



June 20, 2017

Obamacare's Unstable Because of... Obamacare!

On June 6, 2017, Anthem announced it would leave Ohio's Affordable Care Act (ACA) marketplace.¹ Health insurance companies fleeing the Obamacare marketplaces are nothing new,² but, the most recent exits are attributed to "uncertainty" in the marketplace and some are placing the blame for this on the wrong source.

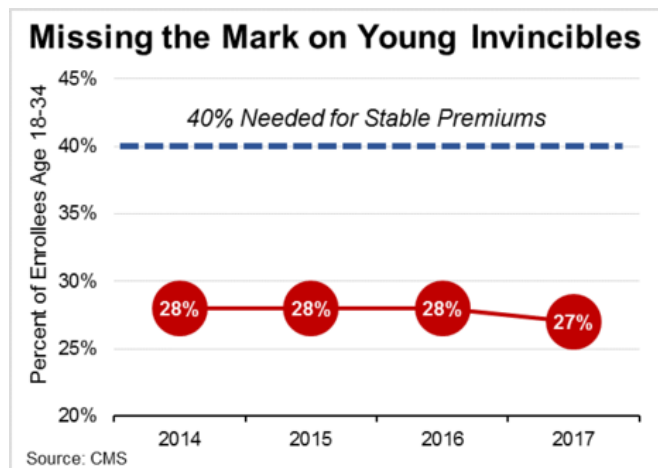
The two major points of "uncertainty" as described by insurers are whether the government will enforce the individual mandate or pay Cost Sharing Reduction (CSR) subsidies. Both of these mechanisms were implemented poorly by Democrats—not the current administration. The faulty individual mandate and CSR program are part of the Democrats' original health care design, which existed before the current administration took office.

Individual Mandate

The individual mandate is an ACA mechanism to force healthy people into insurance pools to offset the cost of insuring sicker individuals. The mandate was weak from the start. According to Jonathan Gruber, one of the ACA's architects, in 2014 new enrollment through Obamacare was driven by Medicaid enrollment and not the individual mandate.

"When we assessed the mandate's detailed provisions, which include income-based penalties for lacking coverage and various specific exemptions from those penalties, we did not find that overall coverage rates responded to these aspects of the law."³ (Emphasis added.)

Even without these findings, the ACA failed to attract the "young invincibles"⁴ necessary to subsidize more costly enrollees and the individual mandate is, and was, ineffective in cajoling these healthy people into the market.⁵ New lawmakers, and incumbents who were in the minority during the writing of the ACA's individual mandate, can hardly be held responsible for the mandate's poor results today.



Cost Sharing Reduction Subsidies

CSR subsidies were intended to help make out-of-pocket costs more affordable for certain individuals with ACA marketplace insurance. However, unlike other funds made available by the ACA, CSR payments were not made permanent or mandatory, which

means the program can continue only if Congress approves these funds each year through the appropriations process. In fact the nonpartisan Congressional Research Services stated, “it appears...that funds for these payments are intended to be made...through annual appropriations.”⁶ When Congress did not appropriate funds in 2014, the Obama Administration continued to pay these subsidies to insurers without congressional approval. The House of Representatives filed a lawsuit to prevent these payments and won in federal court. U.S. District Court Judge Rosemary M. Collyer upheld the constitutional challenge by the House of Representatives in May 2016, further asserting that it is up to Congress to appropriate these funds.⁷

Payments for CSR subsidies are inherently uncertain because they rely on the appropriations process. This uncertainty was evident again when the House of Representatives filed a lawsuit in 2014 and yet again when the House won that lawsuit in 2016. Insurers that continued to over-rely upon an appropriations process subject to changing majorities and in spite of continued legal proceedings likely did a disservice to themselves and their customers. Uncertain CSR payments, like the individual mandate, stems from the text of the ACA itself, a law drafted by Democratic members that failed to attract any Republican votes. Blaming the current administration for a flawed program created by Democrats disregards the more fundamental problem that Obamacare was poorly drafted and designed.

Conclusion

Insurance is a business built on uncertainty. In fact, given the spikes in premiums and loss of insurers in the marketplaces, the only certainty is that Obamacare was already collapsing long before the new administration took office.⁸ The House of Representatives took the first step toward providing greater predictability in the health insurance market by passing the American Health Care Act, which would repeal and replace much of Obamacare and its unstable policies. The individual mandate has been an ineffective tool to attract young and healthy people into the individual market. Questions regarding the constitutionality of CSR payments without congressional consent have existed since 2014. These are problems created by the structure of Obamacare itself and should not be attributed to the current administration or the current Congress. The failure of Obamacare is solely attributable to the provisions within Obamacare.

¹ Mathews, Anna Wilde, “Anthem to Pull Out of Ohio Affordable Care Act Exchange,” Fox Business, June 6, 2017, <http://www.foxbusiness.com/features/2017/06/06/anthem-to-pull-out-ohio-affordable-care-act-exchange-update.html>

² Luhby, Tami, “Will Obamacare Survive as Insurers Pull Out,” CNN Money, August 17, 2016, <http://money.cnn.com/2016/08/17/news/economy/obamacare-insurers/index.html>

³ Gruber, Jonathan, et al, “Disentangling the ACA’s Coverage Effects – Lessons for Policy Makers,” the New England Journal of Medicine, October 27, 2016, <http://www.nejm.org/doi/full/10.1056/NEJMp1609016#t=article>

⁴ JEC, Response to the Economic Report of the President, p. 76, https://www.jec.senate.gov/public/_cache/files/1cc4a348-fe09-46e7-a949-a23512ca5558/2017-joint-economic-report-final-majority.pdf

⁵ Miller, Thomas P., “Examining the Effectiveness of the Individual Mandate under the Affordable Care Act,” Statement before the House Committee on Ways and Means Subcommittee on Oversight, pp. 8-10, <https://waysandmeans.house.gov/wp-content/uploads/2017/01/20170124-OS-Testimony-Miller.pdf>

⁶ Letter from then Chairman of the Ways and Means Committee Paul Ryan and the Chairman of the Energy and Commerce Committee Fred Upton to then Department of Health and Human Services Secretary Sylvia Burwell, February 3, 2015, <https://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/114/Letters/20150203HHS.pdf>

⁷ Dennison, Lyle, “Judge: Billions Spent Illegally on ACA Benefits,” SCOTUS Blog, May 12, 2016, <http://www.scotusblog.com/2016/05/judge-billions-spent-illegally-on-aca-benefits/>

⁸ For state-level data on premium increases and insurance choices see <https://www.jec.senate.gov/public/index.cfm/republicans/obamacare-in-states-2017/>.