



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

**Testimony before the  
Ways and Means Subcommittee on Oversight  
United States House of Representatives**

**Rep. Peter Roskam, Chairman  
Rep. John Lewis, Ranking Member**

**Hearing on**

**Examining the Use of Administrative Actions  
in the Implementation of the Affordable Care Act**

**May 20, 2015**

**Testimony presented by  
Grace-Marie Turner  
President, Galen Institute**

***“Examining the Use of Administrative Actions  
in the Implementation of the Affordable Care Act”***

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**May 20, 2015**

**Grace-Marie Turner, Galen Institute**

Chairman Roskam, Ranking Member Lewis, and members of the committee, thank you for the opportunity to testify today on the use of administrative actions to implement the Affordable Care Act.

My name is Grace-Marie Turner, and I am president of the Galen Institute, a non-profit research organization focusing on patient-centered health policy reform. I served as an appointee to the Medicaid Commission from 2005-2006, as a member of the Advisory Board of the Agency for Healthcare Research and Quality from 2005 to 2007, and as a congressional appointee to the Long Term Care Commission in 2013.

The U.S. Supreme Court is considering a question that goes to the heart of the issue before the committee today. Did the Obama administration, through the Internal Revenue Service, have legal authority to allow premium assistance tax credits to be available in federally-facilitated health insurance exchanges? Or are the credits available only through an “Exchange established by the State,” as the law specifies numerous times.

The court will decide that question within a month. I understand other witnesses today will be addressing issues in *King v Burwell*. But this is by no means the administration’s only controversial action involving regulatory interpretation that challenges the language of the statute. The Galen Institute has been chronicling changes made to the Affordable Care Act since it was enacted in 2010, and we count at least 50 changes – 31 of them made by the administration. In addition, there have been 17 changes passed by Congress and signed into law by President Obama, and two changes made by the Supreme Court. I have appended our list to my testimony.<sup>1</sup>

Today, I will discuss 1) examples of actions by the administration that are clearly contrary to the statute; 2) failed and successful congressional actions to provide legal authority to changing the law; and 3) additional changes only now being uncovered.

**Administration actions contrary to the statute**

Many of the changes the administration has made through regulation are not based upon the language of the statute. A few examples:

- *Employer mandate delay:* An announcement leaked on July 2, 2013, that the administration would not take enforcement action until the beginning of 2015 against employers that fail to comply with the law's employer mandate requirements.<sup>2</sup> The ACA requires the provision to have taken effect on January 1, 2014. The administration subsequently announced an additional change, allowing employers with at least 50 but fewer than 100 employees an additional year to comply with the law.
- *Self-attestation:* Because of the difficulty of verifying income and employment after the delay of the employer reporting requirement described above, the administration decided to allow "self-attestation" of income and eligibility by people applying for health insurance in the exchanges.<sup>3</sup> Besides being contrary to the requirements in the statute, this has caused a cascade of hardship for people who understated their income. When they filed their income tax returns with the IRS this spring, they were required to reconcile the amount of subsidy they received with their actual income. More than half by one estimate had to pay back some or all of the subsidy the government had paid to health insurance companies on their behalf to reduce their monthly premiums. H&R Block estimates that 52 percent of its customers who received health coverage through the insurance exchanges in 2014 owed an average subsidy repayment of \$530.<sup>4</sup>
- *Medicare Advantage cuts:* The administration continues to resist efforts by government auditors to comply with the law regarding payments to Medicare Advantage plans. To pay for expanded Medicaid and exchange insurance, the ACA calls for significant cuts to the popular MA program, which provides seniors with access to private health plans within Medicare.

The nonpartisan Government Accountability Office called for the administration to cancel an \$8.3 billion program it has tapped to pay "quality bonuses" to Medicare Advantage insurance plans. The administration has used the bonus payments to postpone the pain of cuts to MA plans that are called for in the law. Most of the money has gone to plans rated average or worse. The GAO concluded, "The Secretary of HHS should cancel the MA Quality Bonus Payment Demonstration and allow the MA quality bonus payment system established by PPACA to take effect. If, at a future date, the Secretary finds that this system does not adequately promote quality improvement, HHS should determine ways to modify the system, which could include conducting an appropriately designed demonstration."<sup>5</sup> The administration ignored the GAO's recommendation, and it also has ignored demands from Congress to stop the illegal payments.

Other controversial administration actions include several decisions to permit insurers to renew noncompliant policies in the individual and small group markets until in some cases October 1, 2016, even though the law explicitly says that plans must be compliant with the law's coverage standards no later than January 1, 2014.<sup>6</sup> The administration also has created special enrollment periods that have exempted individuals from fines and penalties called for in the statute.<sup>7</sup> I refer you to the appendix in my testimony for additional examples of the administration's regulatory changes to the law.

## Lack of transparency

The administration also has been criticized for its lack of transparency in its financing of the implementation of the law. For example:

- *Co-op funding*: The administration released a list on December 22, 2014, of \$300 million it had allocated in “solvency funds” last year to Consumer Operated and Oriented Plan (co-op) plans.<sup>8</sup> There is no explanation of the criteria used to determine why some co-ops received added federal funding and others didn’t and why some received very generous awards and others much smaller amounts – or nothing. Nor is there any explanation about who decides which co-ops fail and which get additional infusions of federal funds. The branch of CMS in charge of overseeing the co-op program, the Center for Consumer Information & Insurance Oversight (CCIIO), is supposed to allow the various co-ops to draw down the funds in increments as they meet or exceed developmental milestones – but those milestones remain confidential contractual agreements that have not been disclosed to the public.
- *Cost-sharing reductions*: Treasury Department has rebuffed a request by Ways and Means Chairman Rep. Paul Ryan to explain \$3 billion in payments the administration has made to health insurers even though Congress never authorized the spending through annual appropriations.<sup>9</sup> The payments to insurers are known as cost-sharing subsidies designed to limit out-of-pocket costs for certain low income individuals for health insurance deductibles, co-payments, and co-insurance. But Congress never authorized any money to make these payments to insurers in its annual appropriations. The administration made the payments anyway.

The issue is part of the lawsuit filed by House Speaker John Boehner. Administration lawyers contend that congressional leaders are wrong, saying in a legal brief, “The cost sharing reduction payments are being made as part of a mandatory payment program that Congress has fully appropriated.” But the administration undercut its own argument when HHS asked<sup>10</sup> Congress for an annual appropriation of \$4 billion to finance the cost-sharing payments in 2014 and another \$1.4 billion “advance appropriation” for the first quarter of fiscal year 2015, “to permit CMS to reimburse issuers ...” The request was an acknowledgement that HHS needs congressional appropriations to make the payments. Congress rejected the request, but the administration made the payments to insurers anyway.

## Congressional attempts to provide statutory authority to administrative changes to the law

There have been numerous instances when the administration has made what many Members of Congress consider to be an illegal change to the law but a change with which many in Congress agree. Congress has attempted to pass legislation to give legal standing to the change but has been rebuffed by the administration. For example:

- *Employer mandate delay*: When the administration issued its blog post on July 2, 2013, announcing the employer mandate delay, the House of Representatives later that month passed legislation that would have given legal standing to the delay. But the White House issued a Statement of Administration policy saying that the president would veto the legislation if it were to reach his desk. The legislation, which passed the House with bi-partisan support to grant a legal delay of the employer mandate, never reached the president's desk because it died in the Senate.<sup>11</sup>
- *Keep your Health Plan*: Similarly, the House passed on November 15, 2013, with bi-partisan support the Keep Your Health Plan Act of 2013. It would have permitted health insurance companies to continue to offer individual coverage that was in effect as of January 1, 2013, even if the policies did not meet ACA requirements. The administration threatened to veto the legislation had it reached the president's desk (which it did not), even though it would have codified a change made by the administration to permit states to allow insurers to renew non-compliant plans.<sup>12</sup>

### **Legislation which was enacted to provide statutory authority to changing the law**

The administration has claimed it made the changes through regulation because Congress refused to consider legislative fixes. But the record proves that wrong. At least 17 changes to the law have been passed by both houses of Congress and signed into law by President Obama. Here are three examples:

- *CLASS Act repeal*. After extensive study, the Department of Health and Human Services concluded that the Community Living Assistance Services and Supports (CLASS) Act could not be self-sustaining as required by law. The CLASS Act was repealed on January 2, 2013.<sup>13</sup> (The legislation called for creation of a Long-Term Care Commission, on which I served, that developed an extensive and impressive list of reform recommendations for Congress. Our report was issued on September 30 of that year.<sup>14</sup>)
- *1099 repeal*. On April 14, 2011, Congress repealed the controversial 1099 reporting provision that would have required businesses to report (on IRS Form 1099) whenever they pay a vendor more than \$600 for goods in a single year.<sup>15</sup>
- *Medicaid fix*. Couples earning as much as \$64,000 a year would have been able to qualify for Medicaid because of definitions of income calculations in the ACA. Congress saved taxpayers at least \$13 billion when it amended this provision on November 21, 2011.<sup>16</sup>

### **More changes revealed**

We continue to discover new evidence that the administration is not following the statute in its implementation of the law. The latest example was uncovered by Prof. Andy Grewal of the University of Iowa College of Law.<sup>17 18</sup>

*Coverage for some people under 100% FPL and for unlawful immigrants:* The ACA provides tax credits to U.S. citizens with incomes between 100 and 400% of poverty, but IRS rules expanded the eligibility to extend the credits to citizens below 100% FPL in some cases.<sup>19</sup>

Also, 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. However, 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.”<sup>20</sup>

## **Health reform was needed, and people have received coverage**

Our health sector definitely needed reform, especially to expand coverage to millions of people who had been shut out of insurance in the past. The Affordable Care Act has extended health insurance coverage to many people who needed insurance but could not afford it or obtain it because of pre-existing conditions. There was bi-partisan support in Congress when bills were being debated to achieve these goals, but instead of pursuing a bi-partisan solution, the Affordable Care Act was pushed through on a strictly partisan basis with unusual parliamentary maneuvers. This process did not leave Congress the usual ability to fix problems with the language in the Senate bill in conference.

The 50 changes already made to the law show that the law would have been difficult if not impossible to implement as it was written and passed. However, it is not the job of the administration to fix the law but to implement it as written. The U.S. Constitution requires the executive branch to seek new legislation, as it has done at least 17 times with the ACA, if changes to the law are needed. I would oppose these illegal administration actions no matter who was in the White House because they undermine the rule of law.

Companies inside and outside the health sector have spent countless billions of dollars trying to comply with the ACA. When the administration makes what some call “minor temporary course corrections,” it causes a new cascade of disruption and expenses for companies and makes it even harder for them to comply not only with the law but with ever-changing regulations.

We have a process by which laws are to be enacted and changed, and that process has not been followed in implementing key provisions of the Affordable Care Act, as I have described here. I thank the committee for holding this hearing today to shed light on this issue. If our constitutional system of government is to survive, it must be based upon the rule of law.

## **ENDNOTES**

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<sup>1</sup> Grace-Marie Turner, “Fifty Changes to ObamaCare...So Far.” Galen Institute, May 18, 2015. [www.galen.org/newsletters/changes-to-obamacare-so-far/](http://www.galen.org/newsletters/changes-to-obamacare-so-far/)

<sup>2</sup> Internal Revenue Service, “Transition Relief for 2014 Under §§ 6055 (Information Reporting), 6056 (Information Reporting) and 4980H (Employer Shared Responsibility Provisions),” Notice 2013-45, July 9, 2013, <http://www.irs.gov/pub/irs-drop/n-13-45.PDF>.

- <sup>3</sup> Federal Register 42159, <http://www.gpo.gov/fdsys/pkg/FR-2013-07-15/pdf/2013-16271.pdf>
- <sup>4</sup> Anna Gorman, "For Many Middle-Class Taxpayers On Obamacare, It's Payback Time," February 26, 2015. Kaiser Health News. <http://kaiserhealthnews.org/news/for-many-middle-class-taxpayers-on-obamacare-its-payback-time/>
- <sup>5</sup> Government Accountability Office, "Medicare Advantage: Quality Bonus Payment Demonstration Undermined by High Estimated Costs and Design Shortcomings." GAO-12-409R: Published: March 21, 2012. Publicly Released: April 23, 2012. <http://www.gao.gov/products/GAO-12-409R>
- <sup>6</sup> Department of Health & Human Services, Centers for Medicare & Medicaid Services, "Insurance Standards Bulletin Series - Extension of Transitional Policy through October 1, 2016." March 5, 2014. <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/transition-to-compliant-policies-03-06-2015.pdf>.
- <sup>7</sup> Congressional Research Service, "Implementing the Affordable Care Act: Delays, Extensions, and Other Actions Taken by the Administration." March 3, 2015. <http://fas.org/sgp/crs/misc/R43474.pdf>
- <sup>8</sup> CCIIO, CMS, HHS, "Loan program helps support customer-driven non-profit health insurance," December 22, 2014. <http://www.cms.gov/CCIIO/Resources/Grants/new-loan-program.html>
- <sup>9</sup> Philip Klein, "Treasury Won't Explain Decision To Make \$3 Billion in ObamaCare Payments," February 26, 2015. Washington Examiner. <http://www.washingtonexaminer.com/treasury-wont-explain-decision-to-make-3-billion-in-obamacare-payments/article/2560739>
- <sup>10</sup> <http://www.cms.gov/About-CMS/Agency-Information/PerformanceBudget/Downloads/FY2014-CJ-Final.pdf>
- <sup>11</sup> Authority for Mandate Delay Act passed the House 264-161 on July 17, 2013, H.R. 2667. It would have codified the administration's announcement delaying the employer mandate and reporting requirements. Similarly, the House passed on that same date the Fairness for American Families Act 2510174 H.R. 2668 that would have delayed enforcement of the individual mandate by a year. Both died in the Senate.
- <sup>12</sup> Keep Your Health Plan Act of 2013 passed the House 261-157 on November 15, 2013. It would have codified the administration's action allowing continuation of non-compliant health plans beyond the statutory deadline.
- <sup>13</sup> Congressional Research Service, "Legislative Actions to Repeal, Defund, or Delay the Affordable Care Act," March 2, 2015. <https://www.fas.org/sgp/crs/misc/R43289.pdf>
- <sup>14</sup> Commission on Long-Term Care. "Report to Congress." September 30, 2013. <http://www.gpo.gov/fdsys/pkg/GPO-LTCCOMMISSION/pdf/GPO-LTCCOMMISSION.pdf>
- <sup>15</sup> Congressional Research Service, "Legislative Actions to Repeal, Defund, or Delay the Affordable Care Act," March 2, 2015. <https://www.fas.org/sgp/crs/misc/R43289.pdf>
- <sup>16</sup> *ibid*
- <sup>17</sup> Andy S. Grewal, "Lurking Challenges to the ACA Tax Credit Regulations." May 2015. Publication pending. [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2598317](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2598317)
- <sup>18</sup> Andy S. Grewal, "Another 'Glitch' with the ACA Tax Credit?" March 30, 2015. Yale Journal on Regulation. <http://www.yalejreg.com/blog/another-glitch-with-the-aca-tax-credit-by-andy-grewal>
- <sup>19</sup> Federal Register /Vol. 76, No. 159 /Wednesday, August 17, 2011. <http://www.gpo.gov/fdsys/pkg/FR-2011-08-17/pdf/2011-20728.pdf>
- <sup>20</sup> *ibid*



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## Fifty Changes to ObamaCare...So Far

Grace-Marie Turner

May 18, 2015

For updates to this list visit: [www.galen.org/newsletters/changes-to-obamacare-so-far/](http://www.galen.org/newsletters/changes-to-obamacare-so-far/)

By our count at the Galen Institute, more than 50 significant changes have been made to the Patient Protection and Affordable Care Act, at least 31 that the Obama administration has made unilaterally, 17 that Congress has passed and the president has signed, and two 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. (March 29, 2011)
2. *Medicare Advantage patch:* The administration [ordered](#) an advance draw on funds from a Medicare bonus program to provide payments to Medicare Advantage plans to temporarily forestall payment cuts called for in the ACA that could have led to cuts in benefits and an early exodus of MA plans from Medicare. (April 19, 2011)
3. *Coverage for some people under 100% FPL and for unlawful immigrants:* The ACA [provides tax credits](#) to U.S. citizens with incomes between 100 and 400% of poverty, but [IRS regulations](#) extend credits to citizens below 100% FPL in some cases. Also, 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.” (August 17, 2011)
4. *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)
5. *Delaying a low-income plan:* The administration [delayed](#) implementation of the Basic Health Program until 2015. It would have provided more-affordable health coverage for certain low-income individuals not eligible for Medicaid. (February 7, 2013)
6. *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 HHS Secretary Sebelius’s control to extend the pools, but instead used the money to pay for advertising for Obamacare enrollment and other purposes. (February 15, 2013)
7. *Doubling allowed deductibles:* Because some group health plans use more than one benefits administrator, plans [were allowed](#) to 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. (February 20, 2013)
8. *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)
9. *Employer-mandate delay:* By an administrative action that is contrary to language of the ACA, enforcement and reporting requirements for the employer mandate were [delayed](#) by one year until 2015. (July 2, 2013)



10. *Self-attestation*: Because of the difficulty of verifying income after the employer-reporting requirement was delayed, the administration it would [allow](#) “self-attestation” of income and eligibility by applicants for health insurance in the exchanges. (July 15, 2013)
11. *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. (September 30, 2013)
12. *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. (October 23, 2013)
13. *Insurance companies may offer canceled plans*: The administration announced that insurance companies may [reoffer](#) plans that previous regulations had forced them to cancel. (November 14, 2013)
14. *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. (September 26, 2013) (November 27, 2013)
15. *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. (December 2, 2013)
16. *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. (December 12, 2013) (January 14, 2014)
17. *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. (December 19, 2013) (March 5, 2014)
18. *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. (January 2014)
19. *Equal employer coverage delayed*: Tax officials will not be [enforcing](#) in 2014 the mandate requiring employers to offer equal coverage to all their 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.” (January 18, 2013)
20. *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 until 2016 and relaxing some requirements for larger employers. Businesses with 100 or more employees must offer coverage to 70% of their full-time employees in 2015 and 95% in 2016 and beyond. (February 10, 2014)
21. *Extending subsidies to non-exchange plans*: The administration released a bulletin through CMS [extending](#) subsidies to individuals who purchased health insurance 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. (February 27, 2014)
22. *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)

23. *Reducing cost sharing reductions.* 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 changed through [regulation](#) to apply to only those [100-250% of poverty](#). (March 11, 2014)
24. *Delaying the sign-up deadline:* The administration [delayed](#) until mid-April the March 31 deadline to sign up for insurance without penalty. Applicants simply need to check a box on their application to qualify for this extended sign-up period. (March 26, 2014)
25. *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)
26. *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)
27. *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)
28. *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)
29. *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)
30. *Transparency of coverage:* CMS [delays](#) statutory requirements on insurance companies to disclose data on the number of people enrolled, disenrollment, number of claims denied, costs to consumers of certain services, etc. (Oct. 20, 2014)
31. *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](#). (February 24, 2015)

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

32. *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)
33. *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)
34. *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. (August 10, 2010)
35. *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. (December 15, 2010)
36. *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)
37. *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. (January 7, 2011)

38. *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)
39. *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)
40. *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. (November 21, 2011)
41. *CO-OPs, IPAB, IRS defunded*: Congress [made cuts](#) in funding to [programs and agencies](#) implementing the ACA including the IRS, and the controversial Independent Payment Advisory Board. (December 23, 2011; March 26, 2013)
42. *Slush-fund savings*: Congress [cut](#) \$6.25 billion from the Prevention and Public Health slush fund through 2021, and \$2 billion each year thereafter. (February 22, 2012)
43. *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. (February 22, 2012)
44. *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.” (January 2, 2013)
45. *Defunding CO-OPs*: [Congress cut](#) an additional \$2.2 billion from the “Consumer Operated and Oriented Plan” (CO-OP), which some saw as a stealth public option, blocking creation of new government-subsidized co-op programs. Early reports showed many co-ops, which had received federal loans, had run into serious financial trouble. (January 2, 2013)
46. *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)
47. *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)
48. *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. (December 16, 2014)

## CHANGES BY THE SUPREME COURT

49. *Medicare expansion made voluntary*: The court ruled it was voluntary, rather than mandatory, for states to expand Medicaid eligibility to people with incomes up to 138% of poverty by ruling the federal government couldn’t block funds for existing state Medicaid programs if states chose not to expand the program. (June 28, 2012)
50. *The individual mandate made a tax*: The court determined that violating the mandate that Americans must purchase government-approved health insurance would only result in individuals’ paying a “tax,” making it, legally speaking, optional for people to comply. (June 28, 2012)