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Obamacare employer mandate bumped 2015, raises eyebrows

By: Eric Schulzke – July 3, 2013

In a move the critics suspect is meant to delay bad news until after the next election, the Treasury Department announced this week that it would delay requirements for employers to provide health coverage until 2015, citing logistical challenges.

In an unusual move, the Treasury Department, which oversees IRS implementation of the health care mandates, quietly announced the shift in a blog post.

"The Administration is announcing that it will provide an additional year before the ACA mandatory employer and insurer reporting requirements begin," the blog post said, "This is designed to meet two goals. First, it will allow us to consider ways to simplify the new reporting requirements consistent with the law. Second, it will provide time to adapt health coverage and reporting systems while employers are moving toward making health coverage affordable and accessible for their employees."

"This provides vital breathing room. I think businesses are relieved there's more time to get this right," James A. Klein, president of the American Benefits Council, an employer benefits advocacy group, told CNN Money.

According to the Treasury statement, all other aspects of Obamacare remain on track, including the individual mandate and the exchanges that feed that market. But skeptics wonder if that can even work.

"This is just the beginning. The employer mandate is a cornerstone of the entire Obamacare exchange system," Timothy Finnell, president of the Group Benefits health consulting in Memphis, Tenn., told CNNMoney. "There are going to be people who get a subsidy and end up costing taxpayers a whole lot more than anticipated," he said.

Then there is the question of legal authority. Does the administration even have power, under the statute, to delay the rules? Observers on both sides of the political spectrum think not.

Michael Cannon at the Cato Institute, a critic of Obamacare, notes the emphatic language in the law:

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to months beginning after December 31, 2013.

"It is hard to see how the will of the people's elected representatives — including President Obama, who signed that effective date into law — could have been expressed more clearly, or how it could be clearer that the IRS has no legitimate power to delay the mandate," Cannon wrote.

Cannon argues that the law as a whole will be rendered inoperable by the delay, because the employer mandate is so intimately tied to the rest of the law that the IRS cannot delay it without delaying the rest of Obamacare.

"The law requires employers to report information to the IRS on their coverage offerings, both to determine whether the employer will be subject to penalties and whether its employees will be eligible for credits and subsidies," Cannon wrote.

At the Washington Post, meanwhile, Ezra Klein is a staunch supporter of the law, but a harsh critic of the employer mandate portion of it. He argues that the regulatory delay is an "end-run of the legislative process. The law says the mandate goes into effect in 2014, but the administration has decided to give it until 2015 by simply refusing to enforce the penalties."

Klein points to a brief by the Center on Budget and Policy Priorities as to why the employer mandate serves as a disincentive to hire, especially impacting lower-skilled workers who need employment the most.