

[https://doi.org/10.52326/jss.utm.2021.4\(1\).12](https://doi.org/10.52326/jss.utm.2021.4(1).12)  
UDC 614(73)



## HEALTH INSURANCE IN THE US: OBAMA VERSUS TRUMP

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Received: 12. 26. 2020

Accepted: 01. 82. 2021

**Abstract.** The article elucidates the history of US law, known as Obamacare. Usually you find out that you are eligible for Medicaid when you fill out a health insurance application on the Affordable Care Act (ACA), which passes the information to Medicaid. Because you applied for health insurance on an Obamacare health insurance scholarship, you may be surprised to receive Medicaid instead of a private Obamacare plan. Following the inauguration, Donald Trump signed an order repealing the Affordable Care Act (the Obamacare Act). The decree is symbolic, being the first signed by Donald Trump when he officially took office. This repeal is perceived as a break with the previous government. However, in the face of opposition from the House of Representatives, the text aimed at repealing Obamacare was finally withdrawn on March 24th, 2017, at the request of the new president, who is thus suffering his first major political setback. On May 4th, 2017, the House of Representatives narrowly passed a bill to repeal Obamacare, but the bill was rejected by the Senate on July 28, following a decisive vote by Republican Sen. John McCain, who joined two of the two his fellow Republicans in the vote against repeal. On October 13th, 2017, Donald Trump issued a new decree to circumvent Obamacare. Finally, Donald Trump changed his tactics to repeal the Affordable Care Act, supporting legal initiatives against it, especially in Texas. On the other hand, he made a hobby for the 2020 US presidential election, promising an effective repeal if re-elected, which did not happen.

**Keywords:** *Health insurance, Tea Party, repeal, amend, vote, veto, Obamacare, constitutionality of the law, debt ceiling, health insurance policy, Medicaid, private insurers.*

**Rezumat.** Articolul elucidează istoria legii SUA, cunoscută sub numele de Obamacare. De regulă, aflați că sunteți eligibil pentru Medicaid atunci când completați o cerere de asigurare de sănătate în bursa de asigurări de sănătate Affordable Care Act (ACA), care transmite informațiile către Medicaid. Deoarece ați depus cererea inițială de asigurări de sănătate la o bursă de asigurări de sănătate Obamacare, s-ar putea să vă surprindă că veți primi Medicaid în loc de un plan Obamacare privat. După învestire, Donald Trump a semnat un ordin de abrogare a Legii privind îngrijirea accesibilă (Legea Obamacare). Decretul este simbolic, fiind primul semnat de Donald Trump când a preluat oficial funcția. Această abrogare este percepută ca o ruptură cu guvernul anterior. Cu toate acestea, în fața opoziției din partea Camerei Reprezentanților, textul care vizează abrogarea Obamacare a fost în cele din urmă retras la 24 martie 2017, la cererea noului președinte, care suferi astfel primul său major recul politic. La 4 mai 2017, Camera Reprezentanților a adoptat în mod restrâns un proiect de lege pentru abrogarea Obamacare, dar proiectul de lege a fost respins de Senat la 28 iulie, în urma unui vot decisiv al senatorului

republican John McCain, care s-a alăturat la doi dintre colegii săi republicani în votul împotriva abrogării. La 13 octombrie 2017, Donald Trump a emis un nou decret de eludare a *Obamacare*. În cele din urmă, Donald Trump și-a schimbat tactica pentru a abroga *Actul de îngrijire accesibilă*, sprijinind inițiative legale împotriva acestuia, în special în Texas. Pe de altă parte, a făcut hobby pentru alegerile prezidențiale din SUA din 2020, promițând o abrogare eficientă dacă va fi reales, ceea ce nu s-a întâmplat.

**Cuvinte cheie:** *asigurare de sănătate, Tea Party, abrogare, modificare, vot, veto, Obamacare, constituționalitatea legii, plafon de datorie, poliță de asigurare de sănătate, Medicaid, asiguratorii privați.*

### **Policy context of *Obamacare***

One of the flagship measures of Barack Obama's 2008 election campaign was the introduction of a major reform of the health system allowing the creation, at the federal level, of a "universal health insurance", without imposing compulsory health coverage except for children [2]. One of the aims of this desire to change the health system was to prevent around 45,000 deaths per year, attributed to inadequate health coverage [3]. After the legislative and senatorial elections of November 2010, marked by the push of the *Tea Party*, the most right-wing tendency of the Republican Party, a proposal to repeal the law was tabled in Congress, but rejected by the Democratic majority. Thus, in February 2011, the Senate voted against the repeal of the law by 51 votes to 47, with all Democrats supporting the law while Republicans opposed it [8]. The fight against the law has nevertheless continued, and since January 2011, 56 votes to repeal, amend, or reduce the law have taken place in the US Congress. The most recent vote took place in February 2015, during which a bill repealing *Obamacare* was passed by the House of Representatives by 239 votes to 186. However, this vote is likely to be inconsequential like the previous 55, as President Obama has indicated that he would veto the text if the Senate also passes it [9].

The battle against the law has also taken place at the legal level. More than 20 cases have been filed challenging the constitutionality of the law, with two federal judges in Florida and Virginia upholding the complaints [8]. One of the rulings opposing the Act challenged the constitutionality of compulsory insurance, a device introduced by the new Act to balance the insurance obligation imposed on private insurers, who no longer have the right to refuse files or to raise fees disproportionately because of the client's state of health. The *Supreme Court* was finally asked to rule on the dispute and on 28 June 2012, to the great surprise of the Republicans, the *Supreme Court* upheld the constitutionality of *Obamacare* by 5 votes to 4 [archive].

The Republican Party's blocking of the US federal budget, whose *Patient Protection and Affordable Care Act* they want to see dropped, means that, for the 18th time in its history and the first time since 1996 [10], [11] the US federal administration will be "shutting down" on 1 October 2013 [12]. On 17 October, an agreement is finally reached between the Democrats and Republicans that puts an end to the shutdown while raising the debt ceiling. The *Obamacare* was therefore not modified. But the agreement only extends until 15 January 2014 for the federal budget, and 7 February for the authorisation given to the Treasury to borrow on the markets (debt ceiling) [13]. In December 2013, the Obama administration finally watered down its health care reform because of numerous malfunctions, postponing for millions of Americans by one year the obligation to take out a health insurance policy [14].

Technically *Obamacare* is just a nickname for the *Affordable Care Act*. It was first used in a pejorative sense by opponents of the Act, but President Obama adopted the terminology in 2012, and it has since been used by opponents and both ACA supporters.

Since *Obamacare* is synonymous with ACA, it includes all regulatory changes that apply to the individual health insurance market (both on- and off-exchange, all new major medical plans are ACA-compliant), as well as changes that apply to small group and large group markets.

It also encompasses the expansion of *Medicaid*, which is a cornerstone of the ACA. And it includes the individual and employer mandates – the ACA "sticks" to encourage people to get coverage - with the premiums "the carrots" that make coverage more affordable in health insurance exchanges.

Although legislators and the Trump administration pushed for the repeal of many parts of the CBA in 2017, the only part of the law that was ultimately repealed was the individual term penalty, and that repeal will not take effect until 2019. The GOP tax bill (the *Tax Reduction and Employment Act*) that was enacted in December 2017, will finally remove the individual mandate penalty, but the penalty will still be assessed (early 2019) on the tax returns of uninsured people in 2018.

The ACA remains fully intact in 2018 and most of its parts will likely remain intact in 2019 and beyond.

### **Typical use of *Obamacare* = plans sold in the stock exchange**

Although the term *Obamacare* technically covers the entire ACA, people generally use it to refer to individual health insurance plans sold in health insurance exchanges. So, for the purpose of this article, we will go with this use of the word and take a look at the difference between these plans and *Medicaid*. *Obamacare* plans which are private plans; *Medicaid* is a government-run coverage.

*The most important difference between Medicaid and Obamacare is that Obamacare health plans are offered by private health insurance companies, while Medicaid is a government program.*

*Medicaid*, the government health insurance program for low-income residents of the United States, is a "welfare" program like *SNAP food stamps* or temporary help for needy families.

The term *Obamacare* is generally used to describe private health insurance purchased through *Affordable Key Act* health insurance grants. *Obamacare health insurance plans* are offered by health insurance plans such as *Blue Cross, Kaiser Permanente, Molina, Aetna, Cigna Wellpoint*, and others. *Obamacare health plans* are not run by the government but have to comply with various government regulations.

It should be noted, however, that more than three quarters of *Medicaid* affiliates nationwide are on *Medicaid* managed care plans, which means that their insurance is administered by private insurers who also sell commercial insurance to individuals and businesses.

These plans operate through a contract with the state government to provide *Medicaid* benefits. This can be confusing for people, and it is compounded by the fact that in most states the *Medicaid* program does not have "*Medicaid*" in its name (*Apple Health* in Washington, for example, and *BudgetCare Plus* in Wisconsin).

### **Who gets *Medicaid* vs. who gets *Obamacare***

Getting *Medicaid* is harder than getting an *Obamacare health plan*. If you are a legal resident of the United States you can purchase a private health insurance plan through your ACA health insurance scholarship as long as you are not eligible for health insurance.

If your income is between 100% and 400% of the federal poverty line you can receive a grant to help you pay a portion of your monthly health insurance premiums (note that the lower eligibility threshold is 139%). (*Medicaid* is available for people whose income reaches 138% of the poverty line).

### Patient Protection and Affordable Care Act

The Patient Protection and Affordable Care Act, dubbed "Obamacare", was passed by the 111th Congress and signed into law by President Barack Obama on March 23, 2010 [1]. It is the main component of the reform of the social welfare system in the United States, along with the Health Care and Education Reconciliation Act.

In return for this obligation, the state provides tax incentives to those who cannot afford the coverage. This law has thus made it possible to cover around twenty million Americans who previously lived without insurance, causing the proportion of the latter to fall from 16% to 8.9% between 2010 and 2016.

However, in the United States, care is far from being "affordable": for example, a consultation for simple angina or gastroenteritis with a general practitioner costs in principle 80 dollars, i.e. around 75 euros.

The health system in the United States is nothing like the one we know in France. On the other side of the Atlantic, there is no universal coverage and only a quarter of Americans benefit from a service. Since a 1965 law, the poorest citizens have benefited from *Medicaid*. The income limit above which a sick person cannot benefit from it, as well as the reimbursement rates, vary from one state to another. The other *American public insurance*, also created in 1965, is called *Medicare* and only covers people over 65 years of age.

Those under 65 and those who do not live below the poverty line, i.e. three-quarters of Americans, must take out insurance from private organisations. In the majority of cases, this coverage is financed by the employer. Until 2014, insurers could even refuse to insure a person with a medical history or chronic illness (known as a "pre-existing condition"). But *Obamacare* prohibited this discrimination.

In addition, companies with more than 50 employees that do not finance their employees' insurance must now pay penalties. Finally, with *Obamacare*, children can remain covered by their parents' insurance until the age of 26, which was not the case before.

In fact, the three devices overlap and complement each other. For example, *Obamacare* has made a number of screening tests free of charge, previously paid for, even for those with public coverage. For example, seniors (*Medicare* beneficiaries) still had to pay \$275 (255 euros) out of their own pocket to undergo a colorectal cancer screening colonoscopy. With *Obamacare*, the exam is free for all *Medicare* beneficiaries and thousands of lives have been saved, according to a *University of Virginia* study cited by *NBC*.

Finally, *Obamacare* has instituted a policy of *Medicaid* expansion, encouraging US states to broaden the eligibility criteria for this public insurance. However, 19 states (out of 51) refuse to apply this part of the law, according to the *Kaiser Family Foundation*. Why is this? Because the program is funded partly by the federal government and partly by the states. However, the more beneficiaries a state has, the greater the share of health cares spending in its budget.

Republicans have been waging a relentless war against *Obamacare* since its promulgation. Although the text is only 6 years old, it has already received 60 votes in Congress. Each time, Republicans have tried to prevent its implementation. The *Supreme Court* has even been seized four times! Not only do they consider the reform too costly, but they also denounce the redistributive logic according to which the contributions of healthy people must compensate for the costs of the sickest. For them, the obligation to take out insurance means restrictions on individual freedoms and state interference.

However, in addition to these ideological principles, they believe that *Obamacare* serves many Americans. The insurers - who, it should be remembered, can no longer refuse customers - believe that this market is no longer profitable enough. As a consequence, they either refuse to play the government's game and withdraw from private insurance catalogues compatible with *Obamacare*, or they increase their premiums (in 2017, Americans have paid on average 25%

more for their insurance than the previous year), details *The Washington Post*. In addition, each of these insurers offers different services: sometimes an insurer does not cover consultations in this or that hospital, or with this or that doctor. Opponents of *Obamacare* are therefore outraged to pay more and more for an increasingly limited service.

Now that the *Patient Protection and Affordable Care Act* (henceforth "the Act" or "*Obamacare*") is law, "what is in it" is revealed by 3,256 pages of legislative text, counting the 858 pages of the Reconciliation Bill.

### **The great rules of *Obamacare***

The general principle is to ensure that almost all US citizens have adequate health coverage. Those who did not comply with this obligation were liable to a corresponding fine.

This law obliges all citizens to take out health insurance with a private insurer listed on the healthcare.gov website as "ACA compliant". In return, the state provides tax incentives to those who cannot afford this coverage.

Those who did not comply with this obligation were liable to a fine corresponding to either USD 695 per adult and USD 347.50 per child, or 2.5% of their "Adjusted Gross Income" (annual income after subtraction of the "minimum threshold", i.e. 10.15 per adult in the household).

Since 1 January 2019, US residents no longer incur penalties if they do not have health insurance, or if they choose insurance that does not meet the *ACA Compliant Criteria*. Some states, such as Massachusetts, Washington D.C., New Jersey and Vermont, have nevertheless maintained the health insurance requirement.

### **New obligations for insurers**

*Obamacare* has also introduced new rules for insurance companies, which must now: Provide the insured with an easily understandable summary of his or her coverage.

Respecting the *Medical Loss Ratio*: 80% of the client's premium must be used to make reimbursements and improve the quality of care, and only 20% to cover administrative and marketing costs.

Refund part of the customer's premium in the event of non-compliance with the *Medical Loss Ratio*.

Justify any fare increase of 10% or more.

To give the insured the possibility of appealing in the event of a dispute concerning a refund.

Cover dependent children up to 26 years of age under their parents' policy.

To cover any person wishing to take out insurance, regardless of their state of health and without applying an additional premium.

Covering free preventive care.

In addition, they are now prohibited from:

Cancel a contract due to excessive consumption on the part of the insured person.

Put in place annual ceilings as well as ceilings per contract on the 10 guarantees considered essential.

### ***Obamacare* in practice**

The coming in to force of the CBA has had a number of consequences for the US health care system.

Increase in the number of insured people.

*Obamacare* has partly achieved its main objective: the number of people without insurance fell from 16% in 2010 to 8.5% in 2018.

**Obamacare explained for expatriates**

Is it necessary to take out insurance in the USA?

The ACA had made it compulsory for all US residents, including expatriates, to take out health insurance.

Since January 2019, President Trump has abolished this obligation, which remains in force in five states, under penalty of financial penalties: Massachusetts, New Jersey, Washington DC, California and Vermont).

In any case, when you reside in the United States, it is essential to take out insurance. With the highest health care costs in the world (a simple consultation can cost \$80), paying for hospitalization can be very complicated without health coverage.

**Expatriates can take out an Obamacare-compliant insurance policy.**

The American health care system relies almost exclusively on private medical insurance, which is poorly regulated and expensive in most cases. Choosing to take out "Obamacare compliant" or "ACA compliant" insurance offers a guarantee that the rules laid down by the authorities for the protection of the insured and the contract will be respected: no ceiling for 10 essential guarantees, prohibition of termination of the contract in the event of consumption deemed excessive by the insurer, etc.

It is also possible, under certain conditions, to benefit from coverage for medical history, particularly at the time of arrival in the United States.

**The limits of Obamacare insurance**

However, ACA-compliant insurance also has serious flaws for expatriates, first of all that it is only valid on American territory.

This means that there is no possible coverage for care received during stays abroad, and that repatriation to the expatriate's country of origin will be at the expense of the expatriate.

Choosing American insurance also requires understanding and accepting the specificities of the American health care system: you need to be familiar with certain specific notions such as "coinsurance", "copay" or "out of pocket maximum" in order to be able to foresee your real expenses, and to be able to manage your contract and procedures in English.

Moreover, certain reimbursements are only possible if the patient has been treated in a health network approved by his insurer or with the agreement of a referring doctor.

**Obamacare insurances are, therefore, often not the most adapted to the needs of expatriates.**

International insurance for expatriates is often more attractive than Obamacare insurance for expatriates in the USA.

The contracts taken out are easier to understand than ACA compliant contracts because they are written in a simplified manner that does not require extensive knowledge of the American health system.

All procedures are carried out in French, with contacts that have a good knowledge of the health system and local healthcare networks, as well as of the issues specific to expatriates.

These contracts have been specially developed to meet their needs, and are available in a number of formulas, which are more flexible than Obamacare contracts.

They allow you to be covered anywhere in the world, including during stays in France, and cover at least the essential benefits of hospitalisation and repatriation assistance.

It is also possible to add additional guarantees that do not exist in Obamacare insurance (civil liability, legal assistance, protection of identity papers, plane tickets or luggage in the event of loss, theft or flight cancellation, etc.).

Expatriates preferring international health insurance to *Obamacare* insurance can choose between CFE insurance and a complementary insurance (for example the *Well Away complementary insurance*, which is ACA compliant), or first dollar insurance, which is often the most advantageous solution.

Be careful, however, for residents of states that still apply financial penalties for taking out health insurance outside the *Obamacare* system: you will have to think about adding these penalties to the contribution of the health insurance taken out to find out the total cost of your health coverage.

### **International insurance for expatriates often more attractive**

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### **Policy context**

The US Congress had been debating this health issue for almost a century. Republican President Theodore Roosevelt had already mentioned it in his program, but was defeated in the 1912 presidential election by Democratic candidate Woodrow Wilson. In 1965, Democratic President Lyndon Johnson signed into law Medicare and Medicaid insurance for the elderly and the poor respectively, after winning half of the Republican vote in Congress. Democratic President Bill Clinton also tried to pass an ambitious bill in 1993, but failed.

### **Donald Trump's attitude**

Donald Trump wanted to abolish and replace this emblematic law of the Obama era. But with the particularly complex healthcare system in the US, this campaign promise will be difficult to keep.

Unsurprisingly, Donald Trump asked Congress to enact a law to "replace" *Obamacare*, the health law emblematic of Barack Obama's mandate. "Tonight, I call on this Congress to repeal and replace *Obamacare* with reforms that will expand choice, provide better access (to care) and reduce costs", the US president said in his first State of the Union address on the night of Tuesday 28 February to Wednesday 1 March.

A logical statement for this president who, as soon as he was installed in the Oval Office on Friday, January 20, signed a decree marking the very first step in the dismantling of *Obamacare*.

The president went to war against this measure, which allowed a few millions Americans to access health coverage. Back on an ambitious and imperfect reform, deeply hated by Republicans, including those who benefit from it.

During the campaign, Donald Trump promised to "repeal and replace" *Obamacare*. As soon as he entered the White House, he signed an executive order which, in the words of his spokesman, instructed the various federal agencies to "relieve the burden" of the law pending its repeal and replacement. But more than a month after his inauguration, in his speech to Congress, he still has not detailed his plan. For the law itself cannot be erased with the stroke of a pen: Congress, with a Republican majority, will have to vote, according to a timetable that has not yet been announced. The American press, for its part, is counting on a complete repeal within two or three years. In the meantime, both houses can act on *Obamacare* through budget votes, which require only a simple majority.

Initially, Trump wants to unravel *Obamacare* by using a fast-track procedure "allowing all aspects of the reform affecting the budget to be changed," explains *Courrier International*. It could thus "eliminate the penalties that currently apply to people who do not insure themselves and to employers who do not provide coverage for their employees" and remove "the aide intended to extend the *Medicaid* program (...).

Finally, the Republican plan should prohibit patients from receiving *Obamacare* when they go to certain clinics, such as *Planned Parenthood*, the American equivalent of *Family Planning*. Such a measure would amount to depriving millions of women of free access to contraception.

Donald Trump has been hammering home the fact that no American citizen would be deprived of his or her insurance, which implies the preparation of a plan to replace *Obamacare*. In an interview with the *Washington Post* shortly before his inauguration, he assured that he was putting the finishing touches to his health reform, promising simply "great insurance, simplified in form, cheaper and much better".

While some, including in the Republican camp, fear that the president has not grasped the magnitude of the task ahead of him, touting an "imaginary" plan, *Slate* reports, he can rely on the alternatives prepared by the Republicans. For example, the Republican Speaker of the House of Representatives, Paul Ryan, has advocated a plan that would remove the insurance requirement as well as the income requirements for aid, which would be lowered. According to this plan, "at-risk" patients would be grouped together in state-subsidised insurance groups in order to disengage the federal government, *Le Monde* details. "On the other hand, the Republicans do not want to touch the possibility for children to remain on their parents' insurance until the age of 26," the daily continues.

Finally, this new plan should also provide for a transition for Americans who are beneficiaries of *Obamacare*, so that they don't lose their coverage between the two systems. And for good reason, "a rapid repeal without the slightest replacement would create a situation, at least temporarily (...), of great uncertainty for those concerned, as well as for Republicans, who are under enormous political pressure," reports *National Review*. For the GOP is playing a big game: by keeping, even for a while, a version of *Obamacare* emptied of its substance (for example, by abolishing the taxes that finance it), the Republican party is taking the risk of seeing one insurer after another leave the ship, leaving citizens without the possibility of insurance and therefore of treatment. A return to the pre-*Obamacare* era that nobody, not even Donald Trump, wants.



Increase in the number of insured people. The number of uninsured people fell from 16% in 2010 to 8.5% in 2018.

For people who need to take out health insurance, the government has created online "markets" where they can consult and compare different private insurance options.

The number of insurers in these markets has declined since they were set up, and premiums have tended to rise steadily each year.

### **Donald Trump wants to abolish and replace this emblematic law of the Obama era**

However, with the particularly complex healthcare system in the US, this campaign promise will be difficult to keep.

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### **Process of adoption and parliamentary and legal challenge of the law**

Demonstration by supporters of the *Tea Party*, a movement fiercely opposed to health care reform, in Washington D.C., in front of Capitol Hill on 12th September 2009.

Nevertheless, once elected president, Obama was forced to make concessions in order to get his proposal through Congress. On November 7th, 2009, almost 11 months after his inauguration and, despite a comfortable majority in the House of Representatives, he narrowly won passage of a health care reform bill by 220 votes to 215. Only one Republican, Joseph Cao, had voted for the reform at the time.

After a long debate and multiple amendments, the Senate voted the bill on 30th December 2009 by 60 votes to 39, with all Democrats and Independents voting "for" and Republicans "against".

Finally, after many vicissitudes, on 21st March 2010, despite unfavorable opinion polls, an aggravated polarization of the political class and American citizens, a presidential popularity at half-mast symbolized by the victory of a Republican in Massachusetts to succeed Ted Kennedy and the reluctance of some Democrats, the text voted by the Senate was adopted as is by the House of Representatives by 219 votes to 212 (178 Republicans and 34 Democrats).

As soon as Barack Obama signed the law into law on 23th March 2010, the attorneys general (ministers of justice) of twelve (and then fourteen) American states will declare that they are initiating a federal legal procedure to challenge the constitutionality of the new law for violation of state sovereignty [4] while the legislatures of 37 states are beginning debates to adopt a derogatory status so as not to have to apply the reform [5]. Then, on 24th March, after two Republican amendments to the Senate regarding procedural flaws were passed by the Senate, the *Conciliation Act*, passed by the House of Representatives to implement the new law, which included an extension of federal subsidies, increased state support for the *Medicaid* program, a broadening of the tax base, and reform of the student loan program, was sent back to the House for a new vote, delaying implementation of the law. *The Conciliation Act* was in turn adopted by the Senate on 25th March 2010 [7]. The reform then becomes one of the main

themes of the 2010 mid-term election campaign, the Republicans having promised to repeal or amend it.

The battle against the law has also taken place at the legal level. More than 20 cases have been filed challenging the constitutionality of the law, with two federal judges in Florida and Virginia upholding the complaints [8]. One of the rulings opposing the *Act* challenged the constitutionality of compulsory insurance, a device introduced by the new *Act* to balance the insurance obligation imposed on private insurers, who no longer have the right to refuse files or to raise fees disproportionately because of the client's state of health. The *Supreme Court* was finally asked to rule on the dispute and on 28th June 2012, to the great surprise of the Republicans, the *Supreme Court* upheld the constitutionality of *Obamacare* by 5 votes to 4.

The Republican Party's blocking of the US federal budget, whose *Patient Protection and Affordable Care Act* they want to see dropped, means that, for the 18th time in its history and the first time since 1996 [10], [11] the US federal administration will be "shutting down" on 1st October 2013 [12]. On 17th October, an agreement was finally reached between the Democrats and Republicans that put an end to the shutdown while raising the debt ceiling. The *Obamacare* was, therefore, not modified. But the agreement only extends until 15th January 2014 for the federal budget, and 7th February for the authorization given to the Treasury to borrow on the markets (debt ceiling) [13]. In December 2013, the Obama administration finally watered down its health care reform because of numerous malfunctions, postponing for millions of Americans by one year the obligation to take out a health insurance policy [14].

### **Main provisions of the law**

Described as historic, the text, which received no votes from the opposition (a historic first for this type of legislation), guarantees health coverage for 32 million Americans who do not have it. It nevertheless falls far short of Barack Obama's electoral promises, as it does not include, in particular, a universal public scheme or even public insurance, and will leave 5% of American residents (23 million people) without any health cover (compared with 15% before the reform) [15].

Under the text thus adopted, most Americans will be obliged to take out insurance before 2014, failing which they will be subject to penalties [16]. Subsidies will be provided by the federal government to help lower-income families pay their contributions (incomes below \$88,000 per year [16]). Companies with more than 50 employees (SMEs and traders) that do not provide coverage will also have to pay penalties [17].

In addition, the text prohibits insurance companies from refusing to cover people because of their medical history. Parents will also be able to protect their children up to the age of 26.

Nevertheless, in order to achieve his goals and pass the law, Barack Obama responded to requests from Nebraska Senator Ben Nelson, announcing that he would sign an executive order guaranteeing that the reform would not alter the restrictions on the use of federal funds for abortions [18], which he did on 24 March, the day after the law was enacted [19].

Several corrective measures have yet to be adopted in a budget law by both chambers. The reform is expected to cost \$940 billion (695 billion) over ten years [16]. It should be financed by taxes on high income and lower care expenditure [16] but also by additional taxes on business and investment income.

### **List of main measures**

Many of the provisions of the law do not come in to force until 1st October 2013 for application from 2014 [20].

Insurers must provide the same level of protection, at the same cost, at national level, to any client of the same age, sex and place of residence, regardless of their state of health at the time of signing the health insurance contract. *Medicaid* is extended to individuals and families living on an income equivalent to 133% of the poverty rate.

Establishment of a health insurance exchange system: each federal state sets up a kind of regulated insurance market, selecting private contracts that comply with the rules protecting consumer rights and therefore benefit from financial support from the federal state. People with modest incomes, but above the ceiling for *Medicaid* assistance, receive state budgetary support when they take out insurance via contracts supervised by this exchange system.

Establishment of a health insurance mandate or insurance obligation, aimed at balancing the obligation of insurers to provide the same level of protection to similar clients, regardless of their health status. The principle of this obligation aims to prevent clients from taking out insurance at the last minute, when their condition is critical, at a lower cost, while benefiting from equal protection and avoiding the fair distribution of health costs to the community through the insurance system. This obligation, which already existed, at certain levels, in some states, notably Hawaii, is one of the most contested provisions of the law by Republicans.

Establishment of the *Community Living Assistance Services and Supports Act* (CLASS Act), incorporated as Title VII of the Act. The bill was championed in particular by the late Senator Ted Kennedy, one of the representatives of the left-wing of the Democratic Party. This provision creates a federal public insurance fund to protect individuals from the hazards of life. Membership in this kind of mutual insurance is voluntary. Each insured person receives a sum of money, particularly in the event of disability, to meet his or her daily subsistence needs (between \$50 and \$75 per day). The *Congressional Budget Office* has estimated that this provision could save *Medicaid* \$2 billion in the first decade, since it allows it to be partially replaced (volunteers who have contributed to the fund are guaranteed by the fund rather than by *Medicaid* to which they would have been entitled).

By incorporating the *Biologics Price Competition and Innovation Act* of 2009, drafted by Senator Ted Kennedy, into the *Patient Protection and Affordable Care Act*, the *Food and Drugs Administration* (FDA) becomes competent to authorize bio-generics. Patented bio-drugs retain this exclusive right for 12 years (effective immediately). Generics are reimbursed more than patented drugs by *Medicaid*. In November 2010, Socialist MEP Françoise Castex pointed out that Art. 2.2 of the *Anti-Counterfeiting Trade Agreement* (ACTA), currently under negotiation, contradicted provisions of the *Patient Protection and Affordable Care Act* establishing caps on damages for infringement of drug patents [21].

In addition, a *Patient-Centered Outcomes Research Institute* (POCI), an independent non-profit organization, is being established to conduct comparative analyses of the efficacy of medicines. The institute has only advisory powers, and cannot impose certain medicines or set reimbursement rates. Unlike the UK National Institute for Health and Clinical Excellence, the Institute is legally prevented from developing a QALY (Quality Adjusted Life Year, relating life expectancy to quality, i.e. taking account of dependency or disability) index in its assessment of the comparative value of treatments.

Extension and amendment of the *Indian Health Care Improvement Act* specifically concerning Amerindians living on tribal reserves.

### **Provisional balance sheet**

The reform, after a difficult start, led to a sharp fall in the proportion of Americans without health insurance, which fell from 20.3% to 13.2% of the population between 2013 and 2015 [22]. This rate falls to 10.9% in 2016, but rises to 12.3% after Donald Trump's various attempts to abolish *Obamacare* or reduce its scope.

### **Launching the program**

The reform, which is launched in October 2013, is facing serious difficulties [24].

The website opened on 1 October, where the uninsured had to go to find insurance, was unable to cope with the number of connections. The many warnings previously issued about these problems were ignored; 5% of Americans who already had private insurance saw its cost increase, having to take out new insurance.

Obama was then forced to acknowledge the mistakes that accompanied the implementation of his reform. He had to delay cancelling insurance policies for a year.

### **Rising**

After its initial difficulties, the reform proved to be a success, leading to a 7 percentage point drop in the number of uninsured people. Thus, in March 2015, the American administration highlighted a "historic reduction" in the number of Americans without health insurance: "the proportion of uninsured fell from 20.3% to 13.2% of the population between the third quarter of 2013 and the first quarter of 2015 [22]".

All states have seen a decline in the proportion of uninsured. But the decline has not been uniform. It has been much greater in those states that decided to extend *Medicaid* access as part of the reform and sought to encourage their uninsured residents to take out insurance, such as West Virginia, where the proportion of uninsured people fell from 20 per cent in 2013 to 6.8 per cent in 2016. On the contrary, the proportion of uncovered individuals has declined little in the southern, highly republican states, which have implemented the reform with great resistance [25].

Often, you learn that you are eligible for *Medicaid* when you fill out a health insurance application on your ACA health insurance exchange. If the exchange determines that you are eligible for *Medicaid* in your condition, it will forward this information to *Medicaid*, beginning the *Medicaid* application process. Since you submitted your initial health insurance application to an *Obamacare* health insurance exchange, it can be confusing when you end up receiving an *Obamacare* private plan.

The Trump administration is asking the *Supreme Court* to repeal *Obamacare* (health insurance - introduced by former President Barack Obama - which provided additional insurance for nearly 20 million Americans).

### **Failed repeal by Donald Trump then retry**

After his investiture, Donald Trump signed an order-in-council to repeal the *Affordable Care Act*, commonly known as the *Obamacare Act*. This decree is all the more symbolic as it is the first one signed by Donald Trump since he officially took office. This repeal is symbolically perceived as a break with the previous government [26]. However, in the face of opposition from the House of Representatives (although with a Republican majority), the text aimed at repealing *Obamacare* is finally withdrawn on Friday, 24 March 2017, at the request of the new president, who is suffering his first major political setback. On 4 May 2017, the House of Representatives narrowly passed a bill to repeal *Obamacare*, but the bill was rejected by the Senate on 28 July following a decisive vote by Republican Senator John McCain, who joined two of his Republican colleagues in voting against the repeal of *Obamacare*. On 13 October 2017, Donald Trump issued a new decree to circumvent *Obamacare*.

Finally, Donald Trump changed his tactics to repeal the *Affordable Care Act* by supporting legal initiatives against it, particularly in Texas. On the other hand, by making a hobbyhorse for the US presidential elections of 2020, promising an effective repeal if he is re-elected.

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