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McDonald's ObamaCare Deal Violates Rule of Law

Posted By [Jeff Perren](#) On October 11, 2010 @ 4:11 pm In [Healthcare](#), [Obama](#), [Politics](#), [Regulation](#) | [74 Comments](#)

"...to the end it may be a government of laws and not of men."

John Adams, Samuel Adams and James Bowdoin, Constitution of the Commonwealth of Massachusetts, 1780

In a blatantly unconstitutional move, the Feds have let McDonalds off the hook from some of ObamaCare's requirements. This violation of the Equal Protection clause is just one more reminder, as if we needed it, that D.C. is now completely ignoring the rule of law and deciding issues based on political pressure and pull.

"McDonald's and 29 other firms have [received waivers](#) ^[1] from a requirement to up the minimum benefit covered by insurance, making it possible for their employees to continue to buy low-cost coverage. But thousands of other workers are not exempted and will not be able to afford the government's idea of good insurance.

Starting next year, insurers will be required to cover up to \$750,000 in costs, ratcheting up over the next few years so that coverage must be unlimited by 2014. The administration calls that a consumer protection, but it only protects you if you can afford it.

Firms that hire low-wage workers, such as McDonald's, can offer "mini-med" plans that provide lower benefits than a typical comprehensive health plan at a correspondingly lower cost. By far the most popular mini-med plan offered by McDonald's costs \$24.30 a week and covers doctor visits, hospital stays, and some prescription drugs, up to \$5,000

each year.

Raising the benefit cap to \$750,000 would put insurance out of reach for workers who clearly want coverage. They are buying that insurance with their own money, without the government telling them they have to. Fortunately, they can now keep that coverage, at least for next year.

True, that's always gone on. But it used to be hidden, and when discovered heads rolled. Or, at least newspaper headlines made the perpetrators uncomfortable. Now, it's done in the open and without apology. Though [Sebelius did offer this quasi-defense](#) ^[2]: "We can't waive a regulation that doesn't exist."

That, after all, is one of the problems. As [Michael Cannon describes it](#) ^[1] at Cato: "The law they passed is a shell of a law," says Michael Cannon, director of health-policy studies at the libertarian Cato Institute in Washington. "Most of the rules have yet to be written."

That's one reason so many businesses are holding off on investments and hiring. They have no idea what's coming. But McDonald's needn't worry. High-profile firms can simply ask to opt out and, because it would embarrass the Administration (especially shortly before the election) for so many low-pay workers to get booted off their health insurance plans, they get a free pass.

Do I think McDonald's should have to follow that law? Of course not. No firm should. It's impractical, immoral, and unconstitutional. But letting some firms opt out clearly demonstrates that the rules are not uniform, one of the keystones of the rule of law. And, that simply increases the rampant political corruption in D.C.

Far from being a backdoor deal, this sort of thing is actually built in to the legislation. As [Caroline Baum outlines it in a Bloomberg editorial](#) ^[3]

The explanation of the purpose, background and process for filing a waiver isn't much better. The gist of it is this:

- **the Secretary of HHS is authorized to determine the minimum coverage limits;** [emphasis added]
- **the Secretary of HHS is authorized to waive those limits if compliance with them "would result in a significant decrease in access to benefits or a significant increase in premiums," according to the memo.** [emphasis added]

The state insurance commissioners can give the secretary advice, Antos says, but she doesn't have to take it.

That pretty much describes the operating premise for the legislation that changes health care as we know it.

Bad enough to pass a bad law, one that we can all push to repeal *in toto* asap. Far worse to apply it selectively, granting a royal privilege to those with something politically important to trade. It undermines the separation of powers, grants still more power to an already out-of-control Executive Branch, and makes the law nothing more than the thinnest veneer over naked fascism.

Given the nature of this sort of quasi-legislation, things like this are bound to happen. There's no way to apply it uniformly, since it's designed to separate individuals into favored and punished classes. And, true to form, those allegedly intended to be the (admittedly, unjustly) punished soon find a way to become the favored. Such is the inevitable outcome of Progressive legislation.



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URLs in this post:

[1] received waivers: <http://blog.american.com/?p=20835>

[2] Sebelius did offer this quasi-defense: <http://biggovernment.com>

[3] Caroline Baum outlines it in a Bloomberg editorial: <http://www.bloomberg.com/news/2010-10-08/mcdonald-s-gets-taste-of-obama-sausage-making-commentary-by-caroline-baum.html>

[4] Image: #

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