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## **ACA DECLARED UNCONSTITUTIONAL ..... NOW WHAT?**

By Steve Bakke  December 18, 2018



**ACA - a millstone  
around our neck!**

A federal judge has declared the ACA unconstitutional. This ruling may eventually be struck down, but for now it's smart to plan as if this is permanent. And that means we're in for a lively debate. This is an opportunity for those on the left to argue the merits of single payer, or Medicare for all, etc. It's also an opportunity to introduce a free market approach that conservatives could support. Some ideas that I like are outlined here.

ACA had two-and-a-half strikes against it from the start because it:

- made promises it couldn't keep (e.g. 10,000,000 new enrollees vs. the projected 46,000,000);
- promised cost savings that were impossible;
- mandated coverage that increased costs;
- advertised flexibility but didn't meet expectations;
- depended on the heavy hand of government rather than competition to control costs;
- heavily regulated healthcare in ways that increased bureaucratic costs;
- encouraged Constitutional challenges;
- created complexity that effectively made the system a mystery;
- has become a millstone around the country's neck.

ACA was cleverly designed so that it would be difficult or impossible to be overturned. That was foolish because it also introduced barriers to making major "fixes" that the Democrats should have known to be inevitable. Several years ago, former HHS Secretary Sebelius gave us a hint as to this unfortunate ACA characteristic when she confidently stated that the legislation was so "intimately entwined" into our healthcare payment system that it wouldn't be possible to remove it. That's where we are, and sadly, it makes the task difficult.

If we are having a debate, I think we should set simple but important rules:

- Retain desirable provisions of ACA.
- Refer to this task as "improving" the system, and stop using the controversial words "fix" or "repeal and replace."
- Forbid immediate projections or discussion of costs – if the process gets caught up in the "weeds," it will be impossible to create a vision for a workable structure. Analysis of costs and "who should pay what" should come later.

Here are some characteristics of this system:

- While insurance premiums would be determined in the open market, subsidies would be handled through tax filings or government payments (more below).
- Insurance coverage would be available for all.
- Individuals and families would own their major medical insurance policies.
- There would be no mandates, so people would buy what they want and need.
- Pre-existing conditions, or lifetime limits, wouldn't block insurance coverage.
- Health savings accounts (HSAs) would facilitate payment of medical and insurance costs up to when "major medical" policies assume coverage.
- Insurance companies would be free to underwrite actual risks.

These elements would encourage lower costs through transparency and free market competition:

- Individual and family ownership of major medical insurance policies would permit purchasing what is wanted and needed.
- Insurance companies should be encouraged to enhance competition by selling across state lines.
- Publish prices, thereby permitting individuals to make informed approval of medical services. Policy owners would pay directly for services up to their major medical coverage.
- Tort reform, and of course, aggressively attack waste, fraud, and abuse.

After structure is agreed to, it would be time to discuss "who pays, and how much." This mechanism would make costs fair and affordable for the poorest Americans. Medical related expenses could be reported on the tax return. Depending on the status of the tax code, subsidies would come either through deductions and credits, or by government reimbursement to the policy owner. Income levels would determine the tax benefit, or subsidy, whichever applies. Medicaid, or an effective alternative, should be used as a safety-net covering excess costs for those with low income and others who "slip through the cracks."

Let's learn from the ACA experience and not make it difficult to make changes. Adjustments will be inevitable for changing levels of subsidy, or to find free market incentives for eliminating those choosing to be uninsured. And we should anticipate incurring initial one-time costs to assure an efficient and equitable transition. This would include assistance for those with low income to fund their health savings accounts.

There's so much more, but that's my outline. I believe it points our healthcare payment system in the right direction.