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# McDonald's Offers Taste of Obama Sausage-Making: Caroline Baum

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By Caroline Baum

Oct. 8 (Bloomberg) -- "We have to pass the bill so that you can find out what is in it." -- House Speaker Nancy Pelosi, March 9, 2010.

She wasn't kidding. The public got to peek under the hood last week when the Wall Street Journal reported that McDonald's Corp. wanted out: out of a requirement in the new health-care law that compels employers to spend 80 to 85 percent of premiums on medical benefits.

Who knew?

For McDonald's mini-med health-care plan, a low-cost, limited plan covering about 30,000 hourly fast-food workers, the minimum medical loss ratio was economically unfeasible. The company asked for a waiver, according to memos provided to the Journal.

It turns out lots of other companies are seeking waivers for limited benefit plans -- along with some states, like Maine, with a small number of insurers, according to Joseph Antos, a health-care scholar at the American Enterprise Institute, a conservative think tank.

Another group is lining up to apply for exclusions from the minimum annual cap on benefits that is part of the law. No wonder the Department of Health and Human Services had to put out a memo on waiver guidance. The subject line alone is intimidating:

"OCIIO Sub-Regulatory Guidance (OCIIO 2010-1): Process for Obtaining Waivers of the Annual Limit Requirements of PHS Act Section 2711"

Shell Game

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;

-- 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.

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.

"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."

Who knew?

"If you like your health-care plan, you can keep your health-care plan." -- President Barack Obama, Aug. 11, 2009, Aug. 12, 2009, Aug. 13, 2009, etc., etc., etc.

That pledge "should have come with a disclaimer: Offer not valid for low-income workers," Cannon writes in a recent blog post.

The offer is also subject to the discretion of the HHS secretary.

Discretion may be the better part of valor, but it's not something businesses can rely on for planning purposes. Corporations are already hunkered down because of (take your pick) weak demand, hurt feelings as a result of presidential persecution, or uncertainty over future health-care costs and tax rates. It won't help business confidence to learn the HHS secretary can make and break rules on a case-by-case basis.

"The secretary can decide what you have to purchase, but if you are in a presidential swing state, the secretary has the authority to undo everything she just did," Cannon says.

Cabinet secretaries are political appointees. Policy has become increasingly politicized. The role of the executive branch is not to make or interpret laws.

"I will not sign health-insurance reform that adds even one dime to our deficit over the next decade." -- President Obama

Who knew that adding 30 million people to the health-care rolls would bend the cost curve -- in the wrong direction?

Anyone with a basic knowledge of economics. The law of supply and demand teaches us that when consumers want to buy more (health care, for example) at any given price than they did before, the demand curve shifts out, to the right, representing a higher equilibrium price and higher quantity demanded.

At the same time, providers are responding to the government's increased intrusion by running the other way, refusing to accept new Medicare patients as the government cuts reimbursements.

Everywhere you turn there's a story about insurance premiums rising and employers shifting more of the cost onto employees. A new study by human-resources consultants Hewitt Associates LLC projects an average premium increase of 8.8 percent in 2011, the biggest in five years.

Government of Laws

Costs associated with ObamaCare are just one of the reasons, according to Hewitt. (The others are rising medical claims costs and an aging population.) And it shouldn't come as a surprise that, confronted with a big unknown, companies hope for the best outcome and price for the worst.

"...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

The McDonald's kerfuffle shined a light on the health-care legislation. With many of the rules to be written and many of the provisions to be phased in between now and 2014, the public got to see how the sausage was made and who gets to make it.

And once again, the Obama administration found itself on the defensive, with HHS Secretary Kathleen Sebelius claiming the Journal story about McDonald's dropping its mini-med coverage was "flat out wrong."

"We can't waive a regulation that doesn't even exist," Sebelius said.

Who knew? Well, pretty much anybody who was paying attention.

(Caroline Baum, author of "Just What I Said," is a Bloomberg News columnist. The opinions expressed are her own.)

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