Insight

A Sampling of ACA Failures

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INTRODUCTION

Since its implementation, the Affordable Care Act (ACA) has left a trail of failures in its wake: failure in mission, failure in implementation, failures to help society, consumers, patients, providers, and insurers through bad programs, lack of enforcement, and constitutionally questionable cost-shifting to states. On the 6th anniversary of the law, below is an overview of these failures:

A SAMPLING OF ACA FAILURES

(Not) Bending the Cost Curve

President Obama has proudly announced, on multiple occasions, that the ACA has bent the cost curve. Data showing slowing growth in National Health Expenditures (NHE) has been cited in support of the president's claims. However, when taken in context of the total slowing in the national growth of GDP, it becomes obvious that the slow-down in health spending correlates more closely with a general slowdown in GDP, or excess cost growth. Projections for the next decade anticipate a quick return to pre-ACA growth rates.[1] The health sector is not behaving differently than it did in years before the ACA relative to the rest of the US economy.

Healthcare.gov

The president said that healthcare.gov will make purchasing health insurance like "shop[ping] for a plane ticket on Kayak or a TV on Amazon." The reality is that healthcare.gov was an expensive disaster. The website still has glitches three years after opening and has cost the taxpayers $2 billion so far. The worst part is that the exchanges were supposed to have been run at the state level, but the complexity of the ACA requirements and the cost of maintaining these systems have contributed to a shift among states towards ceding control of the exchanges to the federal government.

Uninsurance Rates

Each year the Department of Health and human Services (HHS) lowers their target enrollment figures and thus makes it appear that they are reaching their target enrollment numbers. Before the ACA went into full effect, CBO estimated that 2016 plan year enrollment would be about 26 million Americans.[2] At the end of the 2016 open enrollment period, total exchange enrollment had only reached 12.7 million, less than half of the original projections. Yet proponents of the ACA keep claiming enrollment successes because each year, during open enrollment, when it becomes clear that the original target figures will not be reached, the administration moves the goal posts. Estimates have been significantly lowered to only 10 million in 2016. This enables supporters to say they have exceeded the most recent projections regardless of what enrollment turns out to be. [3]

Furthermore, the people who are enrolling are older and sicker than was originally anticipated. The 'Young Invincibles', younger, healthier individuals under 35 who tend to be more willing to forgo insurance, are doing just that. Even though individuals between 18 and 35 years old make up two-fifths of the exchange eligible adult population, and are more likely to be unmarried, uninsured, without employer sponsored insurance options, and eligible for exchange subsidies, they still made up only 26 percent of exchange enrollees in 2016.

The careless legislative drafting of the ACA has also contributed to what is known as the Family Glitch. A loophole in the law has left 1.93 million spouses and children of individuals with full time employment without access to affordable health insurance coverage.

Premiums

Part of the reason that enrollment figures have been so low is that premiums and out-of-pocket expenses have continued to increase over the past six years. In 2013, the first year the exchanges were operational, the median premium increase was 50 percent; that increase reached as much as 600 percent for some individuals. The average benchmark premium has gone up an additional 16.6 percent since then. Consumers' out of pocket expenses have likewise increased rapidly during this time period in the form of higher deductibles, co-pays, and coinsurance.

"If you like your plan…" and "if you like your doctor…"

The administration's failure to come through on its promise that "if you like your plan, you can keep it" is well known. At least 4.7 million Americans lost their insurance plan or were unable to re-enroll after the ACA went into effect. This was the result of rising premiums and stringent new regulations mandated by the ACA.

Finding an alternative plan with the same coverage options was also difficult for many because of the narrow network designs many insurers are utilizing in an attempt to keep premiums low. In part because insurance plans began excluding high-cost providers, and in part because providers are unwilling to join networks with exceedingly low reimbursement rates, many Americans have found that even if you could keep your old plan, that doesn't guarantee you could still see your old doctors.

The fact that many Americans lost access to their primary care providers—along with the expansion of the Medicaid population–actually had the inverse effect of what was intended and likely contributed to an increase in expensive Emergency Room visits that could have more appropriately been dealt with in a primary care provider's office or urgent care facility.

Impact on Insurers

Despite optimistic projections, the risk pools in the exchanges are sicker than anticipated and the prohibition on medical underwriting has made it nearly impossible for insurers to make a profit. The drafters of the ACA anticipated some initial risk selection among the plans and therefore created a mandatory risk corridor program. Each insurer who makes a certain amount of profit as determined by the risk corridor ration is required to pay 20 to 50 percent of their profit into the risk corridor pool. Any plan that suffers losses beyond the risk corridor's given threshold will be reimbursed for 20 to 50 percent of those losses. These rules create little incentive for insurers to take risks or make investments in hope of generating extra profits, and in concert with the many other factors working against them, the number of insurers who suffered losses in the first years of the program substantially outpaced those who generated profit and paid into the program. Unsurprisingly, the risk corridors were unable to come through on their promise to support insurers losing money, and have since been cited in lawsuits as a contributing factor to some insurers being forced out of business.

The ACA's co-ops have been exceptional among US insurers for their rapid rate of closures. Twelve of the original 23 co-ops created through the ACA have suffered an average $20 million in losses and have already closed, costing US taxpayers $1.23 billion in lost investments. The remaining 11 co-ops still owe the US treasury about $1.1 billion in startup loans.

Accountable Care Organizations

Accountable Care Organizations (ACOs) are among the ACA's greatest failures. The ACO demonstration program consistently produced results that have shown the program to be unwieldy and ineffective. Over thirty organizations were brought into the first demonstration project intended to show that ACOs help hold down costs while improving the quality of patient care. After the first two years of the program the ACOs were unable to produce any evidence of quality improvement and requested that they not be examined for quality shortcomings for fear of losing Medicare reimbursements. The financial incentives intended to hold down costs failed, and the vast majority of the ACOs dropped out of the demonstration entirely, or were moved into a second, less rigorous program with less anticipated cost savings for Medicare.

The CLASS Act

At least the ACO demonstration projects happened. The CLASS Act was a provision of the ACA that never even made it to implementation. This program was intended to provide long-term care coverage, but was quickly determined to be financially unworkable and was repealed almost immediately.

Accounting

Paying for the ACAs health insurance subsidies was supposed to be fairly straight forward, but the process, it turns out, is incredibly complicated and has resulted in billions of dollars in inappropriate subsidy payments. These inappropriate payments should be corrected through tax reconciliation, but the tax forms themselves have proved a confusing barrier to many Americans who could lose their insurance coverage if they fail to file the appropriate forms by the federal deadline.

New Taxes for Everyone

While the Federal government is hemorrhaging taxpayer money to pay for the ACA, it has not missed the opportunity to further tax those whose money would be better spent actually providing health care, such as medical device manufacturers, employers providing health insurance, insurers, and perhaps more inappropriately, states.

Through the maintenance of effort provisions of the ACA, Congress has forced states to continue running 'voluntary' programs like CHIP, despite the fact that the programs' federal funding is not guaranteed.

Similarly, the health insurance tax aimed at insurance plans and self-insured employers is negatively affecting self-insured states' budges. State governments themselves are often among the largest employers, and are therefore subject to a significant federal tax. The constitutionality of this particular tax, however, is currently being challenged by Texas and other states.

CONCLUSION

New programs often have an implementation lag while bugs are worked out– this is to be expected. But six years into a program that has faced stiff congressional opposition, that economists and health policy experts have warned would be financially unworkable, we are still seeing problems. Unfortunately, these are not 'bugs' but rather features of a law that was not well drafted, supported, or, apparently, implemented. The law is continuously failing to provide the promised benefits while increasing insurance risk pools and premiums and forcing up national health spending without actually improving national health.

[1] https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/downloads/proj2014.pdf.

[2] https://www.cbo.gov/publication/51298; https://aspe.hhs.gov/pdf-report/health-insurance-marketplaces-2016-open-enrollment-period-final-enrollment-report; https://aspe.hhs.gov/pdf-report/how-many-individuals-might-have-marketplace-coverage-after-2015-open-enrollment-period; https://aspe.hhs.gov/pdf-report/how-many-individuals-might-have-marketplace-coverage-at-the-end-of-2016.

[3] https://aspe.hhs.gov/sites/default/files/pdf/187866/Finalenrollment2016.pdf.