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HHS Waivers Incite Controversy

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As the Department of Health and Human Services proceeds with implementation of President Obama's health care law, the granting of hundreds of waivers from the law has become a controversial issue.

As of January, HHS Secretary Kathleen Sebelius had granted more than 700 waivers for companies and organizations. Roughly 40 percent of the waivers granted thus far have been for unionized employees.

Michael Cannon, director of health policy studies at the Cato Institute, says the waiver process is "an admission of guilt" by the administration.

"The law is going to increase, and is already increasing, premiums, and it is forcing people to lose their current coverage," Cannon said.

Unusual Regulatory Flexibility

Ed Haislmaier, senior research fellow in health policy studies at The Heritage Foundation, questions whether the waiver process is being used appropriately. He compiled the changes to Title 27 of the Public Health Service Act by Obamacare, and then looked at the corresponding regulations written by HHS.

"While the statute gives HHS flexibility, nowhere in it does it say that HHS is to use a waiver program to exercise that flexibility, and I think that's the point that Congress needs to latch on to," Haislmaier said.

Haislmaier notes Congress left much of the impact of Obamacare up to HHS.

"Consider, for example, the subsection that says there are going to be no annual limits. But then it says that between now and 2014, HHS can have this sort of phased in, restricted annual limit," Haislmaier says. "Congress gave HHS discretion to implement the statute."

A big reason for the high number of waivers, according to Haislmaier, is that HHS itself is trying to figure out the implementation process, creating a high degree of uncertainty.

"Congress is legislating aspirations. And in this case what they're saying is, 'Well, we don't want the coverage to have any annual limits but we don't want anybody's premiums to go up as a result.' Then they tell HHS to figure out what to do with that," Haislmaier said. "So HHS takes that language and implements the phase-in, then says 'If you've got a problem, just come to see us and we'll give you a waiver.'"

Numerous Mini-Med Waivers

Low wage workers will be covered under many of the waivers, particularly those who employ so-called "mini-med" plans designed to have lower monthly premiums and limited coverage, Cannon says.

"Since their workers are low-skilled and therefore low-wage, and they're generally young, they don't require a lot of medical care. They might like some protection against the sort of expenses that they might incur, which means generally low-dollar expenses, and the mini-med plans do that," Cannon said. "They do actually provide some benefits beyond what the insurer will reimburse."

'Rule of Favor'

Merrill Matthews, a resident scholar at the Institute for Policy Innovation, says the business community is demanding flexibility as they struggle to comply with the new law.

"HHS has argued, and it's not unreasonable, that there are companies that are going to have trouble making it right now, while transitioning over, and so we want to provide some flexibility," Matthews said.

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"The other side of the coin is that it looks odd granting so many waivers," he added. "On the one hand, for instance on Medicaid reform, we want the federal government to grant the states more flexibility to do what they can do to operate under the legislation. But when you grant that many waivers, it almost looks not like a rule of law, but of favor, as you make decisions on who will get a pass on this law."

Haislmaier says there is no end in sight for the rising tide of waivers.

"This is an entirely arbitrary, discretionary exercise going on at HHS as the demands flow in. This is what Congress ought to get after them about, saying, 'This is not the rule of law, you're not going to have a waiver process, and we're going to require you to write this clearly,' Haislmaier concludes. "The reason HHS is implementing waivers is they don't want to admit that Obamacare threw people out of their coverage."

Loren Heal (loren.heal@gmail.com) writes from Neoga, Illinois.

Internet Info

John Vinci, "The Six Types of Obamacare Waivers": http://www.heartland.org/healthpolicy-news.org/article/29291/The_Six_Types_of_Obamacare_Waivers.html

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