



The Daily Dish

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DOUGLAS HOLTZ-EAKIN | MARCH 6, 2014

If you like your plan you can keep it, well at least until 2017. [That is the announcement](#) from the Obama administration late Wednesday after a November promise that Americans would be allowed to remain on health care plans set for elimination because they do not meet the Obamacare coverage standards.

Low income seniors will be hit hard by Medicare Advantage cuts. According to research by AAF, over 2 of every 5 Medicare Advantage beneficiaries have incomes below \$20,000 per year. With an average monthly income of \$1,667, the potential \$145 per month impact of this change could be devastating. [This infographic](#) explains the point more clearly.

AAF's Education Expert, Scott Fleming, [delves into the President's plans for education in the new budget](#): "Tucked into the sea of red ink outlining the administration's priorities for the coming federal fiscal year are a handful of initiatives for higher education. Despite lip service to some of the challenges facing our country's higher education sector, such as growing costs, rising student debt, declining enrollment and uneven achievement among minorities and low-income students, the administration's proposed budget would do little to address these issues."

Eakinomics: Obama Insurance ... Election Insurance

No surprise. No shock. Plenty of dismay. And a grudging admiration of an administration that knows what it cares about: elections. Forget promises, principles and even the law.

Today the administration announced yet another (longer and broader) delay in the implementation of the Affordable Care Act (ACA), extending the political patch for President Obama's broken "if you like your plan you can keep it" promise until after the president has left office. According to senior HHS officials, states will have the discretion to allow insurance issuers to offer non-ACA compliant plans (that is, illegal plans) through the 2016 plan year in both the individual and small group markets.

Cancellations in the former market created a firestorm this past fall and cancellations in the latter (likely to be an order of magnitude larger) were set to be announced just before the November elections. Taking no chances for 2014 and 2016, the administration simply handed this hot potato to state insurance commissioners (who must approve the policies) and insurance companies (who have to agree to keep issuing them).

Along with this delay, HHS is altering the risk corridor ("insurer bailout") calculations for exchange plans in states allowing the non-compliant plans and the Treasury is issuing the final rule simplifying employer and insurer reporting requirements for the employer mandate. In sum, the administration released three major changes — two from HHS and one from the Treasury department — (1) extending "consumer choice" through 2016 plan year; (2) altering the risk corridors within states that choose to allow non-compliant plans to be renewed until October 1st 2016, and (3) issuing the final employer mandate reporting rule.

The politics of making cancelled plan somebody else's responsibility is straightforward. Unfortunately, it means

that healthier people will stay in their original, affordable plans while sicker people will opt for ObamaCare exchange coverage, guaranteed issue and richer benefits. Enter the risk corridors. The administration is simply promising to shovel more money, albeit not enough to fully compensate, toward those plans that get stuck with the bills of the expensive ObamaCare signups. In addition, the rule finalized the proposal to reduce the starting point of a second risk offset (“individual reinsurance”) to per-person costs of \$45,000 instead of \$60,000.

Sadly, this Rube Goldberg patch leaves Americans and insurers on dangerous policy and legal footing:

1. As the American Action Forum [pointed out](#) after the last “sorry, we’ll try to get your cancelled plan back” announcement, the non-compliant plans are still illegal. That means a policy holder could sue if an insurer did not cover an “essential benefit” under ObamaCare. This opens insurers up to some potentially hefty legal liability. HHS is delaying these provisions written clearly in the legislation under their authority to set enforcement priorities. The ACA prohibition on non-compliant plans is still in effect, but not being enforced by HHS. However, do the courts still need to enforce them? If an ACA benefit is mandated by law, but the plan is pardoned by a state insurance commissioner, in theory the enrollee could still sue when that benefit is not covered.
2. The non-compliant plans do not satisfy the legal requirement for the individual mandate. Will the IRS ding holders of these plans with the tax penalty?
3. Are states that previously decided against allowing non-compliant plans going to change their stance? What happens to the old plans that the states forced to be cancelled?
4. If plans renew before October 1, 2016, will there be a period of time prior to open enrollment in 2017 during which those individuals cannot get coverage?
5. Are these plans required to keep premium prices and benefits constant in order to continue? What changes are allowed, if any?
6. Can these plans be sold to new enrollees, or are they limited only to those who were already enrolled in them?

CMS officials claim that the changes are not for political reasons, but instead represent how a law should be implemented. Methinks they doth protest too much. A more honest administration would simply employ the [Iverson defense](#). To paraphrase: “This is the year of action and we’re in here talking about the law. Not an election, not an election, not an election that we go out there and die for. The law. It’s silly.”