



Insight

What Happens When Obamacare Fails

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INTRODUCTION

Pinal County, Arizona was briefly the first US county to be entirely without health plan offerings on the exchanges. Blue Cross Blue Shield eventually agreed to cover this market with a 51 percent premium increase, despite evidence that even this rate bump would be insufficient to cover their costs.^[1] Other counties in Arizona, Connecticut, and Tennessee faced similar threats of being without plan offerings in their health insurance exchanges, but through surprising (even inexplicable) contract negotiations, have managed to retain one plan issuer—for this year at least.

It seems inevitable with the rate of non-profit [Consumer Operated and Oriented Plans](#) (COOPS) closing and insurers asking for huge [rate increases](#), or leaving the exchanges altogether, that some Americans will find themselves living in an area where the exchanges have failed. Should that happen there will be three important questions to answer: will any insurance be available to these individuals? will subsidies be available? will the individual mandate be enforced? The potential answers to these questions are explored below.

WILL INSURANCE STILL BE AVAILABLE?

Health insurance has always been and always should be available for purchase off-exchanges in the private market. In fact, nearly half of all enrollees in the individual market currently purchase their insurance off exchange. Should the exchanges fail, insurance plans – perhaps even the *same* plans that were previously offered on the exchanges—will still be available in the off exchange individual market. The more important question is: what kinds of insurance will be available?

Qualified Health Plans (QHPs) are plans that satisfy the Affordable Care Act's (ACA) individual mandate and are either approved for and sold on an exchange, or else satisfy certain threshold requirements such as maintaining a certain actuarial value and offering all Essential Health Benefits (EHBs). Off exchange QHPs may even be better than their on-exchange counterparts because they tend to have significantly larger (on average 30 percent larger) provider networks, despite having the same premium.^[2] It is not entirely certain why these [larger networks](#) develop off exchange, but it may be tied to the healthier patient population and lack of 90-day mandatory grace period – both of which would not apply to exchange plans.

In addition to QHPs, non-QHPs that have more diverse benefit structures will also continue to be available off exchange. These may include plans that were available pre-ACA and are not grandfathered, catastrophic coverage, or plans that fail to meet any of the ACA's strenuous EHB requirements. Either way, there is no indication that any geographic region would be left without any health insurance options.

WILL SUBSIDIES BE AVAILABLE?

In all likelihood, subsidies will continue to be available to individuals and families purchasing insurance off exchange. There is precedent to suggest an ACA-supportive administration would move to pay out those subsidies unilaterally, while some Republicans in Congress have already introduced legislation amending the ACA to allow subsidies off exchange (among other things).

In 2013, during the rocky launch of healthcare.gov, thousands of individuals were unable to enroll in health insurance through the exchange due to website failures. In order to ensure that these individuals enrolled, The Centers for Medicare and Medicaid Services (CMS) released a regulation authorizing payment of subsidies to QHPs in which eligible individuals were enrolled, contingent upon eligibility subsequently being confirmed.^[3]

If the administration at the time does not step in and extend subsidies, Congress could take action. On September 15th, Senator Lamar Alexander (R-TN)—Chairman of the Senate Committee on Health, Education, Labor and Pensions (HELP)—introduced legislation that would authorize payment of subsidies for plans that are purchased off exchange if the state’s governor has determined that fewer than two affordable health insurance plans are offered in at least one county. ^[4] The language of this bill is only applicable during the 2017 plan year, but may be a blueprint for future stop-gap subsidy coverage.

It seems almost certain that leaders of both major parties would feel an obligation to act in some way to ensure that no Americans are materially harmed as a result of the unworkability of the ACA. What remains unclear is the impact moving exchange enrollees—and their subsidies—to the off-exchange market will have on plans’ decision to continue participating in that market.

WILL THE INDIVIDUAL MANDATE BE ENFORCED?

Similar to the subsidy situation, it is almost certain that through regulation or legislation, the individual mandate will not be enforced against individuals living in states or counties with insufficient insurance plan options.

During the ACA rollout in 2013, there were numerous instances of people having trouble enrolling in health plans. In response to these setbacks, the Obama Administration delayed enforcement of the individual mandate. ^[5] It is likely that any subsequent administration would likewise suspend enforcement in situations where compliance with the law would be financially difficult or impossible.

Senator Alexander’s bill if passed would suspend enforcement of the individual mandate in any state where one or more counties have less than two insurers offering QHPs on the ACA exchanges. Senator John McCain (R-AZ) introduced a similar piece of legislation in response to the situation in Arizona, which would suspend enforcement of the mandate only in counties where one or no health insurers are offering plans on the exchange. ^[6] Currently 31 percent of US counties have only one insurer in the exchange, and therefore would trigger these mandate suspensions should one of these bills become law.^[7]

Whether by administrative action or Congressional intervention, it does not seem likely that the individual mandate would be enforced in a situation that is so obviously unfair to residents of counties or states where the ACA and its exchanges have failed.

CONCLUSION

Many variables remain up in the air as we contemplate what Obamacare would look like without functioning exchanges, but the failure of the exchanges in some states might provide an opportunity to amend and improve upon the ACA, and move the American health care system towards a freer market system where individuals are free to enroll in any health insurance plan that is for sale, and where insurers have the freedom to sell the plans that are the most appealing to potential buyers. Treating markets where the ACA has failed as opportunities rather than crises might be the first step in achieving sustainable health care reform.

[1] <http://www.wsj.com/articles/arizonas-pinal-county-gains-health-law-exchange-insurer-1473297959>.

[2] <http://avalere.com/expertise/managed-care/insights/exchange-plans-include-34-percent-fewer-providers-than-the-average-for-comm>.

[3] <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/retroactive-advance-payments-ptc-csrs-02-27-14.pdf>.

[4] <http://www.alexander.senate.gov/public/index.cfm/sponsoredbills>.

[5] <http://fas.org/sgp/crs/misc/R43474.pdf>.

[6] <http://www.mccain.senate.gov/public/index.cfm/legislation>.

[7] <http://kff.org/health-reform/issue-brief/preliminary-data-on-insurer-exits-and-entrants-in-2017-affordable-care-act-marketplaces/>.