



The ACA's Cost-Sharing Subsidies and Congress's Power of the Purse

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Eakinomics: The ACA's Cost-Sharing Subsidies and Congress's Power of the Purse

As much as many policymakers would like to put the recent health care debate behind them, Congress has an obligation to fix one flaw in the Affordable Care Act (ACA). Under the ACA, the Treasury Department has been making payments to reimburse health insurers for reducing deductibles and other out-of-pocket costs for low income individuals purchasing health insurance plans. The Congressional Budget Office (CBO) estimates that the Treasury will issue \$7 billion in these cost-sharing reductions (CSRs) in 2017, and over \$130 billion in payments over the next ten years. The problem with these payments, is that they are likely illegal.

Article I, section 9 of the Constitution states: “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” It is from this clause that Congress derives its “power of the purse,” or its prerogative over the nation’s finances. It is Congress’s most jealously guarded authority and likely the strongest check against the power of the executive branch. Unfortunately, when Congressional Democrats wrote the ACA, they did so with the mind that future Congresses may want to exercise that power over their legislative prize petunia. As such, most of the funding associated with the ACA is on autopilot and outside the congressional appropriations process – including, or so Democrats thought at the time – these CSR payments. However, it’s clear reading the statute that the language authorizing the CSR payments isn’t tied to any funding source in law.

The Obama Administration knowingly ignored this little wrinkle and continued to make the payments. A federal judge however, took exception to this practice and ruled that the ACA did not provide an appropriation for these payments. The judge’s opinion has been stayed pending appeal. President Trump has threatened to simply end the payments. This may be consistent with the law, but it would be highly disruptive to the insurance market. The ACA has many flaws, and reliance on illegal payments is just one of them. But absent an overhaul that reforms the system as a whole, it would irresponsible to simply withdraw this funding stream from the system. Rather, congressional Republicans should provide the funds as part of the annual appropriations process. This approach would be consistent with the law and sound budget policy. The funding for the CSRs would have to compete with other national priorities as part of the appropriations process, including the oversight due any program requiring annual funding.

It is regrettable that congressional Democrats drafted the ACA, albeit poorly in this instance, to be walled off from oversight from the legislative branch. Congressional Republicans may be reluctant to fund anything remotely associated with the ACA, but more important is the responsibility to restore congressional power of the purse.