thousands of businesses that already offer their employees health insurance are getting tax credits for doing the right thing because of ObamaCare.

A new study shows 17 million Americans have also qualified for tax credits to purchase coverage and many more are eligible for Medicaid because of ObamaCare.

Unfortunately, 5 million people living in States that did not expand Medicare eligibility are left out in the cold. It is shameful that Americans who simply want access to lifesaving medical care will be denied insurance for political reasons.

There is no better example of that than Texas. They have far more people who are eligible for Medicaid coverage who will not get it. That is unfortunate. We know that healthcare.gov is not perfect. I know that ObamaCare is not perfect. But ObamaCare is worth more than a Web site, and whenever Republicans are willing to stop complaining and are willing to start working to improve the law, Democrats are ready and willing to work with them.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER (Ms. HEITKAMP). The Republican leader is recognized.

OBAMACARE

Mr. MCCONNELL. Madam President, nearly every day we see evidence of more Americans losing their health coverage. Just take a look at this map right here to my right—105,000 losing their coverage in Idaho; 215,000 in Pennsylvania; 330,000 in Florida. Out in California it is getting close to 1 million. All of these people have lost their health coverage.

In my home State of Kentucky, which has been frequently referred to by some as a success story, let's get the facts straight: 280,000 people—probably on a per capita basis more than any other State in America—280,000 folks are losing their private insurance as a result of ObamaCare, despite the President's repeated promises that such a thing could not possibly happen. That compares, by the way, with only about 5,000 who have been able to sign up for new private care on the Kentucky exchange.

Let's go over that again. In my State, 280,000 people have lost their health care policies while 5,000 have signed up on the exchange. Most of the people in Kentucky who are signing up for something new are signing up for Medicaid, for free health care. I think we can stipulate that if you are giving out free health care, you are going to have more people sign up. But on the exchanges in Kentucky, 5,000 have signed up, and 280,000 have lost their policies. In other words, so far about 56 times as many Kentuckians have lost their private insurance plans as have gotten new ones on the State exchange. That is hardly what most people would define as a success.

But, if ObamaCare has gotten off to a troubled start in Kentucky, the same is also true in many other parts of the country. That is why one of the most senior Democrats just said that ObamaCare is facing ''a crisis of confidence.'' I certainly agree with her.

She cited the ''dysfunctional nature of the Web site'' as just one reason for the ebbing confidence. She also pointed to the ''cancellation of policies'' and ''sticker shock'' as two additional points of concern—cancellation of policies and sticker shock.

She is right. Americans are far less concerned about a Web site than they are about the availability and affordability of their health care. The White House has tried to dismiss stories about folks losing insurance by saying they had lousy plans to begin with and that those Americans should be happy—they should be happy that the government is now forcing them to get a different one. In other words, the government is smarter than they are. You had a lousy plan to begin with, so I am going to make you get a different one.

But what so many have discovered is that ObamaCare is actually worse. Take Matthew Fleischer. He is 34 and recently wrote to the Los Angeles Times to share his experience with ObamaCare. Matthew recently found out he would be one of those 1 million or so Californians losing their health insurance. He says he is being funneled into an exchange plan that would drive his premiums up by more than 40 percent. Here is some of what he wrote:

> My old plan was as barebones as they came, so I assumed that even though the new plan would cost more, my coverage would improve under ObamaCare, at least marginally. It did not.
>
> Under my old plan my maximum possible out-of-pocket expense was $4,900. Under the new plan, I'm on the hook for up to $6,350. Copays for my doctor visits will double. For urgent care visits they will quadruple. Although slightly cheaper plans exist if I tried to shop around on the exchange, I will lose my dental coverage [if I choose] to switch. Needless to say, I am not pleased.

He is one of numerous people who have been blind-sided since ObamaCare's debut last month. Look, our constituents are worried. They feel deceived. They are very upset, and they should be—not only with the law itself but with the way the administration has basically brushed their concerns aside, just brushed their concerns aside, concerns it does not seem all that interested in solving.

If the past 2 weeks are any indication, the administration seems far more concerned with shifting the blame. That is why the President's PR team has been scrambling to readjust his now-debunked promise, ''If you like your plan, you can keep it.'' How many times did we hear the President say that over the last 3 years? But every new variation basically amounts to this—this is what it really amounts to: If the President likes your plan, you can keep it. That is the truth. If the President likes your plan, you can keep it; not if you like your plan, you can keep it.

The truth is, all these rhetorical adjustments only prove the point. They are a tacit admission that the administration did in fact mislead the public about ObamaCare in order to pass it. Many of our friends on the Democratic side are starting to realize this too, and they are starting to panic. We have seen some of the most vulnerable Senators even putting forward proposals that might allow some folks to keep their plan.

From a policy perspective, we Republicans welcome that. We have long argued that Americans should be able to purchase the plans that suit their needs, not just the plans that meet with the President's approval. But the concern these Democrats are now showing seems hard to take seriously when you consider that they have continued to support ObamaCare for so long, even as Republicans, health officials, and policy experts across the country warned that exactly what is happening would happen. The fact is that back in 2010 the entire Democratic caucus voted against legislation that would have specifically allowed the Americans now losing their plans to keep them. I will say that again. Back in 2010 the entire Democratic caucus voted against legislation that would have specifically allowed the Americans now losing their plans to keep them.

This doesn't mean Republicans won't now consider good legislative proposals. Of course we will. But for Senators looking to absolve themselves of past ObamaCare mistakes, there is only one escape, and it begins with repealing ObamaCare, and it ends with working together on bipartisan reforms that can actually work.

The White House keeps promising Americans that once healthcare.gov is fixed, everybody's going to love ObamaCare, but it is hard to see how that could possibly happen. An IT guy is not going to give Americans their health care plans back. An IT guy is not going to make ObamaCare premiums any more affordable or its coverage any better. An IT guy is not going to allow Americans to keep seeing the same doctors they like or continue to go to hospitals that deliver the care they want. Let's not forget that there is no software fix for undoing the damage this law has already inflicted on the paychecks and lost hours of our constituents. There is no string of code for repairing ObamaCare's harm to jobs and to our country.

The President could not be more right when he says ObamaCare is about more than a Web site. It sure is. I could not agree more. It is about people. It is about the people we represent, folks such as Matthew Fleischer and Edie Sundby, whom I mentioned. Edie is

battling stage IV gallbladder cancer and says that because of ObamaCare she is about to lose access to the kind of affordable care she credits with keeping her alive for the past several years. It is about folks like a 40-year-old constituent of mine named Mark. Mark owns a small business and thought he would be able to keep his current insurance, but then he got a letter from his insurer terminating the plan anyway. After looking at his options on the Kentucky exchange, he discovered that his Kentucky premiums would rise by 300 percent. It is not right, and it is not fair.

Here is an important lesson: ObamaCare would not be law today if the President and his allies in Congress had told the truth about the consequences it would bring. People like Edie, Matthew, and Mark would not be in the troubling circumstances they are in now if the President had simply been honest about ObamaCare.

The President can keep talking about a Web site if he wants, but Republicans are going to keep fighting for the middle-class Americans who are suffering under this law because that is where the focus should be.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

EMPLOYMENT NON-DISCRIMINATION ACT OF 2013

The PRESIDING OFFICER. Under the previous order, the motion to proceed to S. 815 is agreed to, and the clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 815) to prohibit the employment discrimination on the basis of sexual orientation or gender identity.

The Senate proceeded to consider the bill, which had been reported from the Committee on Health, Education, Labor, and Pensions, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Employment Non-Discrimination Act of 2013''.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to address the history and persistent, widespread pattern of discrimination, including unconstitutional discrimination, on the bases of sexual orientation and gender identity by private sector employers and local, State, and Federal Government employers;

(2) to provide an explicit, comprehensive Federal prohibition against employment discrimination on the bases of sexual orientation and gender identity, including meaningful and effective remedies for any such discrimination; and

(3) to invoke congressional powers, including the powers to enforce the 14th Amendment to the Constitution, and to regulate interstate commerce pursuant to section 8 of article I of the Constitution, in order to prohibit employment discrimination on the bases of sexual orientation and gender identity.

SEC. 3. DEFINITIONS.

(a) IN GENERAL.—In this Act:

(1) COMMISSION.—The term ''Commission'' means the Equal Employment Opportunity Commission.

(2) COVERED ENTITY.—The term ''covered entity'' means an employer, employment agency, labor organization, or joint labor-management committee.

(3) DEMONSTRATES.—The term ''demonstrates'' means meets the burdens of production and persuasion.

(4) EMPLOYEE.—

(A) IN GENERAL.—The term ''employee'' means—

(i) an employee as defined in section 701(f) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(f));

(ii) a State employee to which section 302(a)(1) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16b(a)(1)) applies;

(iii) a covered employee, as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301) or section 411(c) of title 3, United States Code; or

(iv) an employee or applicant to which section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16(a)) applies.

(B) EXCEPTION.—The provisions of this Act that apply to an employee or individual shall not apply to a volunteer who receives no compensation.

(5) EMPLOYER.—The term ''employer'' means—

(A) a person engaged in an industry affecting commerce (as defined in section 701(h) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(h)) who has 15 or more employees (as defined in subparagraphs (A)(i) and (B) of paragraph (4)) for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but does not include a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986;

(B) an employing authority to which section 302(a)(1) of the Government Employee Rights Act of 1991 applies;

(C) an employing office, as defined in section 101 of the Congressional Accountability Act of 1995 or section 411(c) of title 3, United States Code; or

(D) an entity to which section 717(a) of the Civil Rights Act of 1964 applies.

(6) EMPLOYMENT AGENCY.—The term ''employment agency'' has the meaning given the term in section 701(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(c)).

(7) GENDER IDENTITY.—The term ''gender identity'' means the gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual, with or without regard to the individual's designated sex at birth.

(8) LABOR ORGANIZATION.—The term ''labor organization'' has the meaning given the term in section 701(d) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(d)).

(9) PERSON.—The term ''person'' has the meaning given the term in section 701(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(a)).

(10) SEXUAL ORIENTATION.—The term ''sexual orientation'' means homosexuality, heterosexuality, or bisexuality.

(11) STATE.—The term ''State'' has the meaning given the term in section 701(i) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(i)).

(b) APPLICATION OF DEFINITIONS.—For purposes of this section, a reference in section 701 of the Civil Rights Act of 1964—

(1) to an employee or an employer shall be considered to refer to an employee (as defined in subsection (a)(4)) or an employer (as defined in subsection (a)(5)), respectively, except as provided in paragraph (2) of this subsection; and

(2) to an employer in subsection (f) of that section shall be considered to refer to an employer (as defined in subsection (a)(5)(A)).

SEC. 4. EMPLOYMENT DISCRIMINATION PROHIBITED.

(a) EMPLOYER PRACTICES.—It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to the compensation, terms, conditions, or privileges of employment of the individual, because of such individual's actual or perceived sexual orientation or gender identity; or

(2) to limit, segregate, or classify the employees or applicants for employment of the employer in any way that would deprive or tend to deprive any individual of employment or otherwise adversely affect the status of the individual as an employee, because of such individual's actual or perceived sexual orientation or gender identity.

(b) EMPLOYMENT AGENCY PRACTICES.—It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of the actual or perceived sexual orientation or gender identity of the individual or to classify or refer for employment any individual on the basis of the actual or perceived sexual orientation or gender identity of the individual.

(c) LABOR ORGANIZATION PRACTICES.—It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of the actual or perceived sexual orientation or gender identity of the individual;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive any individual of employment, or would limit such employment or otherwise adversely affect the status of the individual as an employee or as an applicant for employment because of such individual's actual or perceived sexual orientation or gender identity; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) TRAINING PROGRAMS.—It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because of the actual or perceived sexual orientation or gender identity of the individual in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) ASSOCIATION.—An unlawful employment practice described in any of subsections (a) through (d) shall be considered to include an action described in that subsection, taken against an individual based on the actual or perceived sexual orientation or gender identity of a person with whom the individual associates or has associated.

(f) NO PREFERENTIAL TREATMENT OR QUOTAS.—Nothing in this Act shall be construed or interpreted to require or permit—

(1) any covered entity to grant preferential treatment to any individual or to any group because of the actual or perceived sexual orientation or gender identity of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any actual or perceived sexual orientation or gender identity employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such actual or perceived sexual orientation or gender identity in any community, State, section, or other