

# NATIONAL REVIEW

## How Trump Can Keep His Pledge to Undo Obamacare Shenanigans

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Fourteen ways to hasten repeal of the burdensome health-care act and help Americans in the meantime During the presidential campaign, candidate Donald J. Trump pledged, “On the first day of my term of office, my administration will . . . cancel every unconstitutional executive action, memorandum and order issued by President Obama.” Obama’s unconstitutional actions include several he took to rescue Obamacare. On his first day in office, Trump violated that pledge.

Instead, he issued an executive order that merely declares, “It is the policy of my Administration to seek the prompt repeal” of Obamacare, and that his administration “shall exercise all authority and discretion available . . . to waive, defer, grant exemptions from, or delay the implementation of” the burdens it imposes on citizens, health-care providers, and states. In fairness, it should be noted that it may have been impossible to undo any, much less all of President Obama’s unconstitutional executive actions in one day. Perhaps Trump intends to make good on his pledge and is just working up to it. In that spirit, here are 14 ways Trump-administration officials can restore the Constitution’s limits on executive power, provide relief to Americans suffering under Obamacare, and hasten repeal.

1. End Congress’s illegal Obamacare exemption. Obamacare threw members of Congress and congressional staff out of their health plans and in effect cut their pay by up to \$12,000 per year. Obama ignored the law and made illegal payments to private insurance companies on behalf of members of Congress and their staff for six years — all to prevent Congress from reopening the law. Trump should announce that he will end those illegal payments immediately, and that he will veto any bill restoring the pay cut that Obamacare dealt Congress, until Congress earns that money by repealing and replacing the law. Congress shouldn’t get an exemption from Obamacare until the American people do. Democrats who actually voted for Obamacare especially should have to live under it.

2. End Obamacare's unconstitutional cost-sharing subsidies. In *House v. Burwell*, a federal judge ruled that the Obama administration "violate[d] the Constitution" by paying billions of dollars in "cost-sharing" subsidies to private insurance companies without a congressional appropriation. Trump should immediately drop the Obama administration's appeal of that decision, stop the unconstitutional payments, and prevent insurers from canceling Obamacare plans until 2018.
3. End Obamacare's illegal "reinsurance" payments. The Government Accountability Office found that the Obama administration illegally diverted additional billions of dollars in "reinsurance" payments from the Treasury to private insurance companies. Trump should immediately stop the diversion of those funds and demand that insurers repay the more than \$3 billion in unlawful payments they have received.
4. Block Big Insurance's "risk-corridor" raid on the Treasury. The Obama administration tried to circumvent a statutory cap on "risk-corridor" payments to private insurance companies by offering to settle lawsuits filed by the insurers. Trump should immediately announce that his administration will not settle but will instead vigorously defend taxpayers' interests in all such lawsuits.
5. Investigate the Obama administration's illegal spending. Federal law provides penalties for officials who spend taxpayer funds without authorization from Congress. Trump should direct the Department of Justice's Public Integrity Section to determine whether the officials who implemented the above policies violated the Anti-Deficiency Act, the False Statements Act, the False Claims Act, or other federal laws.
6. Allow freedom of conscience and choice in contraceptives coverage. The Obama administration expanded the definition of "preventive care" services for which all must purchase insurance coverage to include forms of contraception that violate the consciences and religious practices of many Americans. Trump should eliminate all requirements that consumers purchase preventive-care coverage that are not explicitly specified in statute.
7. Illustrate how Americans can avoid Obamacare penalties. There are many ways that taxpayers who choose not to purchase Obamacare's overpriced insurance can avoid paying a penalty. If they adjust their withholding so they owe money to the IRS at tax time, for example, all the IRS can do is send them nasty letters. Trump should direct the IRS and the Department of Health and Human Services to publish "how to" guides that explain, with specifics, how taxpayers and employers may lawfully avoid paying Obamacare penalties.
8. Illustrate how Obamacare makes it easier than ever for people to wait until they are sick to purchase coverage. Before Obamacare, insurers charged higher premiums to people who waited until they were sick to purchase coverage. This practice encouraged people to buy insurance while healthy, so their premium dollars would help defray medical bills for others who were in need. Obamacare eliminated this practice, making it easier than ever for people to wait until they are sick to purchase coverage. (Even Nobel Prize-winning economist and Obamacare supporter Paul Krugman agrees.) Trump should direct HHS to publish and send to all Obamacare enrollees a "how to" guide that illustrates all the ways the law enables this and other irresponsible behaviors.

9. Publish Obamacare's vital signs. The Obama administration notoriously guarded and sidestepped bad news about Obamacare. The Trump administration should shine a light on both Obamacare and the Obama administration's conduct. Trump should direct HHS to publish and send letters to Obamacare enrollees with all information produced by or available to the federal government on: the number of consumers who lost their health plans in each year since Obamacare took effect; the dwindling number of choices available to exchange enrollees; the growth in health-insurance premiums; the erosion of coverage in exchange plans; the unlawful activities the Obama administration undertook, including illegal subsidies to private insurers, to prop up this failing system; the risks to which those illegal activities exposed Americans, including the risk that a court ruling could result in millions' losing coverage; how the Obama administration took steps to protect private health-insurance companies, but not enrollees, from the consequences of its unlawful actions; the actual costs and enrollment in Obamacare's Medicaid expansion, compared with projections; and other information pertinent to improving the public's understanding of the law.

10. Release the documents. The Obama administration shrouded its implementation of Obamacare in secrecy. Trump should release all unpublished reports, cost estimates, evaluations, and legal memoranda regarding the ACA left by the Obama administration, including: any cost estimates on the affordability of health insurance and the number of uninsured before, during, and after the ACA; any materials bearing on the administrative decisions challenged in *King v. Burwell* and *House v. Burwell*; other unlawful activities mentioned above; the delay of the employer mandate; and the Obama administration's decisions not to enforce parts of Obamacare, including various regulations.

11. Praise states that refused to implement Obamacare. Two-thirds of the states refused to implement an Obamacare exchange. Nineteen refused to implement Obamacare's Medicaid expansion. These states did the right thing under a withering assault from Big Insurance, Big Pharma, and other special interests that wanted the subsidies — legal and illegal — that the Obama administration had promised them. Trump should praise the states that recognized Obamacare as an unworkable and temporary program and direct the Office of Management and Budget to quantify how much those states have saved taxpayers and reduced federal deficits to date, and project how much they will continue to do so over the next decade.

12. Direct states to prepare for Obamacare repeal. When Congress repeals Obamacare, states will have to change their laws. President Trump should send letters to governors and state legislatures informing them that they should start preparing conforming legislation for when they resume control of their insurance markets after Congress repeals Obamacare. Trump should emphasize, as he did in his executive order, that states should create "a free and open market in interstate commerce for the offering of health-care services and health insurance."

13. Renounce IPAB. Obamacare's Independent Payment Advisory Board is an unconstitutional super-legislature with the power to make laws — including the power to impose taxes — without political or judicial accountability. Trump should affirm that his oath to uphold the U.S. Constitution forbids him to use the powers that Obamacare purports to invest in IPAB.

14. Let seniors opt out of Medicare without losing Social Security benefits. The Social Security Administration, without any authorization from Congress, decreed that Medicare-eligible

individuals must enroll in the program or forfeit all Social Security benefits, past and future. The rule antedates the Obama administration, though the administration defended it in court. This rule lacks any legal authority. Trump should direct HHS and the Social Security Administration to rescind it, which would save taxpayers money by freeing more seniors to opt out of Medicare.

Trump administration officials have a lot of work ahead of them, but also a tremendous opportunity to make history. Returning the executive branch to its proper role under the Constitution will also spur Congress to enact reforms that make health care better, more affordable, and more secure.

*Michael F. Cannon is the Cato Institute's director of health policy studies. Cannon has been described as "an influential health-care wonk" (Washington Post), "ObamaCare's single most relentless antagonist" (New Republic), "ObamaCare's fiercest critic" (The Week), and "the intellectual father" of King v. Burwell (Modern Healthcare). He has appeared on ABC, BBC, CBS, CNN, CNBC, C-SPAN, Fox News Channel, and NPR.*