



MEMORANDUM

September 5, 2013

To: Honorable Tom Coburn

Subject: Enacted Laws that Repeal or Amend Provisions of the Patient Protection and Affordable Care Act (ACA); Administrative Delays to ACA's Implementation

This memorandum responds to your request for information about legislative and administrative actions that affect implementation of the Patient Protection and Affordable Care Act (ACA).¹ Specifically, you asked for a summary of the laws that have repealed or otherwise amended particular provisions of the ACA, as well as the laws that have reduced or eliminated ACA funding. You also asked for a list of decisions made by the Obama Administration to delay specific ACA programs and activities.

Table 1 summarizes the authorizing legislation enacted to date to amend the ACA. Each table entry includes the public law number and date of enactment, the original bill number and sponsor, and a brief description and explanation of the change(s) made to the ACA. The laws are listed in chronological order beginning with the first measure signed into law following ACA's enactment. In compiling the table, CRS had to make a number of decisions about which laws—or specific provisions in a particular law—to include, and which ones to leave out. Generally, we have included only those laws that amend, or make changes that relate to, *new* programs and activities established under the ACA. We have excluded laws that amend or extend *established* programs and activities that were subject to prior amendment by the ACA. For example, the ACA extended multiple existing Medicare and Medicaid program payments and activities that have since been further extended and/or modified by more recently enacted laws. None of these laws are included in **Table 1**.

Table 2 summarizes the ACA-related provisions that were included in enacted annual appropriations acts for the past three fiscal years (i.e., FY2011-FY2013). Finally, **Table 3** summarizes decisions by the Obama Administration to delay by one year various ACA mandates and other requirements.

The following laws are referred to in the tables by their acronym:

- Health Care and Education Reconciliation Act (HCERA; P.L. 111-152)

¹ ACA was signed into law on March 23, 2010 (P.L. 111-148, 124 Stat. 119). A week later, on March 30, 2010, the President signed the Health Care and Education Reconciliation Act (HCERA; P.L. 111-152, 124 Stat. 1029), which made numerous amendments to the health care and revenue provisions in ACA. All references to ACA in this memorandum refer to the law as amended by HCERA.

- Internal Revenue Code (IRC)
- Medicare Improvements for Patients and Providers Act (MIPPA; P.L. 110-275)
- Social Security Act (SSA)

The material in this memorandum, some of which was drawn from existing reports, is of general interest to Congress and may be included in future CRS products. Please contact us if you have further questions.

Table I. Authorizing Legislation Enacted Through August 2013 That Amends ACA

Public Law and Date of Enactment	Bill (Sponsor)	Summary of Provisions
111 th Congress		
P.L. 111-159 Apr. 26, 2010	H.R. 4887 (Skelton)	TRICARE Affirmation Act. Amended IRC Section 5000A(f)(1)(A), as added by ACA Section 5101(b), to clarify that health care provided under TRICARE, TRICARE for Life, and the Nonappropriated Fund Health Benefits program constitutes minimal essential health care coverage as required by ACA. [Beginning in 2014, ACA requires most U.S. citizens and legal residents to have minimal essential health care coverage or pay a penalty.]
P.L. 111-173 May 27, 2010	H.R. 5014 (Filner)	[No title.] Amended IRC Section 5000A(f)(1)(A), as added by ACA Section 5101(b), to clarify that health care provided by the Department of Veterans Affairs constitutes minimal essential health care coverage as required by ACA. [Beginning in 2014, ACA requires most U.S. citizens and legal residents to have minimal essential health care coverage or pay a penalty.]
P.L. 111-226 Aug. 10, 2010	H.R. 1586 (Rangel)	FAA Air Transportation Modernization and Safety Improvement Act. Among its many provisions, P.L. 111-226 amended SSA Section 1927(k)(1)(B)(i)(IV) (as added by ACA Section 2503(a)(2)(B)), as amended by HCERA Section 1101(c) by modifying the definition of average manufacturer price (AMP) to include inhalation, infusion, implanted, or injectable drugs that are not generally dispensed through a retail community pharmacy.
P.L. 111-309 Dec. 15, 2010	H.R. 4994 (Lewis)	Medicare and Medicaid Extenders Act of 2010. To help offset the costs of the Medicare and Medicaid program extensions and the postponement of cuts in Medicare physician payments, P.L. 111-309 amended IRC Section 36B (as added by ACA Section 1401(a)) to modify the amount of excess premium tax credits that individuals would have to repay. The law created a sliding scale for such repayments based on household income. [Under ACA, the amount received in premium credits is based on income as reported on tax returns. These amounts are reconciled the following year, which could result in an overpayment of credits if income increases. ACA placed limits on the amount of any premium credit overpayment that had to be repaid to the government.]
P.L. 111-312 Dec. 17, 2010	H.R. 4853 (Oberstar)	Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. Amended ACA Section 10909 to extend the nonrefundable adoption tax credit through tax year 2012. The adoption tax credit helps offset the cost of qualified adoption expenses. [Subsequently, P.L. 112-240 made the nonrefundable adoption tax credit permanent.]
P.L. 111-383 Jan. 7, 2011	H.R. 6523 (Skelton)	Ike Skelton National Defense Authorization Act for Fiscal Year 2011. Extends TRICARE coverage to dependent adult children up to age 26, to conform with the private health insurance requirements under ACA.
112 th Congress		
P.L. 112-9 Apr. 14, 2011	H.R. 4 (Lungren)	Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011. Amended IRC Section 6041, as amended by ACA Section 9006, to repeal the requirement that businesses file an information report (IRS Form 1099) whenever they pay a vendor more than \$600 for goods in a single year. To pay for the 1099 repeal, P.L. 112-9 further amended IRC Section 36B, as added by ACA Section 1401(a), by modifying the amount of excess premium tax credits that individuals would have to repay based on household income (see entry for P.L. 111-309, above).

Public Law and Date of Enactment	Bill (Sponsor)	Summary of Provisions
P.L. 112-56 Nov. 21, 2011	H.R. 674 (Hergert)	3% Withholding Repeal and Job Creation Act. Among its many provisions, P.L. 112-56 amended IRC Section 36B, as added by ACA section 1401(a) (as amended), by modifying the calculation of Modified Adjusted Gross Income (MAGI) to include Social Security benefits. MAGI will be used to determine eligibility for health insurance exchange subsidies and Medicaid, beginning in 2014.
P.L. 112-96 Feb. 22, 2012	H.R. 3630 (Camp)	Middle Class Tax Relief and Job Creation Act of 2012. Among its many provisions, P.L. 112-96: <ul style="list-style-type: none"> • Amended ACA Section 4002 to reduce the Prevention and Public Health Fund (PPHF) annual appropriations over the period FY2013-FY2021 by a total of \$6.25 billion to help offset the cost of extending the payroll tax cut. • Amended SSA Section 1923(f) to extend by one year the disproportionate share hospital (DSH) allotment reduction imposed by ACA Section 3203. • Amended SSA Section 1905(aa), as added by ACA Section 2006, to make a technical correction to the formula to phase down the Medicaid disaster-recovery Federal Medical Assistance Percentage (FMAP) adjustment as originally intended. [The purpose of the adjustment was to help Louisiana avoid a significant reduction in its federal Medicaid match (i.e., FMAP) in the aftermath of Hurricane Katrina. As written in ACA Section 2006, the formula for the disaster-recovery FMAP adjustment unintentionally caused the FMAP adjustment to increase, rather than phase down, each year the state qualifies for the adjustment.]
P.L. 112-141 July 6, 2012	H.R. 4348 (Mica)	Moving Ahead for Progress in the 21st Century Act, or “MAP-21”. Among its many provisions, P.L. 112-141 further modified the Medicaid disaster-recovery FMAP adjustment (see entry for P.L. 112-96, above) by changing the adjustment factor and the effective date.
P.L. 112-240 Jan. 2, 2013	H.R. 8 (Camp)	American Taxpayer Relief Act of 2012. Among its many provisions, P.L. 112-240: <ul style="list-style-type: none"> • Amended MIPAA Section 119 to provide a total of \$25 million for FY2013 for the four outreach and assistance programs, which ACA Section 3306 funded through FY2012. • Amended SSA Section 501(c)(1)(A) to provide \$5 million for FY2013 for the family-to-family information centers, which ACA Section 5507(b) funded through FY2012. • Transferred 10% of the remaining unobligated Consumer Operated and Oriented Plan (CO-OP) program funds to a new CO-OP contingency fund (to provide assistance and oversight to CO-OP loan recipients) and rescinded the other 90% of those funds (see entries for P.L. 112-10 and P.L. 112-74, which predate this act, in Table 2 below).^a • Repealed ACA Title VIII, the Community Living Assistance Services and Supports (CLASS) Act. • Repealed ACA’s appropriations for the National Clearinghouse for Long-Term Care Information and rescinded all unobligated funds.

Source: Prepared by the Congressional Research Service based on the text of the public laws listed in the table.

- a. P.L. 112-10 and P.L. 112-74 rescinded a total of \$2.6 billion of ACA’s original \$6 billion appropriation for the CO-OP program (see Table 2). At the time P.L. 112-240 was enacted, according to HHS budget documents, the CO-OP program had an unobligated balance of \$2.532 billion. P.L. 112-240 rescinded 90% of that amount (i.e., \$2.279 billion), and remaining funds (i.e., \$253 million) were transferred to the contingency fund. In all, Congress has rescinded \$4.879 billion of the \$6 billion CO-OP program appropriation.

Table 2. ACA-Related Provisions in Appropriations Acts, FY2011-FY2013

Public Law and Date of Enactment	Bill (Sponsor)	Summary of Provisions
P.L. 112-10 Apr. 15, 2011	H.R. 1473 (Rogers)	<p>Department of Defense and Full-Year Continuing Appropriations Act, 2011. Division B, Title VIII of P.L. 112-10, which provided full-year continuing FY2011 appropriations for Labor-HHS-Education, included the following ACA-related provisions:</p> <ul style="list-style-type: none"> • Permanently canceled \$2.2 billion of the \$6 billion appropriation for the Consumer Operated and Oriented Plan (CO-OP) program, which was established and funded by ACA Section 1322. • Repealed the free choice voucher program, established by ACA Section 10108, which would have required certain employers to provide vouchers to qualified employees for purchasing coverage through a health insurance exchange. • Prohibited transfers from the Public Health and Social Services Emergency Fund to support the U.S. Public Health Sciences Track, pursuant to ACA Section 5315. • Removed the maintenance of effort requirement for use of monies in the Community Health Center Fund (CHCF), which was established and funded by ACA Section 10503 (as amended by HCERA Section 2303). • Mandated a Government Accountability Office (GAO) study of the costs and processes of ACA implementation, and a Medicare actuarial analysis of the impact of ACA's private insurance reforms on employer-sponsored health insurance premiums.
P.L. 112-74 Dec. 23, 2011	H.R. 2055 (Culberson)	<p>Consolidated Appropriations Act, 2012. Division F of P.L. 112-74, which provided regular FY2012 appropriations for Labor-HHS-Education, included the following ACA-related provisions:</p> <ul style="list-style-type: none"> • Rescinded \$400 million of the remaining \$3.8 billion for the CO-OP program; see P.L. 112-10, above. • Rescinded \$10 million of the \$15 million FY2012 appropriation for the Independent Payment Advisory Board (IPAB), which was authorized and funded by ACA Section 3403. • Instructed the Secretary of Health and Human Services to establish a website with detailed information on the allocation and use of monies in the Prevention and Public Health Fund (PPHF), which was established and funded by ACA Section 4002. • Prohibited the use of PPHF funds for lobbying, publicity, or propaganda purposes.
P.L. 113-6 Mar. 26, 2013	H.R. 933 (Rogers)	<p>Consolidated and Further Continuing Appropriations Act, 2013. Division F, Title V of P.L. 113-6, which provided full-year continuing FY2013 appropriations for Labor-HHS-Education, included the following ACA-related provisions:</p> <ul style="list-style-type: none"> • Rescinded \$200 million of the \$500 million transfer from the Medicare Part A and Part B trust funds for the 5-year Community-Based Care Transition Program, which was established and funded by ACA Section 3026. • Rescinded \$10 million of IPAB's FY2013 appropriation. <p>Note that the PPHF website and the prohibition on using PPHF funds for lobbying, publicity, or propaganda purposes, which were included in P.L. 112-74 (see above), remain in effect in FY2013 under P.L. 113-6.</p>

Source: Prepared by the Congressional Research Service based on the text of the public laws listed in the table.

Table 3. Administrative Delays in ACA Implementation

Source and Date	Summary of Delay
<p>U.S. Department of Health and Human Services, "Medicaid and Children's Health Insurance Programs: Essential Health Benefits for Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes, and Premiums and Cost Sharing: Exchanges: Eligibility and Enrollment," Final Rule, 78 Federal Register 42160-42322, July 15, 2013, http://www.gpo.gov/fdsys/pkg/FR-2013-07-15/pdf/2013-16271.pdf.</p>	<p>Exchange Applicant Eligibility and Verification; Electronic Notices. The July 15, 2013 final rule on health insurance exchange eligibility and enrollment included the following one-year delays:</p> <ul style="list-style-type: none"> • State-based exchanges will not be required until 2015 to verify applicants' information regarding possible employer coverage in order to determine eligibility for premium tax credits. During 2014 the exchanges may accept an applicant's attestation without further verification. [Under IRC Section 36B(c)(2)(C), as added by ACA Section 1401(a), individuals whose employer offers a health plan that is affordable (i.e., the employee's share of the premium does not exceed 9.5% of the employee's household income) and provides minimum value (i.e., the plan's share of the total allowed costs of benefits provided under the plan is at least 60%) are not eligible for a premium tax credit through the exchange.] • While the government initially proposed an audit of each exchange applicant who reported an income that was at least 10% below the amount indicated by IRS and SSA records, the final rule permits state-based exchanges during 2014 to audit less than 100% of all such individuals provided the sample size used is statistically significant. [Under IRC Section 36B(b), as added by ACA Section 1401(a), individuals and families who enroll in qualified health plans (QHPs) offered through an exchange are eligible for refundable premium tax credits if their income is between 100% and 400% of the federal poverty level.] • The federal government has delayed until 2015 a requirement that state Medicaid agencies provide notices electronically to beneficiaries. Between October 1, 2013, and January 1, 2015, state Medicaid agencies must give individuals the choice to receive notices in electronic format or by regular mail. Agencies must ensure that an individual's choice to receive electronic notices is confirmed by regular mail, and must inform the individual of his or her right to switch to receiving notice through regular mail. [42 C.F.R. 435.918] Note that exchanges must also provide required notices by regular mail or, if an individual elects, electronically, provided that the specifications for electronic notices in 42 C.F.R. 435.918 are met. However, exchanges may choose to delay until 2015 the requirement in 42 C.F.R. 435.918(b)(1) that individuals who choose to receive electronic notices receive confirmation by mail. [45 C.F.R. 155.230(d)]
<p>U.S. Department of the Treasury, "Continuing to Implement the ACA in a Careful, Thoughtful Manner," July 2, 2013, http://www.treasury.gov/connect/blog/Pages/Continuing-to-Implement-the-ACA-in-a-Careful-Thoughtful-Manner-.aspx.</p>	<p>Employer Mandate and Insurer Reporting. The Administration has delayed until 2015 the requirement that employers with at least 50 full-time equivalent employees provide health coverage for their full-time workers (and children under age 26) or risk paying a penalty. It has also delayed until 2015 the requirement for insurers to report certain information to the IRS. [IRC Section 6055 (as added by ACA Section 1502(a)) requires reporting by insurers, self-insuring employers, and other parties that provide health coverage. IRC Section 6056 (as added by ACA Section 1514(a)) requires certain employers to report on the health coverage they offer to their full-time employees.]</p>
<p>Letter from Kathleen Sebelius, Secretary of Health and Human Services, to Senator Maria Cantwell, March 22, 2013, http://www.cantwell.senate.gov/public/_cache/files/43cebb4b-424a-4960-b88b-d0d9e0bf3692/Senator%20Cantwell%20final%20response%20on%20the%20Basic%20Health%20Plan.pdf.</p>	<p>Basic Health Plan Option. The Administration is planning to delay implementing the Basic Health Program until 2015. [ACA Section 1331, as amended, permits states to establish a Basic Health Program in which states would contract with private-sector and cooperative health plans to provide health insurance coverage for certain low-income individuals not eligible for the state's Medicaid program with incomes between 133% and 200% of the federal poverty level. States that decide to offer the Basic Health Option receive federal funding equal to 95% of the value of the premium tax credits and cost-sharing subsidies that eligible individuals would have received had they purchased coverage through the exchange.]</p>

Source and Date

U.S. Department of Health and Human Services, "Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Small Business Health Options Program," Proposed Rule, 78 Federal Register 15553-15558, March 11, 2013, <http://www.gpo.gov/fdsys/pkg/FR-2013-03-11/pdf/2013-04952.pdf>.

U.S. Department of Labor, "FAQs about Affordable Care Act Implementation Part XII," February 20, 2013, <http://www.dol.gov/ebsa/faqs/faq-aca12.html>.

Summary of Delay

Small Business Exchanges (i.e., SHOPs). The Administration has proposed to delay until 2015 a requirement that SHOPs offer employers a choice of QHPs. For plan years beginning during 2014, SHOPs may offer a single QHP option.

Limitations on Group Health Plan Cost-Sharing. PHSA Section 2707(b), as added by ACA Section 1201, requires group health plans to ensure that any annual cost-sharing (e.g., deductibles) imposed under the plan for a plan year beginning on or after January 1, 2014, does not exceed the limitations established under ACA Section 1302(c)(1) and (c)(2). The Administration has provided a one-year grace period to insurers that use more than one benefits administrator that will allow them to apply the separate out-of-pocket limits to each set of benefits under the various administrators. Under this policy, for example, many group health plans will be able to maintain separate out-of-pocket limits for hospital and doctors' services and for prescription drug coverage.

Source: Prepared by the Congressional Research Service based on a review of the documents cited in the table.