance-coverage-because-affordable-care-act-new-estimates](http://www.hhs.gov/about/news/2016/03/03/20-million-people-have-gained-health-insurance-coverage-because-affordable-care-act-new-estimates).
  - 11 “Obamacare's fifth anniversary,” by Roger Stark, MD, FACS, blog, Washington Policy Center, March 25, 2015, at [www.washingtonpolicy.org/publications/detail/obamacares-fifth-anniversary](http://www.washingtonpolicy.org/publications/detail/obamacares-fifth-anniversary).
  - 12 “The Oregon experiment – effect of Medicaid on clinical outcomes,” by Katherine Becker, et. al., *New England Journal of Medicine*, May 2, 2013, at [www.nejm.org/doi/full/10.1056/NEJMs1212321#t=article](http://www.nejm.org/doi/full/10.1056/NEJMs1212321#t=article).
  - 13 “Health care spending: historical trends and new directions,” by Alice Chen and Dana Goldman, National Bureau of Economic Research (NBER), August 2015, at [www.nber.org/papers/w21501.pdf](http://www.nber.org/papers/w21501.pdf).
  - 14 “*National Federation of Independent Businesses, et. al. v. Sebelius, Secretary of Health and Human Services, et. al.*,” Supreme Court of the United States, October Term, 2011, at [www.supremecourt.gov/opinions/11pdf/11-393c3a2.pdf](http://www.supremecourt.gov/opinions/11pdf/11-393c3a2.pdf).

At issue was whether the government could force citizens to purchase a private product, in this case health insurance. The court ruled that the fine or penalty the ACA imposes for not purchasing insurance is actually a “tax” and that the constitution gives Congress the authority to tax citizens. In a second part of that case, the court ruled that the federal government can not force states to expand the Medicaid entitlement program as written in the ACA. Each state could decide for itself whether to participate in the expansion, without losing its current federal Medicaid funding.

The second case, *King v. Burwell*, dealt with the specific language of the ACA and whether people could receive subsidies in a federally-established, rather than a state exchange.<sup>15</sup> The court ruled in 2015 that even though the ACA specifically says “...exchange established by the State,” the intent was that any government exchange could be used, including a federally-created exchange. The affect of the ruling was to amend the law, without changing its wording, to expand the federal-subsidy program.

## Controlling health care costs

Liberals and conservatives alike agree that rapidly rising health care costs are unsustainable and that any meaningful health care reform must address this problem. Obamacare has been a dismal failure in reducing or slowing the rise in health care costs. *USA Today* compiled data from the Obama Administration and reported that for 2016 in the ACA exchanges the average family deductible soared, including Washington state where it is up 76 percent or about \$3,500 for the year.

In Mississippi, average family premiums shot up 42 percent and in South Carolina, they increased 37 percent. In North Carolina, annual premiums and deductibles for the most commonly purchased family plans increased on average by about 20 percent. Alaska had the biggest average premium increase among states – 35 percent – for a 27-year-old male.

Three other states – Minnesota, Montana and Hawaii – saw annual cost increases of more than 30 percent. In Washington state, the average premium increased by 13.5 percent.<sup>16</sup> The national average increase for premiums in 2017 is estimated at 24 percent. Twenty-nine states have fewer gold plans and five states are losing more than half of their gold plans.<sup>17</sup>

Half of all Americans receive health insurance through their employers or a spouse’s employer. Even in the employer-based market, health insurance premiums

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15 “*King, et. al. v. Burwell, Secretary of Health and Human Services, et. al.*,” Supreme Court of the United States, October Term, 2014, at [www.supremecourt.gov/opinions/14pdf/14-114\\_qo11.pdf](http://www.supremecourt.gov/opinions/14pdf/14-114_qo11.pdf).

16 “13 health insurers file 154 plans for 2017 – 13.5 average requested rate changes,” Office of the Insurance Commissioner Washington State, May 16, 2016, at [www.insurance.wa.gov/about-oic/newsroom/news/2016/05-16-2016.html](http://www.insurance.wa.gov/about-oic/newsroom/news/2016/05-16-2016.html).

17 “State by state data show bigger 2016 exchange premium, deductible jumps,” by Jayne O’Donnell, *USA Today*, December 16, 2015, at [usatoday.com/story/news/nation/2015/12/16/state-state-data-show-bigger-2016-exchange-premium-deductible-jumps/77353890/](http://usatoday.com/story/news/nation/2015/12/16/state-state-data-show-bigger-2016-exchange-premium-deductible-jumps/77353890/).

are increasing much faster than general prices reported in the consumer price index (CPI). *Fortune Magazine Online* reports that the CPI is increasing at about one percent per year, whereas on average, employer-paid health insurance premiums are increasing at 6.5 percent per year.<sup>18</sup> The average family plan with employer-paid insurance now costs \$18,000 per year, which is \$4,400 more than the average cost before the ACA was enacted.

Almost 40 percent of Americans are now enrolled in Medicare or Medicaid entitlement programs. The Congressional Budget Office reports that Medicare spending will double by 2026 to \$1.29 trillion annually and that federal Medicaid spending will increase by 75 percent to \$621 billion over the same time period.<sup>19</sup>

In spite of the fact that Obamacare is costing the country billions, if not trillions, in public dollars, private health care costs continue to rise for individuals and families.

## Universal health insurance coverage

Although 20 million Americans are insured through the ACA, 30 million people are still without health insurance. Many of these uninsured are young and healthy individuals. They have made a conscious economic decision not to pay for expensive health insurance containing benefit mandates they do not want or need. Especially with the pre-existing conditions clause in Obamacare, younger and healthier people feel it makes more sense to pay the government penalty for not having insurance and wait until they become ill to purchase needed health coverage.

## State and federal exchanges

As noted, only 14 states plus the District of Columbia have established their own ACA exchanges. Elected leaders in the other 36 states have declined to participate in this provision of Obamacare and the federal government has created an exchange for their residents. Most state exchanges, including that in Washington state, are theoretically set up to be self-sustaining financially.<sup>20</sup> Members of the Washington State Exchange Board, however, admit that financial assistance may be needed from “other” public resources, presumably referring to money in the state General Fund.

The number of insurance companies participating in the exchanges is trending downward nationally. Some states, including Washington, have a fairly stable number of carriers. However, the national average of companies participating in the

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18 “Here’s why you’ll likely pay more for your employer-sponsored health insurance,” by Laura Lorenzetti, *Fortune Magazine Online*, June 21, 2016, at [fortune.com/2016/06/21/health-care-rising-costs/](http://fortune.com/2016/06/21/health-care-rising-costs/).

19 “CBO: Medicare spending up this year,” by Ron Shinkman, *Fierce Healthcare*, August 25, 2016, at [www.fiercehealthcare.com/finance/cbo-says-medicare-spending-up-year](http://www.fiercehealthcare.com/finance/cbo-says-medicare-spending-up-year).

20 “Washington Health Benefit Exchange, Report to the Washington state legislature, December 1, 2012, at [www.wabexchange.org/wp-content/uploads/2015/08/391423087296\\_Legislation\\_120112\\_Sustainability\\_Report.pdf](http://www.wabexchange.org/wp-content/uploads/2015/08/391423087296_Legislation_120112_Sustainability_Report.pdf).



exchanges has dropped from 6.5 in 2016 to 5.8 in 2017.<sup>21</sup> The number of counties across the country with only one insurance company selling coverage will increase to 18 percent in 2017, up from two percent in 2016.<sup>22</sup>

This sharp decrease in consumer choices reflects the imbalance in the risk pool in the exchange markets. The majority of enrollees are older and sicker individuals. The architects of Obamacare estimated that the exchanges would need young and healthy people to make up at least 40 percent of all enrollees in order to be financially viable. That number is currently only 28 percent nationally, far below the number needed to make ACA exchanges work.<sup>23</sup>

Many state exchanges are now at risk of closing. The governor of Kentucky wants to put his state's exchange into the federal exchange.<sup>24</sup> The commissioner of Tennessee's Department of Commerce recently reported that because of increasing premiums and decreasing insurance company participation, the Tennessee exchange is "very near collapse."<sup>25</sup> States that close their exchanges, of course, can push their residents into the federal exchange. This puts federal taxpayers at greater risk, not only for increased premium subsidies, but also for the higher overhead costs of running the exchanges.

## Medicaid entitlement expansion

The ACA expanded Medicaid coverage, the entitlement program for the poor, to any person age 18 to 64 who earns less than 138 percent of the federal poverty level. The federal government paid 100 percent of the expansion cost through 2016 and then will gradually decrease that amount to 90 percent starting in 2020. The U.S. Supreme Court ruled that states could decide whether or not to expand Medicaid and, so far, 31 states plus the District of Columbia have elected to expand Medicaid.<sup>26</sup> Without taking a formal vote, Washington state legislators have simply rolled Medicaid expansion into the last several biennial budgets.

Nationally, approximately 50 percent of the newly insured people under the ACA were placed in the Medicaid entitlement program.<sup>27</sup> For Washington state, according to the Office of the Insurance Commissioner (OIC), over 80 percent

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21 "Analysis of 2017 premium changes and insurer participation in the Affordable Care Act's health insurance market places," by Cynthia Cox, et. al., The Henry J. Kaiser Family Foundation, July 28, 2016, at [kff.org/health-reform/issue-brief/analysis-of-2017-premium-changes-and-insurer-participation-in-the-affordable-care-acts-health-insurance-marketplaces/](http://kff.org/health-reform/issue-brief/analysis-of-2017-premium-changes-and-insurer-participation-in-the-affordable-care-acts-health-insurance-marketplaces/).

22 Ibid.

23 "What, me buy insurance?," by Bob Herman, *Modern Healthcare*, May 14, 2016 at [www.modernhealthcare.com/article/20160514/MAGAZINE/305149980](http://www.modernhealthcare.com/article/20160514/MAGAZINE/305149980).

24 "Bevin gives Kynect a temporary reprieve," by Baylee Pulliam, *Louisville Business Journal*, July 13, 2016, at [www.bizjournals.com/louisville/news/2016/07/13/bevin-gives-kynect-a-temporary-reprieve.html](http://www.bizjournals.com/louisville/news/2016/07/13/bevin-gives-kynect-a-temporary-reprieve.html).

25 "Obamacare is 'very near collapse' in one state," by Bob Bryan, *Business Insider*, August 24, 2016, at [www.businessinsider.com/obamacare-near-collapse-in-tennessee-2016-8](http://www.businessinsider.com/obamacare-near-collapse-in-tennessee-2016-8).

26 "A 50-state look at Medicaid expansion," FamiliesUSA, February 2016, at [familiesusa.org/product/50-state-look-medicaid-expansion](http://familiesusa.org/product/50-state-look-medicaid-expansion).

27 Ibid.

(680,000 out of 837,500) of people newly insured under Obamacare were put in the Medicaid expansion.<sup>28</sup>

Without significant change and reform, the existing Medicaid program is not financially sustainable.<sup>29</sup> Adding over 10 million new enrollees to the entitlement program has made its financial status even more precarious. One out of five Americans nationally and one out of four Washingtonians are now in the Medicaid entitlement program.

Medicaid pays providers roughly 40 percent of what private insurance pays. Consequently, access to care for existing Medicaid patients is poor, especially in primary care. Adding millions of new patients to Medicaid will make this access problem worse. Doctors, clinics and hospitals have little incentive to accept more Medicaid patients when government policy means they lose money on every visit.

The real tragedy for patients is, except for very specific diagnosis, having Medicaid insurance provides no better clinical outcomes than being uninsured.<sup>30</sup> Researchers at Harvard University studied thousands of people in Oregon, half of whom won a lottery to enroll in Medicaid and half of whom remained uninsured. Researchers found that not only were clinical outcomes no better for people in the Medicaid group than for people who remained uninsured, but the utilization of emergency rooms was actually higher for people in the Medicaid program than for people in the uninsured group.<sup>31</sup>

### **Failure of Consumer Operated and Oriented Plans (CO-OPs)**

Consumer Operated and Oriented Plans, know as CO-OPs, were placed in the Affordable Care Act as a compromise for lawmakers who wanted a “public option” health insurance plan. The stated goal of CO-OPs is to increase competition and consumer choice in the health insurance exchanges by competing with private insurance companies. CO-OPs must comply with all state insurance laws, mandates and regulations.

Initial funding was provided through two types of federal government loans given at favorable interest rates. Start-up loans must be repaid to taxpayers within five years and solvency, or reserve, loans must be repaid within fifteen

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28 “Uninsured rate in Washington state drops by half to 7.3 percent,” Office of the Insurance Commissioner, Washington state, February 3, 2016, at [www.insurance.wa.gov/about-oic/newsroom/news/2016/02-02-2016.html](http://www.insurance.wa.gov/about-oic/newsroom/news/2016/02-02-2016.html).

29 “Medicare and Medicaid at fifty,” by Roger Stark, MD, FACS, Policy Note, Washington Policy Center, September 3, 2015, at [www.washingtonpolicy.org/publications/detail/medicare-and-medicare-at-fifty](http://www.washingtonpolicy.org/publications/detail/medicare-and-medicare-at-fifty).

30 “Obamacare’s fifth anniversary,” by Roger Stark, MD, FACS, blog, Washington Policy Center, March 25, 2015, at [www.washingtonpolicy.org/publications/detail/obamacares-fifth-anniversary](http://www.washingtonpolicy.org/publications/detail/obamacares-fifth-anniversary).

31 “Effect of Medicaid coverage on ED use – further evidence from Oregon’s experiment,” by Amy Finkelstein, et. al., *New England Journal of Medicine*, October 20, 2016, at <http://www.nejm.org/doi/full/10.1056/NEJMp1609533>.

years. Essentially CO-OPs are start-up health insurance companies with limited financial reserves.<sup>32</sup>

A total of 23 CO-OPs were established and received \$2 billion in federal taxpayer funds. Most went bankrupt and to date only six remain solvent.<sup>33</sup> Hundreds of thousands of enrollees have been forced to find new health insurance and taxpayers have lost billions of dollars.

## Impact on providers

The ACA requires a payment model for providers that ultimately will eliminate the solo or small group practitioner. The policy goal is to shift from fee-for-service payments for doctors and hospitals to a global payment model in which all providers are paid with a single check for any given patient. This forces doctors to become hospital employees or to form some type of financial relationship with hospitals or large physician groups.

The central-planners of Obamacare call these relationships accountable care organizations (ACOs).<sup>34</sup> These basically function like the unpopular health maintenance organizations (HMOs) of the late 1980s and early 1990s. HMOs are effective at holding down health care costs, but they do this by rationing care using a gatekeeper system. Patients and doctors grew very dissatisfied with them 30 years ago and understandably, their popularity waned. Even with a goal of “better quality,” ACOs are a merely a repeat of the failed HMO model.

Because of the new payment model and because of the significant cuts to Medicare (see below), hundreds of hospitals, mostly located in rural areas, are at risk of closing.<sup>35</sup> Some estimates show that 30 percent of the 2,000 rural hospitals in the U.S. are likely to close for financial reasons in the next two years because of diminishing payments.

## New and expanded taxes

The actual cost of Obamacare is a moving target, but taxes pay for at least half of the cost. The “rich,” defined in the law as an individual who earns more than \$200,000 per year or a married couple who earns more than \$250,000 per year, have

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- 32 “Consumer operated and oriented plans (CO-OPs) and the Affordable Care Act,” by Roger Stark, MD, FACS, Legislative Memo, Washington Policy Center, February 22, 2014, at [www.washingtonpolicy.org/publications/detail/consumer-operated-and-oriented-plans-co-ops-and-the-affordable-care-act](http://www.washingtonpolicy.org/publications/detail/consumer-operated-and-oriented-plans-co-ops-and-the-affordable-care-act).
- 33 “Another Obamacare co-op folds, leaving only 6 remaining,” by Ali Meyer, *FoxNews Politics*, September 13, 2016, at [www.foxnews.com/politics/2016/09/13/another-obamacare-co-op-folds-leaving-only-6-remaining.html](http://www.foxnews.com/politics/2016/09/13/another-obamacare-co-op-folds-leaving-only-6-remaining.html).
- 34 “Changes in patient and doctor relationships in United States health care,” by Roger Stark, MD, FACS, Policy Note, Washington Policy Center, November 1, 2015, at [www.washingtonpolicy.org/publications/detail/changes-in-patient-and-doctor-relationships-in-united-states-health-care](http://www.washingtonpolicy.org/publications/detail/changes-in-patient-and-doctor-relationships-in-united-states-health-care).
- 35 “With hospitals in critical condition, can rural America survive?,” by Mattie Quinn, *Governing the States and Localities*, July 2016, at [www.governing.com/topics/health-human-services/gov-rural-hospitals-critical-condition.html](http://www.governing.com/topics/health-human-services/gov-rural-hospitals-critical-condition.html).

seen an added 0.9 percent to their payroll tax and an added 3.8 percent tax to their unearned income. This income definition of “rich” is fixed and will not rise as inflation or cost-of-living increase. As the average income for Americans increases, more people will be required to pay these expanded taxes.

A very specific tax designed to raise billions of dollars is the so called “Cadillac Tax.” It is a 40 percent excise tax on high-cost employer-paid health insurance plans, which will affect both private and government employees. Although it was set to begin in 2018, it has been delayed with bipartisan support until 2020.<sup>36</sup> The tax is an excellent example of the politics involved in enacting Obamacare.

The Cadillac tax will affect hundreds of thousands of workers and employers. The Obama Administration, however, chose to write the ACA in such a way as to delay the unpopular tax until after the president left office, presumably to not adversely influence the 2012 presidential election.<sup>37</sup>

Drug manufacturers and insurance companies are experiencing new taxes to pay for the ACA.<sup>38</sup> Of course, many of these taxes are passed on to consumers through higher prices. In other words, not only the rich, but everyone who uses health care, are paying these added taxes.

## **Cuts to Medicare and the Independent Payment Advisory Board**

In addition to taxes, financial cuts to Medicare, the entitlement program for seniors, pay for the vast majority of Obamacare costs.<sup>39</sup> In the original budget, the CBO determined that \$500 billion of the \$940 billion total cost of the ACA would come from Medicare. Most of these cuts were to come from the provider side of the program – that is, further reductions in payments to doctors, hospitals, ambulance services, nursing aid and kidney dialysis units.

Medicare currently pays providers approximately 70 percent of the amount that private insurers pay. Because doctors have trouble paying their expenses with these lower reimbursements, they limit the number of Medicare patients they are financially able to see. The Obamacare cuts to Medicare will make this access problem for seniors worse.

Neither Congress nor the Obama Administration has been aggressive about making these cuts. This was anticipated by the architects of the ACA.

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36 “About that Cadillac tax,” by Jeff Lemieux and Chad Moutray, HealthAffairs Blog, April 25, 2016, at [healthaffairs.org/blog/2016/04/25/about-that-cadillac-tax/](http://healthaffairs.org/blog/2016/04/25/about-that-cadillac-tax/).

37 “As Cadillac tax threat looms, how can unions respond?,” by Dan DiMaggio, *Labor Notes*, November 2, 2015, at [labornotes.org/2015/11/cadillac-tax-threat-looms-how-can-unions-respond](http://labornotes.org/2015/11/cadillac-tax-threat-looms-how-can-unions-respond).

38 “The impact of the Affordable Care Act in Washington state,” by Roger Stark, MD, FACS, Policy Brief, Washington Policy Center, January 1, 2014, at [www.washingtonpolicy.org/publications/detail/the-impact-of-the-affordable-care-act-in-washington-state](http://www.washingtonpolicy.org/publications/detail/the-impact-of-the-affordable-care-act-in-washington-state).

39 “The impact of the Affordable Care Act in Washington state,” by Roger Stark, MD, FACS, Policy Brief, Washington Policy Center, January 21, 2014, at [www.washingtonpolicy.org/publications/detail/the-impact-of-the-affordable-care-act-in-washington-state](http://www.washingtonpolicy.org/publications/detail/the-impact-of-the-affordable-care-act-in-washington-state).

Consequently, the law establishes a non-elected committee called the Independent Payment Advisory Board (IPAB) that will recommend “best practices” in the Medicare program. These best practices theoretically can not be determined by cost. In reality, however, the committee is charged with holding down the expenditures in Medicare. Undoubtedly, once up and running, the IPAB will move forcefully to transfer money from Medicare to Obamacare.

The IPAB has not yet been set up. However, as increased spending in both Medicare and Obamacare continues, it is only a matter of time before the committee is organized and starts making clinical decisions that will affect seniors, all in an effort to cut costs.

## **Regulations and mandates**

The ACA is one of the most complex and sweeping laws ever passed by Congress. The law and its many amendments are 2,700 pages long, plus thousands of newly-added regulations. Health care makes up 18 percent of the U.S. economy and Obamacare touches virtually every part of the health care delivery system. Not only the individual health insurance market, but also the employer-paid market, and Medicare and Medicaid, are affected by the ACA.

The government-imposed benefit mandates in all insurance plans, the insurance regulations of community rating and pre-existing conditions, and the expansion of Medicaid, all contribute to the rising costs of health care in the United States. Even the financial cuts to Medicare that pay for Obamacare simply transfer taxpayer money from the senior insurance program to the ACA.

## **Conclusion**

In spite of the 20 million “newly” insured, Obamacare has been a clear policy failure. Except for the enrollees in the Medicaid entitlement, virtually every person with health insurance in the U.S. has experienced a significant increase in insurance premiums. Millions have lost insurance plans they liked, lost access to their doctors and seen their deductibles go up.

Access to health care is a growing problem, especially in the Medicaid and Medicare entitlement programs. Just having health insurance on paper is no longer a guarantee of getting to health care services in practice.

There is wide agreement that the health care system was dysfunctional before the ACA became law. Going back to the situation as it existed before 2010 is not a solution. The country has two choices at this point: 1) impose more government control or; 2) move toward more patient control.

Policymakers could increase government control by further expanding Medicaid, allowing non-seniors to buy into Medicare, offering a public option in the individual market and placing more regulations on the employer-paid market. With these maneuvers, a single-payer health care system, like that in Canada, would soon become a reality in the U.S.

Alternatively, policymakers could move toward giving patients more control and re-establishing the relationship between patients and doctors, while reducing government-directed interference.

Patients are the most important part of the health care system and they should be in charge of their own health care. There is nothing inherently different about health care than any other economic activity. There are six practical steps that would put patients in charge of their health coverage:

- 1) Repeal the Obamacare law;
- 2) Promote price transparency, so patients become true consumers of health care and know the real cost of the services they are receiving;
- 3) Change the tax code and allow equal treatment for individuals and families, so they can benefit from the same tax deductions that employers now receive;
- 4) Reform the health insurance industry by allowing people to buy insurance across state lines, eliminating government-forced benefit mandates, and converting to true risk mitigation with the use of health savings accounts and high-deductible plans;
- 5) Enact meaningful reform of Medicaid and Medicare entitlements and make them true, targeted, safety-net programs, and;
- 6) Establish high-risk pools for high-use and high-cost patients, to ensure that everyone has access to coverage.

These six policy solutions offer the best and most realistic way out of our current health care crisis. Patients, acting as health care consumers, would demand more transparency in pricing and, just as happens in other areas of life, would promote competition, and improve quality and service. As a result, a normal-functioning health care market would drive costs down and increase access to quality care for all Americans.

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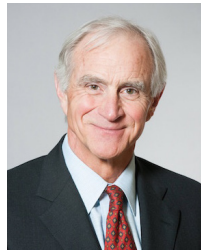
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**Dr. Roger Stark** is the health care policy analyst at Washington Policy Center and a retired physician. He is the author of two books including *The Patient-Centered Solution: Our Health Care Crisis, How It Happened, and How We Can Fix It*. He has also authored numerous in-depth studies on health care policy for WPC, including *The Impact of the Affordable Care Act in Washington State*, *A Review of the Medicaid Program: Its Impact in Washington State and Efforts at Reform in Other States*, *What Works and What Doesn't: A Review of Health Care Reform in the States*, and *Health Care Reform that Works: An Update on Health Savings Accounts*. Over a 12-month period in 2013 and 2014, Dr. Stark testified before three different Congressional committees in Washington DC regarding the Affordable Care Act. Dr. Stark graduated from the University of Nebraska's College of Medicine and he completed his general surgery residency in Seattle and his cardiothoracic residency at the University of Utah. After practicing in Tacoma he moved to Bellevue and was one of the co-founders of the open heart surgery program at Overlake Hospital. He has served on the hospital's governing board. He retired from private practice in 2001 and became actively involved in the hospital's Foundation, serving as Board Chair and Executive Director. He currently serves on the Board of the Washington Liability Reform Coalition and is an active member of the Woodinville Rotary. He and his wife live on the Eastside and have children and grandchildren in the area.