



Obamacare's regulatory surtax on exchange insurance plans

By: Philip Klein - December 3, 2012

Despite over 2,000 pages of legislative text, many key details of President Obama's national health care law were left up to regulators to work out, with Secretary of Health and Human Services Kathleen Sebelius given the lead role. The Obama administration wanted to avoid issuing potentially controversial health care regulations during an election year, but now that it's over, regulations are starting to roll out. In a news dump this past Friday afternoon, HHS released 373 pages of new insurance regulations, and buried on page 299 is a proposed 3.5 percent monthly "user fee" to be levied on the premiums collected by insurers who offer policies on the new government-run exchanges. Effectively, it's a regulatory surtax that will inevitably be passed onto individuals who purchase insurance on these new exchanges.

When Obamacare was written, Democrats envisioned new health care exchanges in all 50 states, plus the District of Columbia, in which individuals (based on their income level) would receive subsidies to purchase insurance that met federal regulatory specifications. Under Obamacare, no federal funds are supposed to be used to help run the exchanges after January 1, 2015 (this refers to operating costs, such as providing customer service, rather than subsidies helping individuals pay for insurance coverage). The initial assumption of lawmakers was that states would have to figure out a way to make these exchanges self-sustaining. But now, at least 17 states have decided to let the federal government set up exchanges in their states, and several more are expected to follow suit. So, HHS has now devised this new surtax to pay for the costs. An HHS spokeswoman insisted to the New York Times that the fee wouldn't translate into higher premiums. But basic economics teaches us that instead of absorbing these costs, insurers will pass them on to customers.

Michael Cannon of the Cato Institute has questioned whether the administration even has the authority to impose this new tax. In proposing the regulation, HHS claimed that the text of Obamacare "contemplates" such a user fee. But as Cannon points out, the law actually only suggested user fees as a possible option for the states, while making no mention of the federal government. The relevant portion of the health care law reads: "NO FEDERAL FUNDS FOR CONTINUED OPERATIONS. —In establishing an Exchange under this section, the State shall ensure that such Exchange is self-sustaining beginning on January 1, 2015, including allowing the Exchange to charge assessments or user fees to participating health insurance issuers, or to otherwise generate funding, to support its operations." Now that HHS officials are struggling to find ways to pay for exchanges — a cost they thought they'd be able to foist on states — they are claiming authority to impose these fees.

Regardless of whether this authority exists, it's another example of how the Obamacare's true costs are only going to become known over time. When the law was written and it said "no federal funds" after January 1, 2015, as far as the Congressional Budget Office was concerned, that meant

the exchanges won't impose recurring costs on the federal government. But, now it's clear that there will be ongoing costs, which the federal government will impose on insurers, who will in turn raise premiums on exchange consumers who receive federal subsidies.