



Written by [Joe Wolverton, II, J.D.](#) on March 22, 2011

ObamaCare Celebrates its First Birthday: A Fitting Tribute

While we at *The New American* have been [covering](#) this creature since its conception and continued our coverage through the various [labor pains](#) endured by Congress, this is a special occasion. Indeed, a milestone such as this deserves recognition, and in the case of this titanic twosome, an appropriate way to commemorate the big day is to list of 12 of the law's most economically destructive provisions. This is the illuminating birthday gift brought to the party by [Investors Business Daily](#) (IBD).



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Some might be tempted to call IBD's list a "Top 12 List," but in reality it is closer to a "Bottom 12 List," as these aspects of ObamaCare will hit us all right in the wallet. They are:

1. 1099. Under ObamaCare, businesses have to send a 1099 tax form to every other business, contractor and so forth that they do \$600 worth of commerce with, resulting in a huge amount of costly new paperwork.

Although mostly accurate, the picture painted by IBD isn't complete.

The long and short of it is that under ObamaCare all businesses must issue a 1099 whenever the total gross revenue from business they do with an outside concern exceeds \$600 annually. Considering the number of such qualifying transactions that must occur in an economy the size of the United States, the compliance burden on business will be crippling. As a report from the Cato Institute mused, "When a business buys a \$1,000 used car, it will have to gather information on the seller and mail 1099s to the seller and the IRS. When a small shop owner pays her rent, she will have to send a 1099 to the landlord and IRS."

Prior to enactment of ObamaCare, the tax law required business to issue 1099s only for payment of rent, interest, dividends, and payment of services to independent contractors, when such payments are being made to non-corporations. Now, a business will have to send out a 1099 for almost every transaction, and for the first time, payments made to corporations fall under the regulatory shadow. This small change in a few lines of the behemoth tax code likely will cost as much in compliance as in tax payment.

2. Surprises, Surprises. There doesn't seem to be an end to the discoveries of provisions that almost no one knew were in ObamaCare until after it passed. The 1099 may have been the first. The most recent is the "Basic Health Plan," what Greg Scandlen called "sort of a 'public option' in sheep's clothing." According to Scandlen, a BHP is a plan "states may implement to provide coverage for people between 133% and 200% of poverty and noncitizen legal immigrants who are not eligible for Medicaid. ... If a state opts for a BHP, those people will no longer be eligible for coverage under the Exchange." One of the surprises first broken by IBD was that health plans that were supposed to be "grandfathered" under ObamaCare were only grandfathered if they didn't



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make any big changes in the future. An administration document estimated that under the rules, about 51% of employers would have to relinquish their coverage by 2014. Unless of course, your plan is run by a union.

There is little doubt about the paternity of this behemoth bundle of burdens when one reads the information provided above by IBD. Any medical care insurance plan run by a union, a long-time and reliable faction of the Democratic base, is exempt from these rules regarding the accommodation of BHPs. Not exempt: small businesses (or any businesses) that provide their own coverage to their employees. If these businesses alter the scope of their coverage, then they trigger the BHP trap door and the vital health care coverage provided to their employees slides away into “public option” oblivion.

3. Waivers. Section 2711 waivers enable the health plans of businesses, labor unions and other groups to avoid having to comply with ObamaCare’s regulations, lest their members lose “the insurance they like.” The Department of Health and Human Services has granted 1,040 waivers in about six months. Naturally, a disproportionate share of those receiving waivers are unions, some of Obama’s biggest political allies.

And the waivers are a temporary reprieve as by 2014 all business, unions, etc., must comply with ObamaCare rules, something that will very likely result in lost jobs.

Again, unions are given a “get out of ObamaCare free” card and allowed to pass “Go” and continue collecting dues and premiums. But, as stated above, even these staunch Democratic allies better watch their backs because come 2014, the game is up and everybody will have to play according to (White) House rules.

4. More Waivers? State governments are now asking for waivers from ObamaCare’s medical-loss-ratio regulations. At present, Maine has received a waiver, Kentucky, Nevada and New Hampshire have applied, and 11 other states are preparing applications. An MLR is the share of health premiums spent on medical costs. A 75% ratio means that 75% of premiums are spent on medical care, leaving 25% for things like salaries, advertising, fraud prevention and profits. Starting in 2011, insurers serving the individual or small-group market — i.e., companies with 100 employees or less — must have MLRs of at least 80%. It seems that states are worried that the difficulty of complying with these regulations might drive insurance companies out of their individual and small markets. Maine applied for a waiver because officials there worried that MEGA Life and Health Insurance, which has 37% of the state’s individual market, “would withdraw from the market altogether if the federal requirement remained in place.”

Not exactly surprising that there is yet another provision of ObamaCare that penalizes small businesses. In the establishment of a false market (one dominated by government-funded “exchanges) the Congress and the Obama administration have abandoned small businesses to their own devices and force insurance companies to do likewise in order to remain competitive. Perhaps the ultimate goal, then, is to obliterate private insurance companies.

5. Insurers Have Left The Child-Only Market. In June 2010, HHS informed insurers that they would have to sell a policy to anyone under age 19, regardless of pre-existing conditions. Insurers figured this would incentivize more and more parents to purchase insurance after their children fell ill. This would almost surely make child-only policies a losing business. Thus, insurers started abandoning the child-only market in droves. According to a survey conducted by the Republican staff on the Senate Committee on Health, Education, Labor and Pensions, 34 states have lost at



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least one insurer in the child-only market and 20 no longer have any insurers offering child-only policies.

Insurance companies need not ask for whom the bell tolls, because it tolls for them. Little by little, clause by clause, the size of the available money-making arena provided for private insurance providers is being reduced, redrawn, and restricted until finally these concerns will have no other choice but to move to a new field or quit playing the game all together.

6. Medicaid — Ouch! ObamaCare requires all states to expand their Medicaid program to 133% of the federal poverty level. Presently only eight states and Washington, D.C. make eligibility limits that generous. That expansion is expected to cost states at least an additional \$118 billion through 2023. States are already reeling from budget shortfalls, with Medicaid usually being the biggest budget item. But the stimulus package passed in early 2009 added a new twist to Medicaid. It gave states money to shore up their Medicaid shortfalls, but in exchange the states could not cut back on Medicaid by reducing the eligibility level. That has left only two options: cutting back on benefits and reducing provider reimbursement rates. So far, states seem to be taking the former approach, with Arizona ending support for some organ transplants being the most notorious example.

Notoriously opposed to any exercise of their sovereignty, it is little wonder that the parents of ObamaCare have backed states into a statutory corner. As in almost every instance where the federal government interferes in what is by constitutional law a state sphere of sovereignty, the stick is so much bigger than the carrot and in the end, the carrot itself is nothing more than an orange-colored stick.

7. Life After Death Panels. While Sarah Palin's remark about a "death panel" was not technically accurate, it did highlight the fact that the original version of ObamaCare contained a provision allowing Medicare to pay for end-of-life counseling. In the ensuing media storm, the provision was removed. But that wasn't the end of it. If reformers with a good idea can't get it through the front door, they'll eagerly try the back. Late last year the issue again erupted when HHS tried to slip the provision into 692 pages of new Medicare regulations. The provision was removed again, but controversy remains. HHS Secretary Kathleen Sebelius recently admitted she was the one that decided to exclude the provision for the "proposed" regulations and later slip them into the final rules. The House GOP is calling for an investigation.

With the [rumored](#) imminent Democratic abandonment of Donald Berwick, one of the chief proponents of the "death panel" scheme, there is hope that constitutionally minded representatives can keep enough pressure on the President and the subordinate executive agencies and departments to ensure that "death panels" are permanently excluded from any regulatory or statutory healthcare plan.

8. Medicare's Advantage Over Cuts. ObamaCare was supposed to cut about \$200 billion from Medicare Advantage, the Medicare program that pays private insurers to provide Medicare benefits. There was just one little problem: the 11 million seniors with Medicare Advantage plans who could lose them if the cuts were enforced. As a result, the Obama administration suspended the cuts for 2011 and will actually increase the amount given to Medicare Advantage by 1.6% in 2012 (election year, anyone?). Which means that for the budget math to work, even deeper Medicare Advantage cuts will have to be made in the future. Assuming the budget math actually works to begin with.



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There's one good way to make sure not a single person who may be eligible for Medicare in the future is deprived of benefits: abolish Medicare! And, while we're at it, let's call on our elected representatives (particularly those who promised to take our government back) to repeal every law that created an unconstitutional agency, department, commission, or "entitlement program."

9. Cost Estimates Not Correct. An analysis by Medicare chief actuary Richard Foster showed that ObamaCare would not reduce overall health care costs, but would increase them by about \$311 billion through 2019. An analysis by former Congressional Budget Office head Douglas Holtz-Eakin found that if one takes into account factors that the CBO could not in its analysis (CBO is limited to analyzing just what is a bill), then ObamaCare could increase the deficit by \$190 billion.

Cooking the books is one of the least of the sins committed by Congress and the President in the name of "health care reform." The saddest fact is that the kindling used to build the fire that cooked the books was made from the rolled up parchment that once was our Constitution.

10. Who Needs Evidence? Two of the new health care financing "models" pushed by ObamaCare are medical homes and Accountable Care Organizations. Yet there is very little research showing the medical homes are a cost-effective way of delivering care (and some research that they aren't). As for ACOs, there doesn't appear to be much research on them at all. So much for policymakers only enacting sweeping reforms backed up by evidence.

The lack of corroborating evidence for its billion-dollar boondoggles is nothing new in Washington. Every new Congress is the scene of the presentation of some slate of "reforms" and "overhauls" that are designed to "move America forward" or "show our compassion." Not a single one of these proposals is ever checked against the Constitution and whether or not the evidence stacks up in their favor, the Congressmen or President who support the new law always have a bundle of bureaucrats willing to swear to the beneficial results that will attend passage of the bill. As the old saying goes, when it comes to dismantling the Constitution and ignoring the enumerated powers granted therein, the President (no matter the party) will lie, and Congress (no matter who's in the majority) will swear by it.

11. CLASS-less. ObamaCare included Community Living Assistance Services and Support Act, a measure that is supposed to help seniors pay for long-term care. On paper, the CLASS Act looks fiscally sustainable because it takes in premiums for a number of years before it starts paying out benefits. Which means it is not sustainable. Even Sebelius has admitted as much. But on short-term measures, the CBO has to score CLASS as reducing the deficit.

As Bob Confer wrote last month in *The New American* in an [article](#) analyzing CLASS:

True insurance requires the building of an investment portfolio that uses the premiums collected from insured parties. Those funds are put into the markets to ensure growth, which, when combined with incoming premiums, will easily allow the insurance company to meet its benefit outlays with plenty of financial wiggle-room and security for all future payments. True insurance also survives — even flourishes — through underwriting, a method by which insurers analyze the risks associated with certain people and activities and adjust the premiums accordingly.

CLASS doesn't fit the bill with either of these criteria. For starters, there is no investment portfolio. Eerily similar to another federal takeover of a market function in which it doesn't belong (retirement), CLASS is a glorified Ponzi scheme just like Social Security — which itself was once wrongly identified as insurance. Under Social Security, current payees fully subsidize the benefits of current recipients. There is not a collective investment fund that has been watching its income



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grow since the program's inception in 1935. Instead, what was taken in was put into a trust fund, which in turn was emptied out by government expenditures. All that remains is government bonds — essentially IOUs issued to the government by the government (guess who gets taxed to pay those IOUs).

Structured in the same way, CLASS will possess its own trust fund. And it won't take long for revenues to be far outstripped by expenses. One could assume that it will be bankrupt in its first decade of life, especially if the aging Baby Boomer population (all 78 million of them) jumps on board. If the Budget Office's estimates are correct, the average user will put only \$7,380 into the trust fund. Consider what that user will take out of it: At \$75 of benefits per day, that's \$27,375 in expenses per year, nearly four times what the user put into it. That's only for one year of use. Now, imagine if the user lingers in long-term care for 10 years (\$273,750) or 20 years (\$547,500). It doesn't take a professional accountant to see that it's a financially dangerous endeavor.

And finally, number 12 of the law's most economically destructive provisions:

12. Physician-Owned Specialty Hospitals. A major source of innovation in health care, physician-owned specialty hospitals had long been a target of the Big Hospital Lobby — the American Hospital Association and the Federation of American Hospitals — which doesn't like competition. ObamaCare effectively prevents new physician-owned specialty hospitals from opening and makes it near impossible for existing ones to expand.

Given the Obama administration's undeniable hostility toward small and medium-sized businesses, its alliance with "Big Hospital" is not surprising. Unions, corporate lobbyists, socialists, and bureaucrats are the midwives of ObamaCare and will be proud to see it grow up and become the king of medical care insurance.

The best and brightest hope for the early demise of this law is the constant, unwavering pressure of constitutionalists on their elected representatives. Everyone devoted to rescuing the Constitution and re-enshrining it as the law of the land, must challenge every Senator, every Congressman, and every President that obstinately refuses to rigidly adhere to the barriers on their powers set out in the Constitution. If he or she refuses to conform to the Constitution, then he or she should be sent home forthwith.

Photo of Obama signing ObamaCare law: AP Images





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