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The Issue: Does delay of key Obamacare provision spell trouble ahead?

By: Marcella Kreiter- July 7, 2013

Obamacare, the derisive name for President Obama's signature healthcare reform law, held promise for millions of Americans who have been unable to find affordable insurance coverage for various reasons, the most heartbreaking of which is that they're already sick.

But with the announcement last week the administration is postponing the Affordable Care Act's key provision requiring employers to provide coverage or face $2,000 per employee fines, the future of the law appears in jeopardy. The question is how the announcement affects the measure's individual mandate, the provision requiring all Americans to obtain coverage, either through employers, Medicaid or insurance exchanges.

"The requirement that individuals obtain health insurance or pay a penalty -- which starts at $95 next year or 1 percent of household income, whichever is higher, and rises to $695 or 2.5 percent of household income in 2016 -- has not changed," AARP noted on its website. "But for workers whose employers delay plans to offer coverage, buying a health plan in the subsidized marketplaces known as exchanges might actually be a better deal than what they would have been offered."

Except for one tiny detail: As of May 28, 27 states had refused to set up exchanges, leaving it to the federal government to handle that aspect of the law, a Kaiser Family Foundation tracking survey indicates. The Jackson Hewitt Tax Service also notes the delay will have a positive effect on states' bottom lines, postponing the law's required Medicaid expansion.

The announcement issued by the Treasury Department last week said forcing employers with more than 50 full-time workers to provide health insurance would cause major problems that could actually jeopardize access to care rather than improve it and could cost jobs, something the fragile economy can ill-afford. As a result, the administration postponed the provision for a year to 2015, after the 2014 midterm elections, apparently hoping for a power shift in the House that would allow Congress to fix the law.

"We expect to publish proposed rules implementing these provisions this summer, after a dialogue with stakeholders -- including those responsible employers that already provide their full-time work force with coverage far exceeding the minimum employer shared responsibility requirements -- in an effort to minimize the reporting, consistent with effective implementation of the law," Mark Mazur, assistant treasury secretary for tax policy, said in a blog posting.

"Once these rules have been issued, the administration will work with employers, insurers, and other reporting entities to strongly encourage them to voluntarily implement this information reporting in 2014, in preparation for the full application of the provisions in 2015."

"The administration's decision is an admission that this law is a failure and that we still need to lower the cost of healthcare for all Americans -- which this job-killing law fails to do," House Ways and Means Committee spokeswoman Sarah Swinehart told Accounting Today.

At an April news conference, Obama hinted there would be problems with implementing the law.

"Even if we do everything perfectly, there will still be glitches and bumps," Obama said. "That's pretty much true of every government program that's ever been set up."

An April Gallup poll indicated small businesses are holding off on hiring, and in some cases cutting payrolls, fearing healthcare reform's impact. Some 41 percent indicated they have frozen hiring, 19 percent said they had reduced the number of employees and 38 percent said they had pulled back on expansion plans. The poll of 603 small-business owners had an error margin of 4 percentage points.

Additionally, Gallup reported Tuesday 52 percent of Americans disapprove of the ACA, up from 45 percent in November.

The conservative Heritage Foundation warned the decision "could cause federal spending on Obamacare exchange subsidies to soar," citing a Congressional Budget Office estimate the employer mandate would have raised $10 billion in 2014, money that will not now be available to subsidize the insurance exchanges.

"In its most recent economic forecasts in February, the CBO estimated that unemployment would average 7.8 percent in 2014," Heritage said in a release. "That number is nearly 3 percentage points higher than the CBO's estimate of 2014 unemployment at the time of Obamacare's passage. Because unemployment will be higher than the CBO first projected when Obamacare passed, firms will have more incentive to drop health insurance now while labor markets are more competitive and workers have fewer employment options.

"The CBO now projects that, if firms do drop health coverage, insurance subsidies on exchanges will average $5,290 per enrollee next year. By comparison, shortly after Obamacare passed, the CBO projected subsidies would average $3,970 in 2014. In other words, the projected average subsidy for 2014 has grown by one-third since the law passed."

The Cato Institute's Michael D. Tanner calls the decision the beginning of the "Obamacare train wreck."

"In postponing the employer mandate until after the 2014 mid-term elections, the Obama administration has tacitly admitted what critics of the law have long contended: that Obamacare is unworkable and would be a significant burden for American business and the economy at large," he wrote, and he said the decision creates a burden for individuals.

"In effect, the administration's decision shifts the cost from employers to workers," Tanner said. "This hardly seems fair, and may force the administration to rethink the individual mandate as well."