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# HHS authority allows it to delay mandate

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The administration announced it will provide an additional year before the Affordable Care Act's (ACA) mandatory employer and insurer reporting requirements will begin. These mandates and the accompanying penalties were to apply to large employers, those with 50 or more full time employees, and were scheduled to take effect on January 1, 2014. The implementation date is now January 1, 2015.

But how can the administration delay the law?

The Affordable Care Act consists of hundreds of pages of statutes. A statute is another name for a law passed by a legislative body. Congress has the sole authority to enact federal statutes. Administrative agencies, in this case The Department of Health and Human Services, the U.S. Department of Treasury, and the Department of Labor, define and implement the ACA statutes. This is done through their rule-making and adjudicatory powers.

Administrative agencies have the authority, granted to them by Congress, to interpret the laws and apply guidelines to help them enforce the laws. These rules also have the force of law. It is, then, perfectly within the purview of a federal administrative agency to delay implementation of a statute. Other aspects of the ACA have been delayed as well, and employers and insurers can anticipate additional guidance to be forthcoming.

Originally, penalties were to apply to those large employers who failed to offer health insurance to their employees, or those for whom the offering was either not "affordable" for self-only coverage, or in situations where the offered insurance plan did not provide "minimum value;" at least 60% of expected healthcare costs.



According to the administration's announcement, the delay is designed to meet two goals. First, it will allow for further study to simplify the new reporting requirements, and second it will allow employers more time to adapt health coverage and reporting systems. The ACA includes information reporting requirements under Section 6055 by insurers, self-insuring employers, and other parties that provide health care coverage. It also requires information that is to be reported by certain employers with respect to the health coverage offered to their full-time employees.

### *Implications*

Many analysts are playing down the change on the grounds that most large employers already offer coverage to employees voluntarily.

This delay will likely increase the number of people seeking coverage on the exchanges, because their employer may not offer coverage. This will be problematical however. In order to get subsidized coverage on the exchanges, people are supposed to show they cannot get employer-

sponsored coverage. But without information from employers on their health-insurance offerings—or lack thereof—it isn't clear how the IRS would determine an individual's eligibility.

#### *What Do We Do Now?*

For the moment, the best strategy is most likely a "hold steady" course of action. Most employers, through the use of the "look-back" safe harbors, have made progress in determining which employees are eligible for coverage. Most employers have been working with insurers and brokers to design and implement health plan coverage options. A delay in the reporting requirements and payment of penalties should not significantly alter the work that has been accomplished to date. Employers are to be reminded that the requirements are, at this time, only delayed, not repealed.

Other ACA requirements have not been delayed; (i) the exchange notices are to be provided by October 1, 2013, describing coverage available on the exchanges; (ii) the Patient-Centered Outcomes Research Institute fees are due by July 31, 2013; (iii) SBC's using the previously issued templates are to be implemented January 1, 2014; and (iv) W2 reporting requirements remain in effect.

Mark Mazur, the assistant secretary for the U.S. Department of Treasury wrote in his blog announcing the delay that additional guidance will be forthcoming. It is likely that ongoing "guidance" will be provided for months to come.

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