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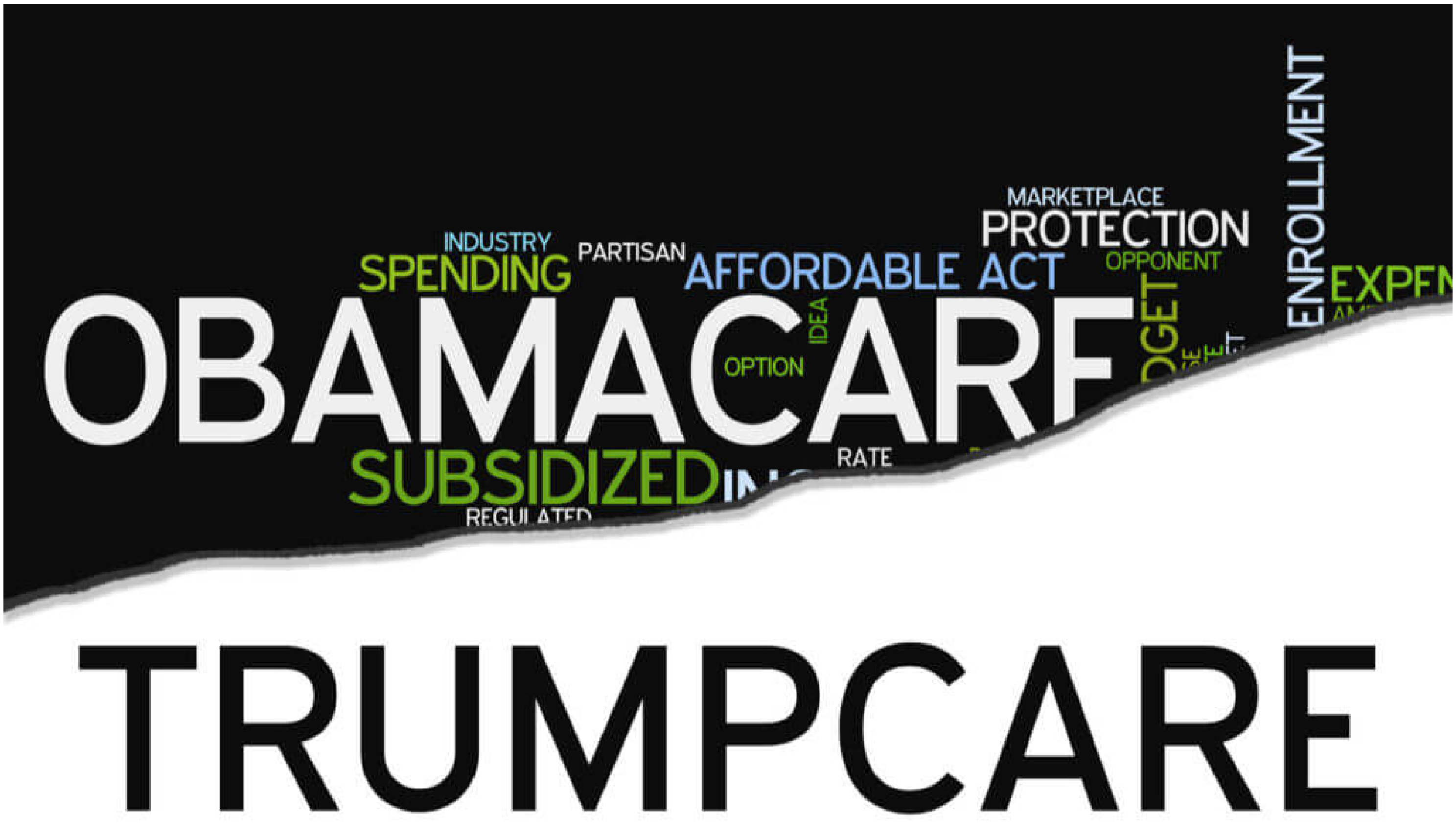

Obamacare under attack – what does it mean?

POLITICS, BUSINESS, MONEY, NEWS, TAXES

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By Gemma Alexander

The much-maligned, poorly understood Affordable Care Act (ACA), often called Obamacare, has provided 20 million Americans with health insurance, reducing the number of uninsured by 7 percent nationwide. But as the most visible legacy of a Democratic president, it has been a Republican target since the day it passed. Although several provisions of the ACA are unpopular, and insurance rates for ACA plans continue to climb, the overall success of the ACA has made "repeal and replace" – the Republican campaign promise turned administration mantra – a bigger challenge than expected. And in September 2017, after the Senate failed to vote on a what was viewed as a last-ditch effort to kill Obamacare, everyone appeared ready to move on. Or so it seemed.

Trump's attempts to undermine the Affordable Care Act (ACA)

Sabotage – (executive) order of the day

Then, on October 12, President Donald Trump signed the Presidential Executive Order Promoting Healthcare Choice and Competition Across the United States. The order purports to offer more choices to consumers and proposes to expand access to healthcare by encouraging association health plans, short-term insurance, and health reimbursement arrangements. The most significant of these options is association health plans. Although they would provide insurance to the same people who currently subscribe to health insurance through the ACA's state health exchanges, association health plans are not the same. In theory, association health plans allow small businesses to band together (often through trade organizations) to offer their own insurance plans similar to the ones offered by large employers. In practice, association health plans are usually bare-bones insurance policies that pair low-cost premiums with minimal healthcare coverage.

Under the executive order, these plans will be allowed to bypass the highly regulated ACA exchanges, which require a standard set of benefits, such as prescription drug coverage and maternity care. For consumers, the primary appeal is lower monthly premiums. However, those who opt for an association plan will have skimpier benefits and will lack the consumer protections set out by the ACA. Association plan subscribers may save money on monthly premiums, only to discover that their medical expenses are not covered when they get sick. Consumers might even find that they have fewer choices, as association providers may opt not to offer less profitable plans that meet exchange requirements for coverage of pre-existing conditions or costly treatments. Association health plans also have a history of higher incidence of fraud, which is unlikely to improve if plans are exempted from existing regulations.

While the executive order exposes consumers to more risk through association plans, it also sabotages the regulated ACA exchanges. Consumers who don't anticipate medical expenses will be drawn to the cheaper plans, leaving the exchanges to serve those with greater medical needs. The loss of younger, healthier individuals will drive up the cost of insurance policies purchased through the exchanges, to the point where many consumers will be unable to afford the better coverage exchange-based policies offer.

Notice of intent to pull the plug

Hours after signing the executive order, Trump dealt a second, potentially more damaging blow to the ACA. In an email sent to reporters, press secretary Sarah Huckabee Sanders confirmed the president's decision to cut off subsidy payments (expected to total $9 billion in 2018) to insurance companies to help them cover the medical needs of low-income Americans. These subsidies, known as cost-sharing reductions, or CSRs, reduce patients' costs for deductibles, co-pays, and similar out-of-pocket expenses. Under the ACA, the federal government reimburses insurance companies for a portion of covered out-of-pocket costs, enabling insurance companies to offer lower premiums.Industry claims that eliminating the subsidies will destabilize the health insurance market are supported by a nonpartisan Congressional Budget Office study published in August, which found that terminating the CSR subsidies would lead to a 20% rise in the average cost of the most popular plans offered by the Affordable Care Act. Moreover, the elimination of the CSRs would increase the federal deficit by almost $200 million according to the study, as the government would have to provide direct subsidies to low-income consumers to cover the increased premiums.

The CSR payments were identified as an Achilles heel for the ACA when House Republicans filed a lawsuit in 2014 (*U.S. House of Representatives. v. Burwell*) claiming the payments were illegal. Despite concerns that the lawsuit itself could be unconstitutional, the United States District Court in Washington, D.C. found the payments illegal (because Congress does not appropriate money annually for the payments), but allowed the monthly payments to continue pending the outcome of the inevitable appeal.

Now what?

Premium rates for health care policies sold on the ACA exchanges have already been set for 2018 (open enrollment begins November 1, 2017). Insurance companies have feared the Trump administration would unilaterally stop the CSR payments, and that uncertainty has already contributed 13% to 20% increases to ACA premiums for 2018. The full impact of ending cost-sharing subsidies will not be felt until 2019 – if the administration gets its way.

Not only is the *House v. Burwell* appeal still pending, but attorneys general from 18 states and the District of Columbia have filed a joint lawsuit in federal court in California to retain the subsidies. According to the lawsuit, "The ACA requires the Secretaries of Health and Human Services and the Treasury to make 'periodic and timely payments' directly to insurance companies that are 'equal to the value of the reductions.' 42 U.S.C. § 18071(c)(3)(A). It also provides a permanent appropriation that authorizes the Secretaries to reimburse insurers for CSR costs without further appropriations from Congress."

The issue of "further appropriations from Congress" is essentially the same as that in the ongoing *House v Burwell* case. Besides bringing another court to bear on the issue, the states' complaint for declaratory and injunctive relief points out that both the Obama and Trump administrations have provided CSR payments to insurers each month since 2014 and the sudden decision to stop payments is the result of the current administration's determination to make the ACA "implode," rather than any emergent legal circumstance. If the court agrees that the decision not to pay the subsidies is arbitrary and capricious, an injunction could compel the administration to continue making payments until both legal cases are settled.

There is wide-spread support for cost-sharing subsidies, as evidenced by the fact that three of the states in the lawsuit – Pennsylvania, North Carolina, and Kentucky – voted to elect Trump. So it's possible that the administration does not really expect to skip next month's subsidy payments, but rather is employing a tactic to pressure Congress to step up healthcare negotiations.

Although Trump's tweets characterize his actions as "bringing Dems to the table," the fact is there is already an ongoing bipartisan effort to improve the ACA. Senators Lamar Alexander, Republican of Tennessee, and Patty Murray, Democrat of Washington, the chairman and ranking member respectively on the Committee on Health, Education, Labor, and Pensions, have proposed legislation to extend the subsidies for two years while offering states more flexibility with health plan regulations. If their compromise passes Congress and is signed into law, the latest round of attacks on the ACA could prove to be no more than political theater from the novice politician in the White House.

Tagged ACA, Donald Trump, executive orders, health, obamacare

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