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Obamacare: Not Settled Law

A recent Congressional Research Service (CRS) report confirmed that President Obama signed 14 laws that amend, rescind, or repeal components of his health care law – and also delayed at least five key provisions of the law by administrative fiat.

While the President and Washington Democrats say Obamacare is settled law, that's not the case. The President has unilaterally rewritten the law on five different occasions.

Consumer Out-Of-Pocket Costs Cap Delayed

In 2009, President Obama promised his health care plan would "place a limit on how much you can be charged for out-of-pocket expenses, because in the United States of America, no one should go broke because they get sick." But in August, the New York Times revealed that the Obama Administration had covertly delayed, until 2015, the provision capping consumers' out-of-pocket spending.

Some employers have different insurance policies – for instance, one for major medical and another for prescription drugs. Obamacare requires all of those benefits be placed under the same out-of-pocket cap ($6,300 per year for an individual and $12,700 per year for a family). The Administration's delay allows the cap to apply to each coverage area separately. The policy change has been described on the Labor Department's web site since February, "but was obscured in a maze of legal and bureaucratic language that went largely unnoticed," according to the Times.

Employer Mandate Reporting Requirements Delayed

The President's health care law contains a mandate requiring employers with 50 or more employees to offer government-approved insurance or pay a tax of $2,000 per worker. Employers that offer health insurance deemed unaffordable (the cost is more than 9.5 percent of the employee's family income) will pay a $3,000 tax for every full-time worker who gets a subsidy in the exchange.

Before the July 4th holiday this year, the Obama Administration's Assistant Secretary of Treasury issued a blog post announcing the President planned to delay for one year his health care law's employer mandate. This was not just a "tweak" as described by the President.

The economic impacts of the delay are staggering:

- The CBO and the Joint Committee on Taxation estimate the Administration's employer mandate delay will increase the budget deficit by $12 billion.
- In its May 2013 baseline projection, CBO estimated that the health care law's insurance coverage provisions will cost $1,363 billion from 2014 to 2023. Due to the Administration's delay, CBO and JCT now estimate the net cost will be $1,375 billion – $12 billion above the previous projection.
- Employer tax penalties assessed in 2014 are expected to drop by $10 billion.
- The federal government is expected to spend an additional $3 billion on exchange subsidies.
- CBO and JCT estimate one million fewer people will have employer sponsored health insurance in 2014.
- An increase in taxable compensation – because fewer people will have employer-based coverage – will generate about $1 billion in revenue.

CBO estimates the employer mandate will cost job creators $140 billion in tax penalties over 10 years (2014-2023). Experts confirm this tax will raise the cost to hire new workers. To avoid being hit by the employer mandate tax, businesses plan to limit employee hours and decrease employee wages. It leaves them with three bad options: Offer government-approved health insurance at high cost. Pay the tax penalty, because it is less expensive than offering health insurance – dumping workers into government exchanges. Keep the number of full time employees below the tax threshold of 50 by laying off workers, moving to more part-time employees, or not hiring.

Consumer Income and Insurance Status Verification Requirements Delayed

Three days after the President announced plans to delay the law's employer mandate, the Administration also quietly revealed yet another significant delay. Buried in 606 pages of regulations, the Administration postponed a requirement that state insurance exchanges verify either people's annual household income or that they get affordable insurance coverage from their employer. When a person applies for an exchange subsidy, states can just accept it based solely on the honor system.

On August 1, 2013, Gary Cohen, the director of CMS' Center for Consumer Information and Insurance Oversight, testified that CMS was going to be "sampling 100 percent" of people applying for coverage. People would have their income verified before receiving a federal insurance subsidy for health coverage. Given the Administration's poor track record when it comes to missed deadlines, questions remain if it will keep this promise. That is why House and Senate Republicans introduced legislation requiring the HHS Inspector General certify that a program to successfully and consistently verify household income be operational before any federal subsidies are issued.

SHOP Employer Choice Requirement Delayed

The President promised small businesses that his health care law would lower employer costs. In fact, the White House repeatedly touted the law's Small Business Health Options Program (SHOP) as a tool employers would have at their disposal, allowing them to offer affordable health insurance to their workers. According to the New York Times, the SHOP program "was portrayed as a major advantage of the new health care law, mentioned often by White House officials and Democratic leaders in Congress as they fought opponents of the legislation."

Fast forward three and a half years. The Administration announced plans to delay the SHOP program's implementation citing operational challenges. The Times went on to say, "Unable to meet tight deadlines in the new health care law, the Obama administration is delaying parts of a program intended to provide affordable health insurance to small businesses and their employees – a major selling point for the health care legislation." Even though the Obama Administration had more than sufficient time to prepare, it finally had to admit it couldn't get the job done.

Basic Health Plan Option Delayed

Earlier this year, the Administration announced the Basic Health Plan (BHP) would be delayed until January 1, 2015 – one year later than outlined in the health care law. Then in September, CMS issued a proposed regulation outlining the BHP's framework. The BHP program was designed to help states provide coverage support for people who do not qualify for Medicaid, but are unable to afford pricy health insurance plans in the government exchanges.

Implementation of the President's health care law has been marked by a pattern of delays, missed deadlines, broken promises, special deals, and exclusive waivers. But in ignoring or rewriting parts of the law, the President bypassed the Constitutional process. He has unsettled the law.