CONSTITUTIONAL ACTION REPORT

THE CONSERVATIVE CAUCUS RESEARCH, ANALYSIS & EDUCATION FOUNDATION, INC.

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Congress Considering Many Bills to Change ObamaCare

Polls show that ObamaCare is unpopular with the voters, and experience with its effects has increased criticism. The result has been a great deal of legislation introduced in Congress to change ObamaCare, some of which might lead to consequences which could force the repeal of ObamaCare as a whole. This issue of the *Constitutional Action Report* examines many of these bills and discusses their consequences.

Protecting Seniors' Access to Medicare Act (HR 351, S 351, and S 1316)

These bills would eliminate the Independent Payment Advisory Board (IPAB). The purpose of the IPAB was summed up by the Congressional Budget Office, which said, "the Independent Payment Advisory Board has the obligation to reduce Medicare spending" (CBO cost estimate on HR 452, May 8, 2012). Each year, the Board would recommend changes that would keep the increase in Medicare spending below a target amount established by ObamaCare. The changes would go into effect unless Congress voted to save the same amount of money by reducing Medicare spending in other ways. The IPAB consists of fifteen people appointed by the President and confirmed by the Senate, but the Secretary of Health and Human Services is allowed to carry out the IPAB's functions at any time when there are no members of the IPAB.

All three bills would repeal the sections of ObamaCare relating to the IPAB, and make no other changes. The limitations on Medicare spending, which have been estimated by the CBO to cut spending by about $700 billion between 2014 and 2022 (July 24, 2012 letter to Speaker Boehner regarding HR 6079), would no longer be enforceable. Given that this funding would no longer be diverted to cover most of the $793 billion in subsidies for those buying insurance under ObamaCare, Congress would be faced with the choice of eliminating much of ObamaCare, running much larger deficits, or cutting Federal spending in some other area. Therefore, passage of one of these bills could lead to the partial or total repeal of ObamaCare.

Keep the IRS Off Your Health Care Act (HR 2009)

Although much of ObamaCare is administered by the Department of Health and Human Services, the Internal Revenue Service (IRS) has the responsibility of enforcing many of the punitive provisions of the law (i.e. those provisions which force Americans to do what they do not want to do, such as buying ObamaCare policies).

The IRS enforcement is a key part of the bill. Without the IRS threat, fewer people will buy insurance and the number of uninsured will remain high, defeating one of the main purposes of the law. IRS enforcement is also intended to force employers to provide insurance, so that fewer people will sign up for the ObamaCare policies and their subsidies.

HR 2009, which passed the House of Representatives in 2013, prohibits the IRS and the Treasury Department from doing anything to "implement or enforce any provisions or amendments" to ObamaCare. If it becomes law, the individual mandate and the employer mandate would be unenforceable. Individuals would once again be able to decide whether purchasing insurance is a reasonable choice. Employers would be able to decide whether providing health insurance is economically reasonable for their businesses.

Without the enforcement of these taxes, the IRS would collect approximately $150 billion less from 2015 through 2022 (CBO to Boehner, July 24, 2012), which would increase ObamaCare's impact on the Federal deficit. It would also undermine ObamaCare's intention of forcing healthy individuals to sign up for overpriced insurance policies and therefore subsidizing less healthy policy holders. Since this is a key assumption of ObamaCare, some experts have predicted that the entire ObamaCare system of insurance exchanges would collapse without it.

The IRS would also be unable to collect the Medical Device Tax (see the Protect Medical Innovation Act below).

Keep Your Health Plan Act (HR 3350), Employee Health Care Protection Act (HR 3522), Keeping the Affordable Care Act Promise (S 1642)

These bills provide, to varying degrees, that Americans can keep their health insurance if they wish to do so. However, HR 3522 (which passed the House in 2013) and S 1642 are temporary measures, merely continuing the policies for 2014. Only HR 3350 permanently overrides ObamaCare's destruction of some popular policies by saying that insurance companies "may continue after such date to offer such coverage for sale during and after 2014".

ObamaCare Taxpayer Bailout Prevention Act (HR 3541 and S 1726)

Health insurance companies participating in the ObamaCare exchanges are eligible for a government-funded bailout for 2014-2016 if they suffer large enough losses on those policies. These bills repeal that section of the law. (However, they do not contain any provision that would prohibit a bailout outside of the structure of ObamaCare, as carried out by Presidents Obama and Bush for other types of corporations during the recent recession.) Given the strong opposition to these bills by the insurance industry, it is possible that passage might cause some, or even many, of them to withdraw from the exchanges. That could destroy the viability of ObamaCare.

Healthcare Tax Relief and Mandate Repeal Act (HR 582)

This bill would repeal the requirements that individuals pay a tax if they have no health insurance and that businesses with 50 + employees provide health insurance. To that extent, its effect would be similar to HR 2009, but it would not affect the other IRS functions in ObamaCare.

Protect Medical Innovation Act (HR 523 and S 232)

ObamaCare imposes an excise tax (similar to a sales tax) on many types of medical equipment. Generally the tax applies to equipment that would be purchased by a doctor or hospital, but not the general public. Taxes are recognized as a means of discouraging the production of (usually undesirable) items, as the cigarette tax is used to discourage the manufacture and use of cigarettes. Putting a tax on medical devices will inevitably discourage their production and improvement, as well as the invention of new devices. Supporters of the tax say that because it is fairly small, it will have only a small effect. This concedes that it will have a negative effect, and ignores the possibility that such a "hidden tax" (most consumers will never directly pay it and will not even know it exists) may well be increased in preference to taxes that are directly seen and felt by the taxpayer.

If one of these bills were to be passed, the tax would disappear and have no further effect on the availability of medical devices. The effect on the deficit would be minor, since ObamaCare is primarily funded by other taxes and by Medicare diversions. It would not threaten the viability of ObamaCare.

No Exemption for Washington for ObamaCare Act (HR 3076 and S 1497)

These bills would prohibit the Federal government from subsidizing the health insurance policies of members of Congress and congressional staff. ObamaCare actually prohibits this already through a section which says that employers may not pay any part of the cost of a policy purchased through one of the

ObamaCare exchanges (members of Congress and most of their staff are required to buy policies through the exchanges). Section 1512 of ObamaCare even requires employers to give each employee a written notice of this employer restriction. However, President Obama has claimed that the law contains an exemption for Congress (an exemption that is invisible to everyone else), and has continued the subsidy. If passed, these bills would explicitly include Congress and their staff in the law's prohibition, ending the subsidy.

The requirement to buy health insurance through ObamaCare would also be extended beyond Congress, requiring the President, Vice President, presidential appointees in the Executive branch, and the remaining congressional staff to obtain their insurance through ObamaCare exchanges.

No action has been taken on these bills, but the House did include the subsidy elimination in the continuing resolution that it passed on September 30, 2013. It was this provision, as well as one delaying ObamaCare's individual mandate for one year, which caused the Senate to reject the continuing resolution and shut down the Federal government for more than two weeks.

The Congressional Budget Office, ObamaCare, and American Jobs

The ObamaCare section of the recent CBO report (*The Budget and Economic Outlook, 2014 to 2024*, February 2014), has caused great controversy. ObamaCare's critics have charged that the report shows ObamaCare would destroy more than 2 million jobs, while defenders have insisted that it merely frees people to move from one job to another and to spend more time with family. Both claims are misleading descriptions of a complex and heavily qualified discussion by CBO analysts.

The report does state, unequivocally, that ObamaCare will reduce the number of people working. "Although CBO projects that total employment (and compensation) will increase over the coming decade, that increase will be smaller than it would have been in the absence of the ACA [Affordable Care Act]" (page 117). However, the CBO also says that most of that reduced employment will be a "decline in the amount of labor that workers chose to supply", rather than a reduction in the number of jobs offered by employers (page 117). Therefore, one cannot speak of those jobs being "destroyed", at least not in the customary meaning of the word "destroy". The jobs will be available, but unfilled.

Nevertheless, the CBO does confirm that some employers will actually reduce the number of jobs available because of ObamaCare. Liberals have ignored this plain statement on page 124. "That penalty [the tax on employers with 50 or more employees] will initially reduce employers' demand for labor and thereby tend to lower employment." The CBO suggests that, over time, employers will also reduce wages to offset the penalty payments. Another conclusion of the CBO is that minimum wage laws will have an impact on the degree to which ObamaCare destroys jobs, and leads to the conclusion that an increase in the minimum wage would make the job loss greater than otherwise.

The CBO also admits that it lacks good data for predicting how many jobs will be eliminated or replaced by part-time work when the employer mandate begins going into effect in 2015 (page 125).

Claims from the left that reduced employment will be a benign result of ObamaCare rest on the welfare state assumption that it is a good thing if some people work hard and pay taxes so that others, who do not work or work much less, may enjoy the rewards of that labor. If one believes that each person has the responsibility to earn his own living, and that the decision to quit working or reduce hours should reflect a willingness to accept less income, it cannot be a favorable development that some people will take their subsidy and work less or not at all (the CBO predicts that some people will retire early because of ObamaCare – page 123).

However, there is an even more negative factor in the CBO report. Working less will not be simply the result of laziness, but an actual disincentive to work -- what the CBO defines as an "implicit tax" in the way ObamaCare affects workers. All taxes, by diverting earned income away from the worker, provide a disincentive to continue working so much. It is well-recognized that high levels of taxation, by reducing the reward for work, encourage people to work less and enjoy more leisure time instead. According to the CBO, for some workers "the loss of subsidies upon returning to a job with health insurance is an implicit tax on working (and is equivalent to an average tax rate of roughly 15 percent)" (page 120). This 15 percent, added to probably a 15 percent income tax rate and 7.65 percent for Social Security and Medicare, will give this low-income worker an effective tax rate of 37.65 percent, plus his state (and perhaps city or county) income tax. In other words, ObamaCare punishes people for working more and makes it a rational decision for some people to determine that working the extra hours is not worth the small additional income.

It is important to note that the latest CBO report gives a much more pessimistic view of the impact of ObamaCare than its earlier 2010 report. The CBO admits that the earlier report was based on assumptions that underestimated how strongly ObamaCare would affect workers. A question worth asking is whether, even now, they have fully accounted for the negative effects.

Constitutional Budget Project

Last year, TCCF continued is annual project of examining the President's proposed budget for selected cabinet departments, line by line, and determining how much of the spending is actually constitutional.

The Constitution delegates to the Federal government certain functions, most of them listed in Article I, Section 8. As the Ninth and Tenth Amendments make clear, the Federal government has no authority except what is granted in the Constitution.

The findings for the three cabinet departments studied in 2013 for the President's proposed FY 2014 budget are shown below.

	Constitutional	Unconstitutional
Department of Education	2%	98%
Department of Energy	51%	49%
Department of Housing and Urban Development	2%	98%

These conclusions will come as no surprise to anyone familiar with the Constitution. That document has nothing to say about a Federal role in education or housing. Much of the Energy department's budget is actually related to national defense (nuclear matters), but research and development of energy for civilian use finds no basis in the Constitution.

In previous years, the Constitutional Budget Project has also examined the budgets of the Departments of Agriculture, Commerce, Interior, Justice, and State.

The examination of the FY 2015 proposed budget is expected to begin in March, soon after President Obama releases it. The findings for each department will be released as each one is finished.

TCCF will provide one free copy of the FY 2014 Constitutional Budget findings upon request. Write to us at 92 Main Street, Suite 202-8, Warrenton, VA 20186 or email to info@ConservativeUSA.org

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