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Not Qualified For Obamacare's Subsidies? Just Lie -- Govt. To Use 'Honor System' Without Verifying Your Eligibility

By: Avik Roy – July 6, 2013

If you thought the delay in the employer mandate was bad news for Obamacare, just wait. On Friday, Sarah Kliff and Sandhya Somashekhar of the *Washington Post* discovered that the Obama administration had buried in the *Federal Register* the announcement that the government won't be able to verify whether or not applicants for Obamacare's insurance exchange subsidies are actually qualified for the aid, in the 16 states that are setting up their own exchanges. Instead, until at least 2015, these states will be able to "accept the applicant's attestation [regarding eligibility] without further verification."

Without employer mandate, Feds to rely on applicant 'attestations'

If you've been following the latest news around Obamacare, you know that on Tuesday evening, just before the Independence Day holiday, the White House announced that it would be delaying the implementation of the health law's employer mandate—requiring all firms with more than 50 employees to provide health coverage to their workers—until 2015.

I, and several others at the time, said "wait a minute." According to the law, you aren't eligible for Obamacare's subsidies if your employer has offered you what the government considers "affordable" coverage. But if employers are no longer going to report whether or not they've offered "affordable" coverage, how can the government verify whether or not workers are eligible for subsidies?

Now we know the answer. The government is going with what Kliff and Somashekhar call "the honor system." "We have concluded that the…proposed rule is not feasible for implementation for the first year of operations," say the Centers for Medicare and Medicaid Services. "The exchange may accept the applicant's attestation regarding enrollment in an eligible employer-sponsored plan…without further verification, instead of following the procedure in §155.320(d)(3)(iii)."

And it's not just there. The feds will also allow people to gain means-tested subsidized coverage on the exchanges without having to…test their means. "For income verification, for the first year of operations, we are providing Exchanges with temporarily expanded discretion to accept an attestation of projected annual household income without further verification."

Presumably, since the IRS knows your income, it could claw back these excess subsidies afterwards, if it chooses to. But the IRS' record of impartiality is, shall we say, contested. And people who don't file tax returns—such as those with incomes below the poverty line—would probably not be subject to that enforcement mechanism. That's a route to enhanced benefits for poor residents of states thatdon't expand Medicaid.
Subsidize first, ask questions later?

The goal here is plain as day. The Obama administration is laser-focused on making sure that enough Americans enroll onto Obamacare-subsidized health insurance platforms, because if they do, it will be politically impossible for Republicans to repeal Obamacare in the future.

Politics ain't beanbag, they say. But deliberately encouraging tens of billions of dollars of waste, fraud, and abuse in order to achieve a political objective is profoundly immoral. It's a breach of faith with the hard-working taxpayers whose paychecks are being harnessed to a cause many of them don't support.

My *Apothecary*colleague Chris Conover has been out front with the argument that the entirety of Obamacare should be delayed for a year until the severe operational problems with the law have been sorted out. Not long ago, I thought this was a quixotic idea, one that the White House would never accept, because of their aforementioned political objective of enrolling as many people under Obamacare as they can.

But at this point, it's hard to argue that even Obamacare's supporters will benefit from activating this law in 2014. A smooth rollout of the law at least has a fighting chance of winning over the skeptics. Between the administration's implementation of rate shock and its encouragement of outright fraud, conservative opposition to Obamacare will only intensify.

These problems will make it harder for advocates of market-based insurance exchanges—like me—to bridge the partisan divide. For true health reformers, a delay wouldn't just be the responsible thing to do. It would be the ethical thing to do.

UPDATE 1: As I go back and forth on Twitter with a few people, it becomes clear that a key ramification of this announcement is what it means for uninsured people who were slated for Obamacare's Medicaid expansion, who live in states that don't expand Medicaid. Effectively, states no longer need to expand Medicaid, because this newly Medicaid-eligible population can now sign up for the exchanges, at no cost to the state, and know that their incomes won't be verified by the IRS (because their incomes are too low to file tax returns).

That is to say, if your income is at 90 percent of the federal poverty level, and you live in Texas, where the state isn't expanding Medicaid, all you have to do is write on the form that your income is actually 105 percent of FPL, and magically, you qualify for the exchange. I could easily envision certain activist groups signing people up for coverage this way. The upshot is that it could dramatically increase exchange subsidy spending, but also lower pressure for the Medicaid expansion.

UPDATE 2: In 2010, Peter Suderman of *Reason* wrote an insightful articleexploring these potential implementation land-mines. He notes that exchange eligibility verification in Massachusetts, under Romneycare, was a much simpler task than what faces the Obama administration:

> "Verifying eligibility for these subsidies means developing a rapid-response welfare apparatus that has the ability to instantly create detailed, accurate applicant profiles. "These exchanges will have to verify someone's eligibility for the exchange," says the Cato Institute's [Michael] Cannon. "They'll have to verify family size and income. They'll also have to determine if this person is a smoker. And they'll have to determine where they live, exactly."
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> Fast, accurate income verification presents a particularly serious difficulty. For one thing, ObamaCare requires subsidies to be based on family income, not individual income. So the process will have to include multiple family income streams, which means the government will have to check spousal salaries when determining eligibility. Tax returns are the most obvious verification method, but tax returns reveal only what someone made last year. They don't reflect the mid-year shifts that ObamaCare was intended to address, such as job losses that mean people can no longer obtain insurance through their employers and are newly eligible for subsidies. Yet states will have to create systems to account for such changes. "States are supposed to have data systems in place that can figure out this person's income and if they're qualified for federal subsidies and then apply that federal subsidy quickly to the plan of their choosing," [James] Capretta says. "That is a monumental undertaking. I don't think anyone has any earthly idea how this is going to happen."
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> ObamaCare's defenders might point to Massachusetts as a model, noting that the Bay State has run a similar insurance exchange since 2006. But Capretta argues that the challenge under the federal system is far greater than anything faced by designers in Boston. For one thing, he notes, the number of people in the Massachusetts exchange is "teeny tiny"—only about 163,000, according to the health policy–focused Kaiser Family Foundation—compared to the millions who are expected to be enrolled nationwide. Furthermore, Massachusetts has relatively few small employers. "Any state that has a

> huge number of small employers and individual entrepreneurs and small businesses," Capretta says, is "going to have floods of people into these exchanges."

Sharon Begley of Reuters quotes a number of experts who say that "the IRS will have a hard time policing that sort of conduct" [misrepresenting one's eligibility for exchange subsidies]:

> "The shift of employees to the exchanges could cost (the government) a boatload," said Nicholas Bagley, a law professor at the University of Michigan. "Some people who are ineligible for subsidies, because their employer offers affordable insurance, may attempt to get subsidies on the exchanges. The IRS will have a hard time policing that sort of conduct."
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> States running their own Obamacare exchanges are scrambling to figure out how to deal with the delay in the employer-reporting requirement.
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> California, said spokeswoman Anne Gonzales, "was planning to tap into information from large employers to verify employee health coverage. The exchange is currently evaluating how the delay in implementation of the large employer mandate will impact enrollment and verification."
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> Of course, a good deal of the information Americans send the IRS, such as the value of the household goods they donated to the Salvation Army, already relies on the honor system.
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> "Obviously the government has made the decision that they're willing to live with that," said Kendra Roberson, a healthcare lawyer at law firm Covington & Burling LLP, referring to an honor system for these aspects of the 2010 Patient Protection and Affordable Care Act.
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> The honor system may force the government to leave even more money on the table. The law imposes a penalty of $95, or 1 percent of household income, on people who fail to obtain coverage. But those whose employer-sponsored policy is unaffordable – defined as more than 8 percent of household income for purposes of penalty assessment – do not have to pay the penalty even if they do not buy insurance.
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> To check whether someone is truly exempt, the IRS has to know whether the employer offers coverage and at what price.
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> "If the IRS doesn't have information about the plans large employers offer, it will be very hard to verify that. It will be an honor system," said Michigan's Bagley. "It could cost the government some money" if individuals elude the penalty through error or dishonesty.

UPDATE 3: It's worth noting that this regulatory change applies to states that set up their own exchanges, not to the (mostly Republican-controlled) states that did not. In other words, the states that did what the Obama administration wanted them to do—set up their own exchanges—are the ones getting hosed here. Yuval Levinexpands on this point:

> As with the employer-mandate delay (to which it is the natural follow-up), this decision appears to have come as a surprise to the people most immediately affected by it—in this case the administrators of the state exchanges. The statement quoted above from the spokeswoman of the California exchange suggests the administrators of that exchange did not know about this new rule the day before it was released. It must come as both a great relief to them and something of a slap in the face, since they and their colleagues in other states have after all spent huge amounts of time and money trying to prepare the technological architecture for verification requirements from which they have now been released. After this eventful week, they must wonder what other "delays" are coming in low-key announcements late on Friday afternoons.

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NOTE: Cigna CI+0.24% (CI),WellPoint WLP+0.6% (WLP), Humana HUM+0.78%(HUM), UnitedHealth UNH+1.48% (UNH) and Aetna AET+1.1% (AET) are the largest publicly-traded sponsors of private health insurance. Some, but not all, of these insurers are participating in Obamacare's subsidized exchanges.