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ObamaCare's state exchange problem

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While the economy figures to be the main factor of this year's election, outside groups are planning to spend millions in ads in campaigns for Congress over ObamaCare. And despite the Supreme Court upholding ObamaCare last month, there may be a way for Congress to bring down the law even without fully repealing it. Over at the Cato Institute's blog, Michael Cannon explains why states, many of which are already balking at Medicaid expansion due to budgetary concerns, are refusing to create the exchanges may do just that:

It turns out that ObamaCare makes an essential part of its regulatory scheme—an $800 billion bailout of private health insurance companies—conditional upon state governments creating the health insurance "exchanges" envisioned in the law.

This was no "drafting error." During congressional consideration of the bill, its lead author, Sen. Max Baucus (D-MT), acknowledged that he intentionally and purposefully made that bailout conditional on states implementing their own Exchanges.

Now that it appears that as many as 30 states will not create Exchanges, the law is in peril. When states refuse to establish an Exchange, they are blocking not only that bailout, but also the $2,000 per worker tax ObamaCare imposes on employers. If enough states refuse to establish an Exchange, they can effectively force Congress to repeal much or all of the law.

That might explain why the IRS is literally rewriting the statute. On May 24, the IRS finalized a regulation that says the law's $800 billion insurance-industry bailout will not be conditional on states creating Exchanges. With the stroke of pen, the IRS (1) stripped states of the power Congress gave them to shield employers from that $2,000 per-worker tax, (2) imposed that illegal tax on employers whom Congress exempted, and (3) issued up to $800 billion of tax credits and direct subsidies to private health insurance companies—without any congressional authorization whatsoever.

As a result of this, Cannon noted during a healthcare policy forum earlier this month that "state officials now have it within their power, collectively, to reduce the federal deficit over the next 10 years by $1.6 trillion." If states don't create exchanges, the federal government can step in to set them up. However, there is a catch — the Obama Administration is expected to run out of money to create exchanges by year's end.

Some may be dismissive and say that this isn't a big deal, but Doug Mataconis explains the obvious problem that is presented because of this:

> *There's no chance that the [Obama] Administration would be able to get that money out of a Republican Congress or a Senate either under Republican control or with a sizable Republican majority. What that means is that, if enough states resist the call to set up exchanges and the Federal Government becomes responsible for doing it, then the ACA would end up collapsing out of sheer inability to pay for it. And anyone who doesn't think that the GOP is just going to roll over and cooperate with implementing the PPACA if Obama is re-elected is fooling themselves. If they can't repeal it, they can essentially destroy it.*
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> *Between this and the legal arguments noted above, there very well may be a self-destruct mode right inside the Affordable Care Act, and there's little that the Administration can do about it.*

Even if Obama manages to get re-elected this fall, and there is a good chance of that, and Senate Democrats maintain control, House Republicans are not going to give funding for ObamaCare, a law that they've twice tried to fully repeal. The only way that this happens is if Republicans start to get nervous about any potential, yet unlikely electoral ramifications of another fight over ObamaCare.