THE HILL

# More woes are ahead for the ACA

By Michael Tanner - 01/15/14 07:13 PM EST

Even setting aside the debacle surrounding the rollout of HealthCare.gov, last fall was a bad time for the Affordable Care Act (ACA).

Millions lost their current coverage despite the president's promise: "If you like your healthcare plan, you can keep it." Millions more found that their doctor was not part of newly defined insurance networks. On top of that, middle-class families across the country encountered sticker shock as they saw their premiums increase.

With a new year and most of the website problems more or less fixed, ACA supporters are hoping the worst is behind them. They are in for a rude awakening.

By next fall, the "glitches" of 2013 will seem like the good old days. Here's why.



More canceled policies: As of December 2013, roughly 5.4 million Americans with individual policies had their current plans canceled because they didn't meet ACA requirements. Another 3 million to 8 million people are at risk of losing their policies in the coming months. However, this is only the tip of the iceberg.

Because the president delayed the employer mandate, the 55 percent of Americans who get their insurance through work haven't felt the pain. They will soon. That's because the same ACA provisions that caused the cancellation of individual policies will start to affect employer-sponsored plans by late 2014. In a nutshell, if a plan doesn't meet "minimum coverage requirements" such as maternity care or alcohol counseling, it can no longer be offered. This could affect as many as 78 million workers.

That means that sometime around September or October, cancellation notices will be going out again. Most workers with canceled policies will end up with similar employment-based plans, but they could end up paying more for fewer choices. Others will be pushed into the exchanges, losing their employer-provided plans altogether.

The adverse selection death spiral: The ACA's success hinges on enough young and healthy people entering the insurance pool at inflated prices to offset the costs of covering previously uninsured, high-risk individuals.

If, however, the insurance pool is composed largely of the old and sick who use more, and more expensive healthcare, insurance prices will necessarily rise to cover the cost.

This would lead to more young and healthy people dropping their insurance, which would then lead to pools even older and sicker than before. The cycle would go on and on in what actuaries refer to as the “adverse selection death spiral.”

In order to avoid such a death spiral, the Obama administration estimated that it will need roughly 38 percent of people buying insurance through the exchanges to be under the age of 35.

But this week, the administration released enrollment data suggesting that just 24 percent of those signing up were between the ages of 18 and 35. While it is certainly possible that younger Americans may disproportionately enroll late, right now the program is far short of what is needed to keep it from crashing and burning.

And all of this likely leads to an insurance bailout: If TARP and the bank bailouts were unpopular, just wait until voters learn that Washington will be covering billions of dollars in insurance company losses.

The ACA contains a $25 billion “reinsurance fund” to protect insurers from losses due to the aforementioned adverse selection. Taxpayers pick up the tab for 78 percent of claim costs between $45,000 and $250,000 per insured individual.

Considering that the health law already directs more than $1 trillion of taxpayer funds to insurance companies in the form of subsidies to help people buy their products, this latest bailout is further proof that the ACA is one of history’s great examples of crony capitalism.

Still in court: The 2012 Supreme Court decision upholding the individual mandate was widely seen as the last major legal challenge to ACA.

That’s not true. Several important challenges are still making their way through the courts.

So far, most media attention has been focused on the group of cases involving the law’s contraceptive mandate. But far more significant is a case currently pending before the United States District Court of the District of Columbia: Halbig v. Sebelius. The case challenges the availability of subsidies on federally run exchanges, and several other provisions such as the employer mandate that extend from those subsidies.

A decision is expected this spring, but regardless of the outcome, the losing side is expected to appeal, and the case is likely to reach the Supreme Court in 2015 or 2016.

All in all, this looks like another bad year for the ACA.