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# Correction, Please!

## Failing ObamaCare Law Keeps Stumbling

**Item:** *The* Washington Times *for October 5 reported, "The White House insisted Tuesday that Obamacare is working just fine, pushing back against former President [Bill] Clinton's assessment that the law has foisted a 'crazy' system onto the country that punishes the healthy with higher premiums."*

**Item:** *The* Washington Post *reported on September 29, 2016 that the Obama administration "is maneuvering to pay health insurers billions of dollars the government owes under the Affordable Care Act [aka ObamaCare], through a move that could circumvent Congress and help shore up the president's signature legislative achievement before he leaves office."*

*The efforts of the administration, the Post maintained, "reflect the partisan thorns that still surround the sprawling law a half-dozen years after its passage. The payouts that officials want to salvage were part of an ACA strategy to help the marketplaces flourish early on. But Republican opponents in Congress branded them an insurance industry 'bailout' and restricted the use of HHS funds."*

*The monies are linked to a strategy that involved "risk corridors" that was employed to get the law passed, the paper noted. These "risk corridor payments are 'an obligation of the federal government,' [Centers for Medicare and Medicaid Services] acting administrator Andy Slavitt told a recent House hearing."*

**Correction:** *The political and media backers of socialized healthcare have been grasping for whatever life preservers might come to hand in an attempt to keep ObamaCare afloat. It's still sinking.*

There has been considerable talk about Bill Clinton's seeming gaffe when he used the word "crazy" about aspects of ObamaCare. However, he notably did not blast it in totality, which is what candor would require. Indeed, the very same day Bill Clinton publicly called it a "remarkable success."

Mr. Clinton also offered his support to his wife's rather undefined plan to "improve" ObamaCare. She has said, though not often and not with any details, that she favors allowing Americans "55 or 50 and up" to buy into Medicare coverage voluntarily. "I'm … in favor of what's called the public option, so that people can buy into Medicare at a certain age," Hillary said in May.

You may recall that the particularly huge "entitlement" already has plenty of its own problems: Earlier this year, its trustees reported that Medicare is expected to go bankrupt sooner than expected, in about 12 years. It is really in worse shape than that. Medicare faces (using 2015 statistics) unfunded liabilities that are around $48 trillion; should healthcare prices spike, those liabilities could top $88 trillion, say analysts.

The Clintons, Bill and Hillary, as well as the White House and its sycophantic allies in the mass media, are also trying to deflect blame elsewhere, including to the Republicans — though the Democrats truly own the legislation. As columnist David Harsanyi reminds us: "Not a single Republican voted for Obamacare. Most, in fact, cautioned that passing the largest health-care reform in American history — written by one party, jammed through using reconciliation, and haphazardly implemented — could be problematic as not only an ideological matter but a practical one." No, it is not the GOP's job to save the sinking law.

Enrollment is way down. As of mid-year, the government statistics were less than half of what had been forecast by the Congressional Budget Office. Healthcare expert Sally Pipes of the Pacific Research Institute observed that the Obama administration was then in the midst of a campaign to coax young Americans into signing on to the plan:

But celebrity endorsements, a campaign targeting "young invincibles" with events at colleges, bars, and cafes, and thousands of outreach organizations have failed to attract enough young people in the past. Enrollment among 18- to 34-year-olds accounted for just 28 percent of the total this year, unchanged from Obamacare's first year — and far below the 40 percent administration officials said was needed to keep the exchanges stable.

There are more than a few defects in the fine print of ObamaCare. It's an unholy mess. Kimberley Strassel in the *Wall Street Journal* in early October was on target when she wrote that ObamaCare "is cratering, destroying millions of pocketbooks in its wake." States, she said, "are reporting premium increases of 60%, 70%, 80%. Insurers, sagging under losses, are fleeing. Nearly a third of U.S. counties are now down to a single ObamaCare plan. Seventeen of 23 ObamaCare co-ops have imploded. Tennessee's insurance commissioner warns her state's exchange market is 'very near collapse.'"

The supporters of the healthcare law are "flailing," and have become

incapable of defending it during this public death spiral. Ezekiel Emanuel, the physician who was one of the architects of the law, was left stammering on Megyn Kelly's Fox News show this week. Dr. Emanuel said that these premium increases are a one-time "correction." He hilariously blamed Republicans for refusing to bail out the system. Bill Clinton, who is becoming ever more honest in his dotage, went on an extended riff about how his party's health-care system was the "craziest thing in the world."

Hillary Clinton has no such out, having fiercely embraced ObamaCare. She owns it, every bit as much as the president, having pledged to "defend and expand" it. Only this week Mrs. Clinton's campaign chairman, John Podesta, reiterated that she views the law as a "success" and plans to "build on it."

Early in October, as seen in the *Washington Post* excerpt above, the White House appeared to have settled on its strategy to buy time for ObamaCare — by using tax dollars to bail out the big health insurance corporations. The White House was obviously more than willing to break the law if it would save the bacon for the program. A leak revealed that the administration was going to use a little-known account — the Judgment Fund — in the Treasury Department to ride roughly over the express opposition of the Congress.

It's hard to sympathize with the insurers. After all, they were happy to side with the feds when it seemed as if crony capitalism was going to benefit them. That said, when the central government makes critical healthcare decisions, individual Americans get hurt. Robert Pear of the *New York Times* has accurately characterized the nature of the structure created by ObamaCare, as well as what the next step might mean. The government, wrote Pear on October 2,

in effect, required consumers to buy their products and provided subsidies to help defray the cost, under an arrangement that had few precedents in other industries.

A public option could take market share from private insurers, so it is no surprise they would oppose it. But insurers say the public option would not hold down medical costs, which they describe as the main engine driving up premiums. Moreover, insurers say that the government would have an unfair advantage if it both regulates and competes with private plans.

The insurers who bought — or were bought by — the administration's promises while the bill was being rammed through have been trying to get billions from "risk corridor" funding. Those corridors exist because Barack Obama, not to put too fine a point to it, lied. He repeatedly told Americans that if they liked their own healthcare plans they could keep them even if the law was enacted. He knew that was untrue, but made the promises anyway.

The resultant millions of healthcare cancellations that ensued showed Americans how much those pledges were worth.

Bureaucrats always have a backup solution when their initial power grab fails — usually involving larger and more expensive government actions. Accordingly, the Centers for Medicare and Medicaid Services (CMS), part of the Department of Health and Human Services, came up with an idea.

As recounted by Christopher Jacobs for *The Federalist*, CMS essentially said that "it would ignore the law's requirements, and allow people to keep their prior coverage — albeit temporarily…. CMS offered insurers a quid pro quo: If you let Americans keep their existing plan a little longer — getting the administration out of the political controversy President Obama's repeated falsehoods had caused — we'll turn on the bailout taps on the back end to make you whole. You scratch my back…"

Give the *Post* credit for pointing out the administration's intentions. While the paper didn't put it this way, the White House was going to act directly against legislation that the president had signed — paying off Big Insurance with taxpayer money. Congress stipulated, twice, that ObamaCare had to be enforced as it was passed, specifically directing that no tax monies would go for payments for "risk corridors." Some folks remembered that under our Constitution, it is Congress that does the appropriating — notwithstanding "executive orders" by the president to benefit his buddies. (This situation exemplifies "crony capitalism.")

However, the *Post* coverage was not on target in other regards. Jeffrey Anderson hit two such aspects in the *Weekly Standard*:

First, it claims that the bailout money is merely what "the government owes" insurers and "what the insurers are owed." Second, it claims that the program in question "originally was not supposed to pay for itself," until Republicans altered it. Each of these claims is false.

Obamacare's "risk corridor" program was designed to redistribute money in the Obamacare exchanges from health insurers who made money to those who lost money. Profitable insurers would pay in; unprofitable insurers would get paid out. With so many insurers losing money under Obamacare, however, the program was positioned to become a bailout, as there was no guarantee in Obamacare's text that the money paid out wouldn't exceed the money paid in.

As Anderson also noted, the dangers were revealed by Florida Republican Senator Marco Rubio in an op-ed in November of 2013. Rubio "highlighted that the risk-corridor program was poised to become a taxpayer-funded bailout of insurers." Then the Congressional Budget Office produced a rosy scenario projecting that the risk corridor program would be a net winner for the taxpayers. "Shortly thereafter, the Obama administration reassured the citizenry that the risk-corridor program wouldn't function as a bailout … but would instead be budget-neutral."

The pending illegal bailout garnered additional attention and more criticism, as well it might. The scheme was summarized well on September 30 by CNBC columnist Jake Novak:

The administration is clearly hoping it will be able to get away with tapping into a Treasury Department fund to make up for a blocked Health and Human Services payoff that was meant to make up for a failed shared-the-wealth risk-pool fund that was meant to make up for a shortfall in enrollees into a poorly planned and executed national health insurance plan. Got that?

Well, this particular solution also ran into trouble, thanks to a finding by the U.S. Government Accountability Office. The federal watchdog found, as reported by Peter Sunderman for Reason.com, that the administration's "decision to funnel billions to insurers to help cover the expense of high-cost patients was illegal. It says something about the shabby state that ObamaCare's exchanges are in that a senior administration official is touting an expensive, illegal payout to insurers as a solution to the program's woes."

It's too early to predict what might happen next. But the Justice Department seemed to realize that the Congress wasn't caving. Justice officials, as noted by The Hill, argued that the money was not owed to the "insurance companies, in part because Congress has 'directly spoken' about its intent to limit the use of federal dollars into the program…. One Republican lawmaker who was briefed on the case, Representative Morgan Griffith (R-Va.), said about the case [that it] 'sounds like DOJ is agreeing with us.'"

Since ObamaCare became law, the administration has made more than three dozen administrative changes in it. Even in the last few months of the Obama tenure, there could be more changes.

In the legislative branch, the Senate Republican Policy Committee, chaired by Wyoming Senator John Barrasso, a longtime orthopedic surgeon who has served as president of the Wyoming Medical Society and has been named Wyoming physician of the year, observed in the midst of the risk corridor squabbling that the law's "burdensome mandates were guaranteed to hurt consumers and taxpayers. Now they are also hurting insurers that expected to profit from the law."

The law, said one committee paper, "has entered what insurers most dread — a death spiral — and taxpayers should not have to pay more to prolong this process."

— William P. Hoar

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