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ON HEALTH

# THE AFFORDABLE CARE ACT: *On Life Support or Zombiecure?*

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"So you consult in Healthcare...tell me, is ObamaCare dead?" Friends ask us this question so often that it make us realize a couple of things. First, with all of the politicking, actual changes, failed changes, and posturing, the ACA is more an enigma now than ever. Second, we need more interesting friends.

Since its passing in 2010, The Affordable Care Act (ACA), nicknamed ObamaCare, had been a lightning rod issue in the politics of this country. Whether you are a supporter or a detractor, there is no doubt that the ACA fundamentally changed health insurance in this country. That said, rather than focus on the hundreds of specifics changes, regulations, and modifications in the over 20,000 pages of the ACA, we will focus instead on the three overall goals of the law. We ask whether, despite the changes, the fundamental goals of the law remain intact. Three important goals were to:

1. Make affordable health insurance available to more people.
2. Expand Medicaid to cover more lower income adults
3. Encourage innovative medical delivery methods to lower the cost of care

Let's dive in to see what was accomplished and where we go from here.

## I. Insurance Reform

Let's start with insurance reform, which makes up the bulk of the regulations passed. We can think of the reforms as falling into a few distinct buckets.



1. Make it easier for people who don't get coverage through employers to buy it themselves by:
  - a. Eliminating medical underwriting
  - b. Limiting insurers ability to cherry pick only good risk through rating reform
  - c. Eliminating pre-existing condition exclusions
  - d. Providing subsidies to make it more affordable
  - e. Penalizing people who don't get coverage
2. Make sure that smaller employers that offer health coverage offer coverage that meets basic needs
3. Require large employers to offer coverage or face a penalty
4. Ensure that the quality of the coverage is adequate by making sure that plans carry at least a minimum benefit level and that they cover things such as preventive services at no cost to the insured

The efforts to repeal the ACA in its entirety failed after several attempts but certain aspects of it have been peeled back. Provisions that prohibit insurers from refusing to cover pre-existing conditions are extremely popular and repealing or weakening those prohibitions have been off the table.

1. The individual market:
  - a. The tax penalty for failure to obtain coverage (Individual mandate) has been eliminated. Though the early year penalties were limited in amount, it is likely that elimination of the penalty will weaken the robustness of the Individual Federal Marketplace and may result in higher premiums as health individuals choose to go "bare."
  - b. The individual marketplaces were further weakened when the administration squashed all types of marketing support for the enrollment period including advertising.
  - c. At a federal level, the administration left significant uncertainty around Cost Sharing Reduction subsidies for the Individual Marketplace. This forced many carriers to price in a lack of subsidy resulting in higher costs to some consumers.

Overall, the individual market has more or less stabilized after several years of very high rate increases. How long this stability lasts needs to be watched and monitored.

2. The Administration is promoting the use of Association Health Plans (AHPs) as a means for small businesses and sole proprietors to get insurance by banding together in buying pools to be treated like a single large employer. These Association Health Plans are estimated to have 4 million enrollees by 2023 (CBO estimates). Association Health Plans could destabilize the traditional small group market in many regions and could pull up to 400K individuals from the Individual Marketplace, potentially weakening it. A lawsuit by 12 jurisdictions (11 states and DC) against the Department of Labor has been filed seeking to invalidate the new AHP rules.

3. The administration has extended the duration of Short Term Medical (STM) plans, which are now valid for up to twelve months of coverage instead of three. This may also result in fewer purchasers on the Individual Marketplaces. These STM plans are less rich in coverage compared to ACA Individual Marketplace plans. They are less expensive and have historically attracted younger and healthier risk due to medical underwriting requirements. Some states are pushing back on these STM plans arguing that the extension of their use to twelve months is designed to hurt the Individual Marketplace for political reasons and arguing that these plans are low quality. The administration argues that STMs fulfill the market needs of certain segments.

4. The Cadillac Tax has been delayed until 2022 and may be delayed further.

5. Some changes have been proposed though not enacted to the Employer Mandate.

- Change the ACA definition of FTE for the penalty to 40 hours per week, from 30
- Keep the ACA employer coverage mandate from applying to any month beginning after Dec. 31, 2014, and before Jan. 1, 2019



The verdict on insurance reform is that it may have a few bruises and cuts, but it still seems to be alive, not just a zombie walking without purpose. Overall, insurance coverage remains higher than when the ACA was passed and key safeguards such as the protections against denial for pre-existing coverage remain in place.

#### **Key employer takeaways:**

1. Employer sponsored insurance will remain the norm for the foreseeable future although large employers continue to contend with penalties for failure to offer coverage. While the individual market has recovered from an early tailspin, it does not provide a better alternative for most individuals or businesses.
2. Smaller employers should keep an eye on how the Association Health Plan market evolves on a state by state level. Associations may provide some economic relief and good coverage options for some employers.

## **II. Medicaid Reform**

Some states expanded Medicaid, and others did not. Those states that did expand continue to see increased enrollment relative to the baseline year. Changes have been made and their usefulness generally depends on your perspective.

1. The administration allowed states more control over how Medicaid is administered. Many are implementing work requirements as a pre-requisite for benefits.
2. The administration is allowing a lot of flexibility for states to submit waivers in order to make changes to their Medicaid programs. Some see this as allowing states more avenues to limit access to Medicaid and others see this as a way of streamlining and enhancing their Medicaid programs.



**Key employer takeaways:** There isn't a lot for employers to do here. However, employers with significant numbers of lower wage workers, especially part time workers, should be aware of the health coverage options that their employees have and expanded Medicaid may be such an option. Employees with some kind of coverage are more likely to be more productive than those without any options.

## **III. Innovative Medical Delivery**

Sadly, this is the area of the ACA that has the most potential upside but receives the lowest amount of attention. CMS has focused on providing grants and funding for programs ranging from Patient Centered Medical Homes and global fees, with most of the effort and attention having gone to ACOs. Additional efforts have been made to reduce the rate of readmissions and hospital acquired infections. There has been indication that some ACOs have successfully reduced costs. As one would expect, those around the longest have performed the best, however this may represent survivor bias more than any other success factor.

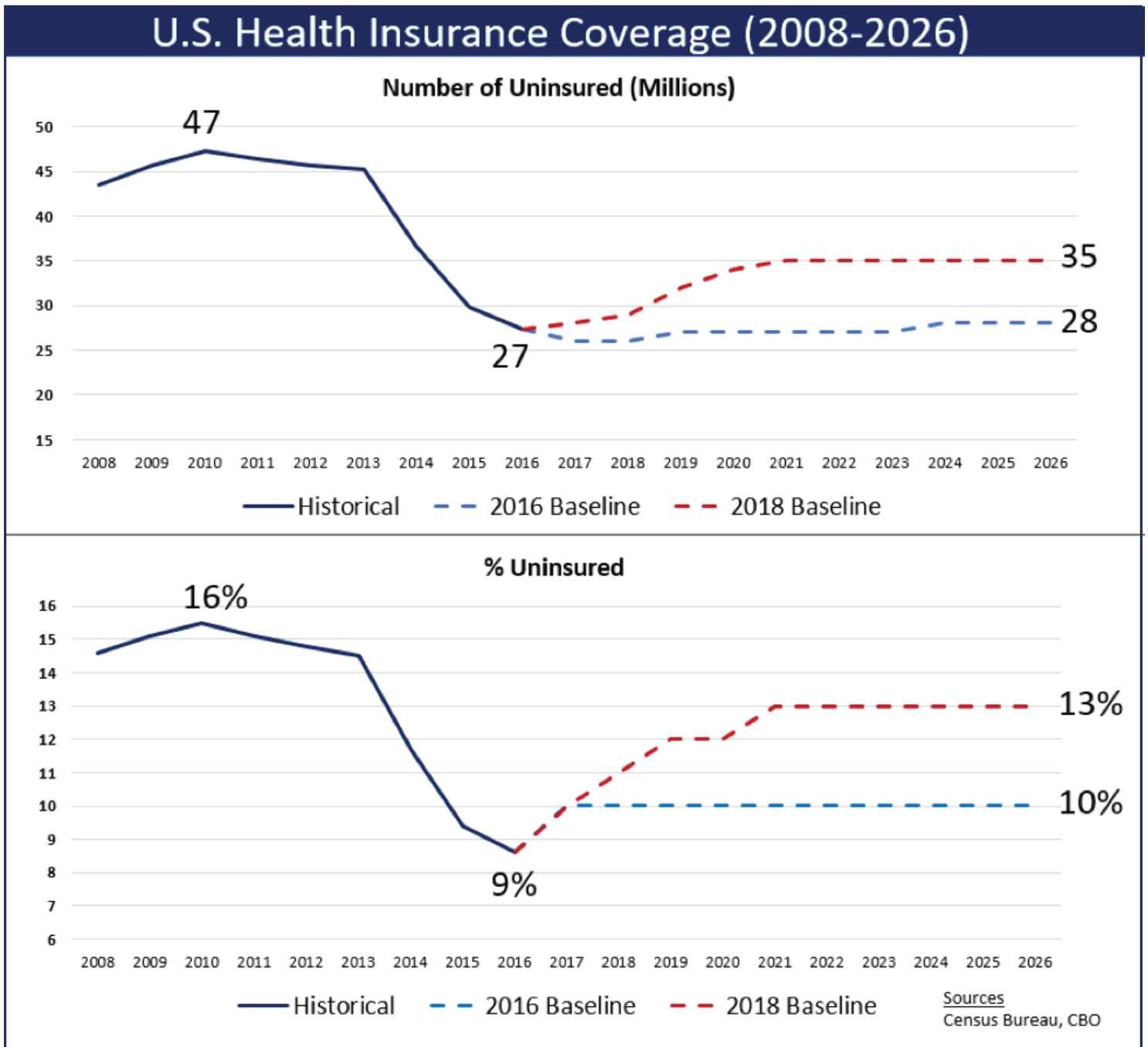
The Center for Medicare and Medicaid Innovation (CMMI) is generally viewed as underfunded for meaningful progress and in any case, the value will only be shown longitudinally over time.

Meaningful delivery reform goes hand in hand with meaningful payment reform. Thus far, both the scope and impact of the ACA has been limited. This may be less a function of change due to any administration but instead the underlying politics of special interest groups. Significant changes to the way that healthcare is paid for (17% of the overall economy) is bound to face opposition from entrenched interests.

**Key employer takeaways:** There is no reason to wait for the Federal Government to come up with solutions. Employers should be receptive to innovate approaches to reduce costs. Accountable care, medical homes, disease management, on-site clinics, telemedicine, big data, etc. all could play a role in helping employers manage costs. Employers, especially larger employers, have the resources and scale to experiment to find solutions that work for them. Take some chances. Western Pennsylvania has some of the greatest health care providers in the country. The hospitals and physician's offices are part of the community so why not reach out and try to partner with them directly? A partnership could include direct contracting, telemedicine initiatives, or even a tailored health management program focused on a chronic condition (diabetes, heart disease, etc.). Play a role in tackling the underlying cost of care and not just the insurance layer.

## Conclusion

The ACA was not perfect but it was not an “unmitigated disaster.” Many of the insurance reforms that the ACA enacted remain in place today. Others have been altered or eliminated for better or worse, depending on your viewpoint. One data point to assess the ACA’s impact is to look at the uninsured rates in the following chart:



The percentage of the US population that remains uninsured is approximately 13%. This is 3 basis points better than the 16% prior to the passage of the ACA. According to the CBO, it is also 3 basis points higher than it would have been had the Obama administration’s policies remained in place. This is one data point but an important one.

Is the ACA dead? No. Is it thriving? Also probably a no. At this stage of the game, we should be less interested in scoring whether “ObamaCare” is alive or dead, and more concerned with the task at hand. How can we get the most for our healthcare dollar, and how can we try to make sure that as many people as possible have access to affordable, quality health care?

**PBGH and Tonic Advisors are happy to help as you think through your company’s needs.**

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