



The hidden ObamaCare workarounds

Michael F. Cannon

March 21, 2018

ObamaCare is not working as intended. Premiums doubled in its first four years and grew another 37 percent this year. Its preexisting-conditions provisions are driving those premium increases and making coverage increasingly worse for the sick — a side effect that turns even Democrats against the law once they learn about it. Since Republicans haven't been able to repeal ObamaCare, some fear voters will blame them when additional premium hikes of 32 percent hit just before election day.

Some are even panicking. Idaho tried to convince the Trump administration to reduce premiums up to 50 percent by letting insurers ignore ObamaCare's requirements. Sen. Lamar Alexander (R-Tenn.) wants to give \$30 billion to insurance companies, effectively hiding ObamaCare premiums by shifting them to taxpayers.

Fortunately, states and the Trump administration each have the power to deliver relief from ObamaCare while Congress dithers.

In 2014, ObamaCare's preexisting-conditions provisions were destroying health insurance markets in U.S. territories. So the Obama administration reversed its interpretation of the statute and found that these and other costly ObamaCare regulations do not apply in the territories.

As a result, states can provide relief from ObamaCare by freeing individuals and employers to purchase health insurance from American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands. States like Idaho could grant health plans licensed by territories the same exemption they grant health care sharing ministries. Some territorial insurers have already established networks with mainland providers.

The Obama administration's reversal also provides a model for the Trump administration.

Federal law exempts “short-term limited duration insurance” from all ObamaCare regulations. As a result, premiums for short-term plans are roughly 70 percent lower, consumers can enroll any time of year, access to providers is often broader, and demand has been growing.

Unfortunately, HHS prevents short-term plans from offering “renewal guarantees,” a consumer protection that allows enrollees who develop expensive medical conditions to continue paying low, healthy-person premiums when they form a new contract with their insurer (i.e., renew) at the end of each policy term. Banning renewal guarantees effectively forces enrollees who fall ill to switch to ObamaCare, where they become a burden on taxpayers.

President Trump has asked HHS to end the ban, which could free millions to escape ObamaCare permanently, and HHS is gathering public input through April 23.

HHS has the authority to end the ban. First, doing so would be consistent with Congress’ support for renewal guarantees and for shielding patients from medical underwriting. (Congress has mandated renewal guarantees in other individual-market plans since 1996).

Second, it would be a minor change. Despite the ban, some insurers offer renewal guarantees by bundling consecutive short-term plans. Ending it would let consumers obtain renewal guarantees without committing themselves to one insurer or to purchasing several short-term plans all at once.

Third, HHS’s current interpretation of the statute is not the only reasonable one. Federal law lets HHS set the maximum term a health insurance contract can have while still qualifying as “short-term limited duration insurance.” Yet the statute specifies the “insurance” to which that time limit applies is a “policy or certificate [or] contract” that provides “benefits consisting of medical care.”

Renewal guarantees are insurance, but they do not provide benefits consisting of medical care. They insure against a different risk (high premiums) and provide a different benefit (low premiums). As evidence, by 2009, 25 states had approved renewal guarantees for sale as a standalone product, separate from health insurance and providing no medical benefits.

Since renewal guarantees are not “health insurance coverage,” it is reasonable to interpret the statute as not counting renewal guarantees against the time limit HHS sets for the legally relevant contract for medical benefits. Even if there are other reasonable interpretations of the statute, it is implausible to argue the law precludes HHS from adopting this one.

Finally, ending the ban would not conflict with or prevent the operation of any federal law. Congress never prohibited renewal guarantees. Every provision in ObamaCare would continue to apply to the plans it regulates.

By November, Republicans could boast that their ideas reduced premiums for the vast majority in the individual market — ObamaCare continued to cause premiums to skyrocket. Conservative states and states with vulnerable GOP members like Florida, Illinois, and Pennsylvania would see the largest premium reductions. When ObamaCare was causing hardship in the territories,

HHS provided relief by reinterpreting the law. It should do the same for the mainland. It's the lawful way to provide relief from ObamaCare while Congress dithers.

Michael F. Cannon is director of health policy studies at the libertarian Cato Institute. Follow him on Twitter: [@mfcannon](https://twitter.com/mfcannon).