

## ObamaCare employer mandate delay stokes concerns about implementation

By: Sam Baker and Mike Lillis – July 4, 2013

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ObamaCare supporters say they can live with a one-year delay in the law's employer mandate — as long as the delays don't keep coming.

The decision to delay the healthcare law's employer mandate raised immediate questions about whether the rest of the law can be implemented on time. Republicans seized on the delay to argue that the law is unworkable, and to stoke speculation about delays in other important provisions.

Many of the law's supporters aren't thrilled with the delay, but said it might be worth it if it helps the administration tackle more important parts of the implementation effort.

"There is a prioritization here," said John McDonough, a Harvard University professor and former healthcare adviser to the late Sen. Edward Kennedy (D-Mass.).

The Treasury Department said it delayed the employer mandate because the policy was especially complicated. Businesses needed more time to figure out new reporting requirements and adapt to new rules for counting their full-time employees, the department said.

But while the employer mandate is indeed very complicated, it doesn't even come close to the intricacies of the law's cornerstone — new insurance exchanges that must determine whether people are subject to the law's individual mandate, help them buy insurance, and determine how big of a tax subsidy they should get to help cover their premiums.

Delays in those provisions, all of which are set to take effect between Oct. 1 and Jan. 1, "would be a cause for serious concern," McDonough said.

But he said the employer mandate doesn't rise to the same level.

Timothy Jost, a law professor at Washington & Lee University and a supporter of the healthcare law, also said getting the exchanges and individual mandate right is "much more important" than the employer mandate, and that's he not expecting a delay in any of those policies.

Still, to the law's critics, punting on an easier undertaking seems like a clear sign that all is not well in the implementation effort. Conservatives used the delay to question whether the administration is up to the task of having exchanges ready to go in every state by Oct. 1 — a deadline officials repeatedly vowed to meet.

“The administration doesn’t go around looking for ways to make implementation harder,” said Michael Cannon, a healthcare analyst at the Cato Institute. “This decision can only be understood as an effort to take the path of least resistance – and if this is the path of least resistance, then ObamaCare itself must be even more chaotic.”

Cannon questioned whether the administration will be able to enforce the individual mandate without the employer mandate, even without another formal delay.

Overall, McDonough said, it’s not surprising to see critics exploiting glitches in the implementation effort.

“Whenever there’s any news that’s not great, there is an instantaneous Greek chorus of critics,” he said.

McDonough said it’s “a lot of wishful thinking” to believe a one-year delay in the employer mandate will cascade into a bigger failure for the healthcare law.

A Democratic leadership aide also waved off sky-is-falling predictions about the implementation, saying Republicans have mischaracterized the employer mandate as a bigger deal than it is. The policy only applies to employers with 50 or more full-time workers.

"Republicans are running around telling everybody that this is some big scary thing coming, and they won't be impacted at all," the aide said.

But the administration can’t keep putting off the mandate without running into more severe consequences.

"It's fundamental to the way the law works," the aide said. "You have to have it eventually."

The penalties collected from employers that don’t provide healthcare are expected to raise about \$140 billion over the next 10 years, so Congress and the White House probably couldn’t afford to keep delaying the mandate, or to repeal it altogether.

But the revenues are limited in the first year, making a one-year delay more palatable. The employer mandate was also designed to prevent employers from dropping coverage more than it aimed to bring new people into the system.

Judith Solomon, vice president for health policy at the Center on Budget and Policy Priorities, a liberal policy group, predicted the delay will have little effect on coverage.

Democrats, who were initially silent about the announcement, are now emerging to cheer the delay as a smart policy move.

The Democratic leadership aide said the delay is "extremely helpful," both by offering affected businesses a longer transition period and by allowing Democrats more time to explain the law's intricacies to their constituents.

"Our members will see this as a positive development," the aide said. "It gives members

more time to explain everything."