Repeal and Replace: 10 Necessary Changes

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There are 10 structural flaws in the Affordable Care Act (ACA). Each is so potentially damaging, Congress will have to resort to major corrective action even if the critics of the ACA are not involved. Further, each must be addressed in any new attempt to create workable health care reform.

1. An Impossible Mandate

Problem: The ACA requires individuals to buy a health insurance plan whose cost will grow at twice the rate of growth of their incomes. Not only will health care claim more and more of every family's disposable income, the act takes away many of the tools the private sector now uses to control costs.

Solution: 1) Repeal the individual and employer mandates, 2) offer a generous tax subsidy to people to obtain insurance, but 3) allow them the freedom and flexibility to adjust their benefits and cost-sharing in order to control costs.

2. A Bizarre System of Subsidies

Problem: The ACA offers radically different subsidies to people at the same income level, depending on where they obtain their health insurance — at work, through an exchange or through Medicaid. The subsidies (and the accompanying mandates) will cause millions of employees to lose their employer plans and may cause them to lose their jobs as well. At a minimum, these subsidies will cause a huge, uneconomical restructuring of American industry.

Solution: Offer people the same tax relief for health insurance, regardless of where it is obtained or purchased — preferably in the form of a lump-sum, refundable tax credit.

3. Perverse Incentives for Insurers

Problem: The ACA creates perverse incentives for insurers and employers (worse than under the current system) to attract the healthy and avoid the sick, and to overprovide to the healthy (to encourage them to stay) and underprovide to the sick (to encourage them to leave).

Solution: Instead of requiring insurers to ignore the fact that some people are sicker and more costly to insure than others, adopt a system that compensates them for the higher expected costs — ideally making a high-cost enrollee just as attractive to an insurer as low-cost enrollee.

4. Perverse Incentives for Individuals

Problem: The ACA allows individuals to remain uninsured while they are healthy (paying a small fine or no fine at all) and to enroll in a health plan after they get sick (paying the same premium everyone else is paying). No insurance pool can survive the gaming of the system that is likely to ensue.

Solution: People who remain continuously insured should not be penalized if they have to change insurers; but people who are willfully uninsured should not be able to completely free ride on others by gaming the system.

5. Impossible Expectations/A Tattered Safety Net

Problem: The ACA aims to insure as many as 34 million uninsured people. Economic studies suggest they will try to double their consumption of medical care. Yet the act creates not one new doctor, nurse or paramedical personnel. We can expect as many as 900,000 additional emergency room visits every year — mainly by new enrollees in Medicaid — and 23 million are expected to remain uninsured. Yet, as was the case in Massachusetts, not only is there no mechanism to ensure that funding will be there for safety net institutions that will shoulder the biggest burdens, their "disproportionate share" funds are slated to be cut.

Solution: 1) Liberate the supply side of the market by allowing nurses, paramedics and pharmacists to deliver care they are competent to deliver; 2) allow Medicare and Medicaid to cover walk-in clinics at shopping malls and other unconventional care — paying market prices; 3) free doctors to provide lower-cost, higher-quality services in the manner described below; and 4) redirect unclaimed health insurance tax credits (for people who elect to remain uninsured) to the safety net institutions in the areas where they live — to provide a source of funds in case they cannot pay their own medical bills.

6. Impossible Benefit Cuts for Seniors

Problem: The ACA's cuts in Medicare are draconian. By 2017, seniors in such cities as Dallas, Houston and San Antonio will lose one-third of their benefits. By 2020, Medicare nationwide will pay doctors and hospitals less than what Medicaid pays. Seniors will be lined up behind Medicaid patients at community health centers and safety net hospitals unless this is changed. Either 1) these cuts were never a serious way to fund the ACA, because Congress will cave and restore them, or 2) the elderly and the disabled will be in a separate (and inferior) health care system.

Solution: Many of the cuts to Medicare will have to be restored. However, Medicare cost increases can be slowed by empowering patients and doctors to find efficiencies and eliminate waste in the manner described below.

7. Impossible Burden for the States

Problem: Even as the ACA requires people to obtain insurance and fines them if they do not, the states will receive no additional help if the estimated 10 million currently Medicaid-eligible people decide to enroll. Although there is substantial help for the newly eligible enrollees, the states will still face a multibillion dollar, unfunded liability the states cannot afford.

Solution: States need the opportunity and flexibility to manage their own health programs — without federal interference. Ideally, they should receive a block grant with each state's proportion determined by its percent of the nation's poverty population.

8. Lack of Portability

Problem: The single biggest health insurance problem for most Americans is the lack of portability. If history is a guide, 80% of the 78 million baby boomers will retire before they become eligible for Medicare. Two-thirds of them have no promise of postretirement health care from an employer. If they have above-average incomes, they will receive little or no tax relief when they try to purchase insurance in the newly created health insurance exchange. To make matters worse, the ACA appears to encourage employers to drop the postretirement health plans that are now in place.

Solution: 1) Allow employers to do something they are now barred from doing: purchase personally-owned, portable health insurance for their employees. Such insurance should travel with the individual — from job to job and in and out of the labor market; 2) Give retirees the same tax relief now available only to employees; and 3) Allow employers and employees to save for postretirement care in tax-free accounts.

9. Over-Regulated Patients

Problem: The ACA forces people to spend their premium dollars on first-dollar coverage for a long list of diagnostic tests. Yet if everyone in America takes advantage of all of the free preventative care the ACA promises, family doctors will be spending all their time delivering care to basically healthy people — with no time to do anything else. At the same time, the ACA encourages the healthy to over consume care, it leaves chronic patients trapped in a third-party payment system that is fragmented, uncoordinated, wasteful and designed for everyone other than the patient.

Solution: 1) Instead of dictating deductibles and copayments, give patients greater freedom to save for their own small dollar expenses in health savings accounts, which they own and control; and let them make their own consumption decisions. 2) Allow the chronically ill access to special health accounts, following the example of Medicaid's highly successful Cash and Counseling program, which allows home-bound, low-income disabled patients to control their own budgets and hire and fire those who provide them with services.

10. Over-Regulated Doctors

Problem: The people in the best position to find ways to reduce costs and increase quality are the nation's 778,000 doctors. Yet today they are trapped in a payment system virtually dictated by Medicare. The ACA promises to make this problem worse by encouraging even more unhealthy government intervention into the practice of medicine.

Solution: Providers should be free to repackage and reprice their services under Medicare. As long as their proposals reduce costs and raise quality, Medicare should encourage resourceful, innovative attempts to create a better health care system.