



Written by [Michael Tennant](#) on March 7, 2014

## Health Plans on ObamaCare's Chopping Block Given Two-year Reprieve

If it's a day of the week ending in y, it must be time for another ObamaCare delay. The latest announcement from the White House is that health plans that do not comply with the law's multitudinous regulations need not be canceled for another two years — an obvious attempt to salvage Democrats' control of the Senate in this year's elections.

Effective January 1, 2014, the Affordable Care Act (ACA) outlaws all health-insurance policies that do not meet its requirements. When, last fall, millions of Americans received insurance cancellation notices and found that they could not obtain new insurance via the botched Healthcare.gov, the administration declared that the canceled policies could be reinstated for another year, provided that states and insurers agreed to reinstate them. About half of the states did so, though not all insurers did, both because it was troublesome and because it undermined the point of the ACA's mandates: forcing young and healthy individuals to buy more expensive policies to offset the costs of covering the sick who now cannot be denied or charged more for coverage.



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That delay helped get the administration through one public-relations fiasco, but it was facing a much larger one this autumn. Those same cancellation notices, plus many millions more, were going to start appearing in voters' mailboxes just ahead of an election in which control of the Senate hangs in the balance.

According to the [Wall Street Journal](#), last year as many as 5.5 million Americans with individual health policies received cancellation notices. Any whose policies were reinstated would have seen them canceled again this year.

The real worry for the administration, however, was that small-group policies were also headed for cancellation. Many small businesses, which typically offer such policies to their employees, avoided cancellation last year by taking advantage of an ACA loophole to lock in their existing coverage through 2014. Come October, though, they would have been facing a raft of such cancellations; and with no



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mandate requiring them to offer coverage, they would have had a powerful incentive not to purchase expensive ACA-compliant policies but instead to let their employees fend for themselves on the exchanges.

The administration claims that “up to 1.5 million people” with individual or small-group policies would have faced cancellation this year, [CNBC](#) reports. That is surely a vast understatement. The American Enterprise Institute issued a report in November that “showed the administration anticipates half to two-thirds of small businesses would have policies canceled or be compelled to send workers onto the ObamaCare exchanges,” according to [Fox News](#). “They predicted up to 100 million small and large business policies could be canceled [in 2014].”

Thus, it comes as no surprise that the administration decided Wednesday to give noncompliant policies another two years to live — and, notes [CNBC](#), “emphasized that the extension now includes people in the small-group market.” Tens of millions of disgruntled voters would not likely have pulled levers for the party that took their health insurance away while assuring them they could keep it if they liked it.

“I don’t see how they could have a bunch of these announcements going out in September,” a health-insurance consultant told [The Hill](#). “Not when they’re trying to defend the Senate and keep their losses at a minimum in the House. This is not something to have out there right before the election.”

The rule even gets Democrats past the next presidential election to some degree by allowing noncompliant plans to remain in effect through 2017 for policyholders who renew by October 1, 2016.

The administration, naturally, denied that its motives were political. “The goal is to implement the Affordable Care Act in a common-sense way and to try to provide a smooth transition for consumers and employers,” a senior official told reporters.

Few bought that explanation because, as [Politico](#) observed, “documents accompanying the announcement reveal that the changes were crafted ‘in close consultation’ with a large contingent of vulnerable Democrats.”

Republicans were only too happy to use the administration’s transparently political move to their advantage.

“The Obama administration’s announcement today that it will continue to allow insurers to sell health care plans that don’t meet Obamacare minimum coverage requirements is not only another reminder of the President’s broken promise that you can keep your plan if you like it, but represents a desperate move to protect vulnerable Democrats in national elections later this year,” Senate Minority Leader Mitch McConnell (R-Ky.) said in a [statement](#). “Americans have become increasingly aware of the fact Obamacare is broken beyond repair. The only ‘fix’ is full repeal followed by step-by-step, patient-centered reforms that drive down costs and that Americans actually want.”

Although they were expecting the announcement, insurers were hardly pleased with it because “the White House’s tendency to shift deadlines makes it hard to price health policies accurately,” wrote [The Hill](#).

“These continual delays, these stops and starts, make it very difficult because we set rates based on predictive modeling,” one insurance-company executive told the paper. “When you change the rules, it has a detrimental impact on your ability to calculate your risk pool and your prices.”

As with most of the administration’s other unilateral amendments to the ACA, the legality of this latest delay is in question. The law unambiguously prohibits the sale of noncompliant policies beginning the



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first of this year; it does not leave that deadline to the executive branch's discretion.

On the other hand, the continuing delays and political giveaways — the rule also exempts many labor unions' health plans from a "reinsurance" tax for the next two years — may have some benefits. For one thing, they could spur repeal of the ACA. Perhaps even more importantly, argues *Forbes'* [Chris Conover](#), "the shamelessly politicized and too often lawless rollout of Obamacare has given one more solid argument against trying to steer the American health care system onto a single payer track."

He elaborates:

If so much is at the whim of the president ... who would favor seeing such arbitrary and capricious power extended even further under a single payer system? After all, if a president can lopsidedly distribute various subsidies and waivers to favored political groups ... what is to stop a future president from doing the same under a single payer system? If a president can unilaterally decide to waive the law (whether for a year or longer) for one group of employers while enforcing it for a different group (even though the law provides no such distinction), what is to stop a future president from deciding a single payer law will apply differently to one favored group ... compared to others? If a president can unilaterally opt not to enforce certain provisions of the law on grounds they are not politically expedient (e.g., stringent payment restrictions on providers such as the Sustainable Growth Formula embedded in the Balanced Budget Act of 1997) what is to stop a future president from clawing back the "excess payments" on grounds they were made in contravention to statutory law?

Those are very good questions indeed. Let us pray that Americans and their elected officials answer them correctly and then act accordingly.



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