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Forty-nine Changes to ObamaCare...So Far

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By our count at the Galen Institute, more than 49 significant changes already have been made to the Patient Protection and Affordable Care Act, at least 30 that President Obama has made unilaterally, 17 that Congress has passed and the president has signed, and 2 by the Supreme Court.

CHANGES BY ADMINISTRATIVE ACTION

1. *Medicare Advantage patch:* The administration ordered an advance [draw](#) on funds from a Medicare bonus program in order to provide extra payments to Medicare Advantage plans, in an effort to temporarily forestall cuts in benefits and therefore delay early exodus of MA plans from the program. (April 19, 2011)
2. *Employee reporting:* The administration, contrary to the Obamacare legislation, instituted a one-year [delay](#) of the requirement that employers must report to their employees on their W-2 forms the full cost of their employer-provided health insurance. (January 1, 2012)
3. *Subsidies may flow through federal exchanges:* The [IRS issued](#) a rule that allows premium assistance tax credits to be available in federal exchanges although the law specified that they only would be available through an "Exchange established by the State." (May 23, 2012)
4. *Closing the high-risk pool:* The [administration decided](#) to prematurely halt enrollment in transitional federal high-risk pools created by the law, blocking coverage for an estimated 40,000 new applicants, citing a lack of funds. The administration had money from a fund under Secretary Sebelius's control to extend the pools, but instead used the money to pay for advertising for Obamacare enrollment and other purposes. (February 15, 2013)
5. *Doubling allowed deductibles:* Because some group health plans use more than one benefits administrator, plans are [allowed](#) to apply separate patient cost-sharing limits to different services, such as doctor/hospital and prescription drugs, allowing maximum out-of-pocket costs to be twice as high as the law intended. (February 20, 2013)
6. *Small businesses on hold:* The [administration has said](#) that the federal exchanges for small businesses will not be ready by the 2014 statutory deadline, and instead delayed until 2015 the provision of SHOP (Small-Employer Health Option Program) that requires the exchanges to offer a choice of qualified health plans. (March 11, 2013)
7. *Delaying a low-income plan:* The administration [delayed](#) implementation of the Basic Health Program until 2015. It would have provided more-affordable health coverage for certain low-income individuals not eligible for Medicaid. (March 22, 2013)
8. *Employer-mandate delay:* By an [administrative action](#) that's contrary to statutory language in the ACA, the reporting requirements for employers were delayed by one year. (July 2, 2013)
9. *Self-attestation:* Because of the difficulty of verifying income after the employer-reporting requirement was delayed, [the administration](#) decided it would allow "self-attestation" of income by applicants for health insurance in the exchanges. This was later partially retracted after congressional and public outcry over the likelihood of fraud. (July 15, 2013)

10. *Delaying the online SHOP exchange:* The administration first [delayed](#) for a month and later for a year until [November 2014](#) the launch of the online insurance marketplace for small businesses. The exchange was originally scheduled to launch on October 1, 2013. (September 26, 2013) (November 27, 2013)
11. *Congressional opt-out:* The administration [decided to offer](#) employer contributions to members of Congress and their staffs when they purchase insurance on the exchanges created by the ACA, a subsidy the law doesn't provide. (September 30, 2013)
12. *Delaying the individual mandate:* The administration [changed](#) the deadline for the individual mandate, by declaring that customers who have purchased insurance by March 31, 2014 will avoid the tax penalty. Previously, they would have had to purchase a plan by mid-February. (October 23, 2013)
13. *Insurance companies may offer canceled plans:* The administration announced that insurance companies may [reoffer](#) plans that previous regulations forced them to cancel. (November 14, 2013)
14. *Exempting unions from reinsurance fee:* The administration gave unions an [exemption](#) from the reinsurance fee (one of ObamaCare's many new taxes). To make up for this exemption, non-exempt plans will have to pay a higher fee, which will likely be passed onto consumers in the form of higher premiums and deductibles. (December 2, 2013)
15. *Extending Preexisting Condition Insurance Plan:* The administration [extended](#) the federal high risk pool until January 31, 2014 and again until [March 15, 2014](#) to prevent a coverage gap for the most vulnerable. The plans were scheduled to expire on December 31, but were extended because it has been impossible for some to sign up for new coverage on healthcare.gov. (December 12, 2013) (January 14, 2014)
16. *Expanding hardship waiver to those with canceled plans:* The administration [expanded](#) the hardship waiver, which excludes people from the individual mandate and allows some to purchase catastrophic health insurance, to people who have had their plans canceled because of ObamaCare regulations. The administration later [extended](#) this waiver until October 1, 2016. (December 19, 2013) (March 5, 2014)
17. *Bay State bailout:* More than 300,000 people in Massachusetts gained temporary Medicaid [coverage](#) in 2014 without verification of eligibility, with the Obama and Patrick administrations using a taxpayer-funded bailout to mask the failure of the commonwealth's disastrously malfunctioning website. (January 2014)
18. *Equal employer coverage delayed:* Tax officials will not be [enforcing](#) in 2014 the mandate requiring employers to offer equal coverage to all their employees. This provision of the law was supposed to go into effect in 2010, but IRS officials have "yet to issue regulations for employers to follow." (January 18, 2013)
19. *Employer-mandate delayed again:* The administration [delayed](#) for an additional year provisions of the employer mandate, postponing enforcement of the requirement for medium-size employers until 2016 and relaxing some requirements for larger employers. Businesses with 100 or more employees must offer coverage to 70% of their full-time employees in 2015 and 95% in 2016 and beyond. (February 10, 2014)
20. *Extending subsidies to non-exchange plans:* The administration released a bulletin through CMS [extending](#) subsidies to individuals who purchased health insurance plans outside of the federal or state exchanges. The bulletin also requires retroactive coverage and subsidies for individuals from the date they applied on the marketplace rather than the date they actually enrolled in a plan. (February 27, 2014)
21. *Non-compliant health plans get two year extension:* The administration [pushed back](#) the deadline by two years that requires health insurers to cancel plans that are not compliant with ObamaCare's mandates. These "illegal" plans may now be offered until 2017. This extension will prevent a wave cancellation notices from going out before the 2014 midterm elections. (March 5, 2014)
22. *Reducing cost sharing reductions.* The ACA originally called for out-of-pocket maximums to be lowered for enrollees with incomes between 100-400% FPL (Sec. 1402), but the provision proved unworkable for those 250-400% of FPL in combination with prescribed actuarial value requirements and was changed through [regulation](#) to apply to only those [100-250% of poverty](#). (March 11, 2014)
23. *Delaying the sign-up deadline:* The administration delayed until mid-April the March 31 deadline to sign up for insurance. Applicants simply need to check a box on their application to qualify for this extended sign-up period. (March 26, 2014)

24. *Canceling Medicare Advantage cuts:* The administration [canceled](#) scheduled cuts to Medicare Advantage. The ACA calls for \$200 billion in cuts to Medicare Advantage over 10 years. (April 7, 2014)
25. *More Funds for Insurer Bailout:* The administration [said](#) it will supplement risk corridor payments to health insurance plans with “other sources of funding” if the higher risk profile of enrollees means the plans would lose money. (May 16, 2014)
26. *Exempting U.S. territories:* Despite earlier administration claims that “HHS is not authorized to choose which provisions [of the ACA] might apply to the territories,” HHS [waived](#) six major requirements – such as guaranteed issue, community rating, and essential benefit mandates – that were causing serious disruption to health insurance markets covering 4.5 million residents of U.S. territories. (July 18, 2014)
27. *Failure to enforce abortion restrictions.* A GAO [report](#) found that many exchange insurance plans don’t separate charges for abortion services as required by the ACA, showing that the administration is not enforcing the law. In 2014, abortions were being financed with taxpayer funds in more than 1,000 exchange plans. (Sept. 16, 2014)
28. *Risk Corridor coverage:* The Obama administration plans to illegally distribute risk corridor payments to insurers, despite studies by both the [Congressional Research Service](#) and the [GAO](#) saying a congressional appropriation is required before federal agencies can make the payments. (Sept. 30, 2014)
29. *Transparency of coverage:* CMS [delays](#) statutory requirements on insurance companies to disclose data on the number of people enrolled, disenrollment, number of claims denied, costs to consumers of certain services, etc. (Oct. 20, 2014)
30. *Tax penalty pass:* Approximately 50,000 taxpayers filed income tax returns based upon inaccurate subsidy data they received from the federal government. The administration [declared](#) that if they received too large of a subsidy, they will not have to repay the government. The ACA requires, in Sec. 5000A, that “Any penalty imposed...shall be included with a taxpayer’s return...” (February 24, 2015)
31. *Military benefits:* [Congress clarified](#) that plans provided by TRICARE, the military’s health-insurance program, constitutes minimal essential health-care coverage as required by the ACA; its benefits and plans wouldn’t normally meet ACA requirements. (April 26, 2010)
32. *VA benefits:* [Congress also clarified](#) that health care provided by the Department of Veterans Affairs constitutes minimum essential health-care coverage as required by the ACA. (May 27, 2010)
33. *Drug-price clarification:* [Congress modified](#) the definition of average manufacturer price (AMP) to include inhalation, infusion, implanted, or injectable drugs that are not generally dispensed through a retail pharmacy. (August 10, 2010)
34. *Doc-fix tax:* [Congress modified](#) the amount of premium tax credits that individuals would have to repay if they are over-allotted, an action designed to help offset the costs of the postponement of cuts in Medicare physician payments called for in the ACA. (December 15, 2010)
35. *Extending the adoption credit:* [Congress extended](#) the nonrefundable adoption tax credit, which happened to be included in the ACA, through tax year 2012. (Dec. 17, 2010)
36. *TRICARE for adult children:* [Congress extended](#) TRICARE coverage to dependent adult children up to age 26 when it had previously only covered those up to the age of 21 — though beneficiaries still have to pay premiums for them. (January 7, 2011)
37. *1099 repealed:* [Congress repealed](#) the paperwork (“1099”) mandate that would have required businesses to report to the IRS all of their transactions with vendors totaling \$600 or more in a year. (April 14, 2011)
38. *No free-choice vouchers:* [Congress repealed](#) a program, supported by Senator Ron Wyden (D., Ore.) that would have allowed “free-choice vouchers,” that the *Hill* warned “could lead young, healthy workers to opt out” of their employer plans, “driving up costs for everybody else.” The same law barred additional funds for the IRS to hire new agents to enforce the health-care law. (April 15, 2011)
39. *No Medicaid for well-to-do seniors:* Congress saved taxpayers \$13 billion by changing how the eligibility for certain programs is calculated under Obamacare. Without the change, a couple earning as much as \$64,000 would still have been able to qualify for Medicaid. (November 21,

CHANGES BY CONGRESS, SIGNED BY PRESIDENT OBAMA:

2011)

40. *CO-OPs, IPAB, IRS defunded*: [Congress made](#) further cuts to agencies implementing Obamacare. It trimmed another \$400 million from the CO-OP program, cut another \$305 million from the IRS to enforce the law's tax hikes and mandates, and rescinded \$10 million in funding for the controversial Independent Payment Advisory Board. (December 23, 2011)
41. *Slush-fund savings*: [Congress cut](#) another \$11.6 billion from the Prevention and Public Health slush fund and \$2.5 billion from the "[Louisiana Purchase](#)." (February 22, 2012)
42. *Less cash for Louisiana*: One of the tricks used to get Obamacare through the Senate was the special "Louisiana Purchase" deal to win the vote of then Sen. Mary Landrieu. [Congress saved](#) another \$670 million by rescinding additional funds from this bargain. (July 6, 2012)
43. *CLASS Act eliminated*: Congress repealed the unsustainable CLASS (Community Living Assistance Services and Supports) program of government-subsidized long-term-care insurance, which even the Democratic chairman of the Senate Finance Committee dubbed a "Ponzi scheme of the first order." (January 2, 2013)
44. *Cutting CO-OPs*: [Congress cut](#) \$2.2 billion from the "Consumer Operated and Oriented Plan" (CO-OP), which some saw as a stealth public option, blocking creation of new government-subsidized co-op programs. Early reports showed many co-ops, which had received federal loans, had run into serious financial trouble. (January 2, 2013)
45. *Trimming the Medicare trust-fund transfer*: [Congress rescinded](#) \$200 million of the \$500 million scheduled to be taken from the Medicare Part A and Part B trust funds and sent to the Community-Based Care Transition Program established and funded by the ACA. (March 26, 2013)
46. *Eliminating caps on deductibles for small group plans*: [Congress eliminated](#) the cap on deductibles for small group plans as part of the SGR "doc fix." This gives small businesses the freedom to offer high deductible plans that may be paired with a Health Savings Account. (April 1, 2014)
47. *Making the risk corridor program budget neutral*. The [Consolidated and Further Continuing Appropriations Act of 2015](#) provides that CMS may not transfer funds from other accounts to pay for the risk corridor program. Expenditures cannot exceed the funds collected in 2014, blocking CMS

from making multi-year calculations. (December 16, 2014)

CHANGES BY THE SUPREME COURT

48. *Medicare expansion made voluntary*: The court ruled it was voluntary, rather than mandatory, for states to expand Medicaid eligibility to people with incomes up to 138 percent of the federal poverty level by ruling that the federal government couldn't halt funds for existing state Medicaid programs if states chose not to expand the program.

49. *The individual mandate made a tax*: The court determined that violating the mandate that Americans must purchase government-approved health insurance would only result in individuals' paying a "tax," making it, legally speaking, optional for people to comply.