Cancelled Insurance Now Exempts People From Individual Mandate

Despite longstanding resistance to Republicans' calls for delaying ObamaCare's individual mandate, the Obama administration announced December 19 that it would be doing just that for Americans whose health insurance policies were cancelled because they did not comply with the Affordable Care Act (ACA).

In response to a letter from six senators (five Democrats and one Independent) expressing concern over their constituents' loss of health insurance under ObamaCare, the Department of Health and Human Services (HHS) declared that individuals whose non-compliant policies were cancelled will now qualify for a "hardship exemption" from the individual mandate for 2014. Essentially, anyone who lost coverage because of ObamaCare is free to ignore the law's requirement that he have health insurance or pay a penalty. In addition, he has the option of purchasing catastrophic coverage that he would not otherwise be permitted to buy under the ACA.

The hardship exemption allows an individual to escape the individual mandate if that person has "experienced financial or domestic circumstances, including an unexpected natural or human-caused event, such that he or she had a significant, unexpected increase in essential expenses that prevented him or her from obtaining coverage under a qualified health plan," HHS explained in a June bulletin.

This provision was intended to help those who have experienced major financial upheavals such as divorce, bankruptcy, or homelessness. But now, HHS Secretary Kathleen Sebelius said in a letter to the senators, "this exemption applies to those with canceled plans who might be having difficulty paying for an existing … plan" on an ObamaCare exchange. That means that, for 2014, those individuals now have the option of either buying catastrophic coverage — something generally restricted to those under 30 years of age — or foregoing coverage altogether. "For these people, in other words, Obamacare itself is the hardship" that triggers the exemption from ObamaCare, remarked Ezra Klein of the *Washington Post*.

How did the administration find itself in the position of having to waive the individual mandate for some people?

First, ObamaCare mandated so-called "essential health benefits" that all health plans must cover, forcing the cancellation of many existing plans that did not cover them. Facing a major public-relations fiasco, the administration in November gave insurers the option to extend these policies for another year; but few have done so, partly because of the administrative headaches and partly because, according to Bloomberg, "at least 22 states … have said they won't allow insurers to extend expiring plans." The administration claims about 500,000 people have lost their coverage as a result of the law, but that is unquestionably far too low. California alone has seen a million policies cancelled, and experts estimate that four million to six million Americans overall have lost coverage.

Second, the disastrous rollout of Healthcare.gov has made it next to impossible for those without coverage to enroll in a new plan on an exchange. No one knows just how many people have actually been able both to select a plan and to pay for it, which is why the administration has continually extended the deadline for enrollment and is forcing insurers to cover people who haven't paid by January 1.

Third, ObamaCare's mandates have driven up the cost of coverage such that many people can no longer afford it.

Thus, trying to head off yet another PR nightmare, the administration felt constrained to offer a way out to those ObamaCare has stripped of their health insurance. "The HHS ruling," observed the *Wall Street Journal*, "is an admission that rate shock is real and the mandates drive up costs well into hardship territory."

While Democrats in Republican-leaning states — such as Virginia Sen. Mark Warner, who led the fight for the exemption — may be happy with the ruling, insurance companies are not.

"This latest rule change could cause significant instability in the marketplace and lead to further confusion and disruption for consumers," Karen Ignani, president of industry trade group America's Health Insurance Plans, said in a statement.

The ruling, wrote *Forbes*' Avik Roy, "has … thrown the individual insurance market into chaos."

Here's why. Insurers such as Aetna and Humana, when they priced their plans for the ObamaCare exchanges, did so by averaging the expected health spending by the people who would sign up for those plans. This new "hardship exemption" will encourage healthier individuals, whose expected spending would be low, to drop out of the pool. As a result, average spending per enrollee on the exchanges is likely to be substantially higher than the insurers had planned for, forcing them to lose money on their policies.

Furthermore, he noted, while ObamaCare's catastrophic coverage isn't generally much cheaper than standard coverage — and is even more expensive than the cheapest standard plan in some states — the rates for catastrophic plans were based on the understanding that most enrollees would be young adults. Although those plans are not eligible for subsidies, it will still be true that "a 55-year-old [buying catastrophic coverage] will now get a steep discount on care courtesy of the insurer's balance sheet, while other risk-tiers on the exchanges will have even fewer customers to make the actuarial math work," wrote the *Journal*.

"The new political risk that the rules are liable to change at any moment will also be cycled into 2015 premiums," the paper forecast. "Expect another price spike next summer."

Then there are the political repercussions of the individual-mandate exemption. As more than one observer has pointed out, this ruling effectively creates two classes of people: those the administration deems worthy of an exemption and those it does not. “This puts the administration on some very difficult-to-defend ground,” argued Klein. Some people won’t have insurance because their old plans were cancelled, while others never had any insurance to begin with. In both cases, however, what’s keeping them from buying coverage now is the cost of a policy, which has been greatly increased by the law. “Why are people whose plans were canceled more deserving of help than people who couldn’t afford a plan in the first place?” Klein asked.

Republicans, of course, are already taking advantage of the administration’s predicament.

“Our entire health care system can’t be fundamentally changed at any given time subject to the random impulses of President Obama,” House Majority Leader Eric Cantor (R-Va.) said in a statement. “How can anyone make health care decisions today knowing that the law may be unilaterally changed again tomorrow?”

“The sad reality is that when the law takes effect come Jan. 1, more Americans will be without coverage under Obamacare than one year ago,” Rep. Fred Upton (R-Mich.), chairman of the House Energy and Commerce Committee, told Bloomberg via email. “Rather than more White House delays, waivers, and exemptions, the administration should provide all Americans relief from its failed law.”

But Republicans control only the House. Barring a GOP landslide next November, Democrats’ responses to the continued unraveling of ObamaCare will be the key to its future.

“This puts the first crack in the individual mandate. The question is whether it’s the last,” wrote Klein. “If Democratic members of Congress see this as solving their political problem with people whose plans have been canceled, it could help them stand against Republican efforts to delay the individual mandate. But if congressional Democrats use this ruling as an excuse to delay or otherwise de-fang the individual mandate for anyone who doesn’t want to pay for insurance under Obamacare, then it’ll be a very big problem for the law.”