

Health Reform Road Map for Cities and Villages

By Josh Brown, Esq.

Update 5: Employer Mandate Delay

Many of Ohio's cities and villages have been working vigorously to prepare to implement the employer mandate in the ACA for over 3 years now. Over the last several months, I have been helping by writing documents that would help cities and villages prepare. Last week, the federal government announced, through the Federal Register, that it will not enforce the employer mandate till one year after the deadline—which would be January 1, 2015. So let's do some analysis.

Is this Unusual?

I guess not. White House Press Secretary Jay Carney said the following about that question, "People who suggest that there's anything unusual about the delaying of the deadline, implementation of a complex, comprehensive law are deliberately sticking their heads in the sand, or just willfully ignorant about past precedent. It's just not serious."

What is Not Affected?

Keep in mind, the individual mandate will not be affected by this. Secondly, most businesses already provided health insurance that was acceptable anyway.

Also, keep in mind that this is a non-enforcement promise from the federal government. It does not mean that the law is not on the books and enforceable. For a government to promise that a law will not be enforced is not equivalent to saying they could not enforce it if they wanted to.

What Will be Affected?

Before you read this, you should know that I base this writing on the idea that you have read my original article on this subject at omloho.org, under the Health Reform section, where I explain many of the terms and issues examined here.

I have two answers to this question. First, is the effects on cities and villages as employers. Second, is the implications for the wider health insurance world.

Most cities and villages in Ohio provide ACA-compliant health insurance to their full-time employees. For the most part, they will not worry too much about the delay in enforcement. However, the big problem that many public employers have is the part-time, seasonal, and variable hour employees (for definitions of these terms, see my original post on this subject, at omloho.org under the Health Reform Section).

Many employers were cutting full-time employees to part-time and managing their seasonal and variable hour employees in a way that prevented them from becoming full-time. Now, essentially, they will not have to worry about this until next year.

However, for the ACA more broadly, this is a deep blow. The problem policy-makers faced was that large group employee coverage was preferable to individual coverage. In most states, the market for individual or small group coverage was a mess—expensive and hard to get.

Meanwhile, to solve other problems, the ACA's individual mandate requires virtually everybody to acquire health insurance—which brings in a lot of money to health insurance companies. Also, the ACA's

guaranteed issue requires insurance companies to issue insurance to virtually anybody—which costs health insurance companies a lot of money. It is supposed to balance out. The employer mandate is supposed to help it balance out.

The ACA wants you to get coverage from an employer, for several reasons. However, if an individual cannot get ACA compliant coverage from an employer, the federal government will subsidize that person's coverage on the upcoming health insurance exchanges. The ACA attempts to take advantage of the efficiencies in the employer coverage market by getting as many people as possible covered by ACA compliant employer coverage. The purpose of this is to put the burden for paying for people's health insurance on the employer, rather than the federal government. The ACA says that if the federal government has to bear the burden, then the employer has to pay a "shared responsibility payment" commonly referred to as a tax penalty. Either way, the employer bears at least a significant part of the burden. Keep in mind, that ultimately, the average American still bears the burden, either through taxes or increases in the costs of goods and services.

With the individual mandate in place and the employer mandate not in place, the federal government will bear all of the burden for at least the first year. Of course, the feds will pay for the burden with taxes they collect, or loans on future taxes, from average Americans.

So what's the effect on employers? You're off the hook. You will pay for people's coverage through your ordinary taxes and insurance premiums, rather than through business tax penalties and mandates. This mix of policies takes a narrow burden imposed on employers and essentially spreads the burden much broader—to the entire (future and present) tax base.

Why Did they Delay?

Here is [the statement](#) issued by Mark Mazur, Assistant Secretary for Tax policy at the Treasury Department:

Continuing to Implement the ACA in a Careful, Thoughtful Manner

Over the past several months, the Administration has been engaging in a dialogue with businesses – many of which already provide health coverage for their workers – about the new employer and insurer reporting requirements under the Affordable Care Act (ACA). We have heard concerns about the complexity of the requirements and the need for more time to implement them effectively. We recognize that the vast majority of businesses that will need to do this reporting already provide health insurance to their workers, and we want to make sure it is easy for others to do so. We have listened to your feedback. And we are taking action.

The Administration is announcing that it will provide an additional year before the ACA mandatory employer and insurer reporting requirements begin. This is designed to meet two goals. First, it will allow us to consider ways to simplify the new reporting requirements consistent with the law. Second, it will provide time to adapt health coverage and reporting systems while employers are moving toward making health coverage affordable and accessible for their employees. Within the next week, we will publish formal guidance describing this transition. Just like the Administration's effort to turn the initial 21-page application for health insurance into a three-page application, we are working hard to adapt

and to be flexible about reporting requirements as we implement the law.

Here is some additional detail. The ACA includes information reporting (under section 6055) by insurers, self-insuring employers, and other parties that provide health coverage. It also requires information reporting (under section 6056) by certain employers with respect to the health coverage offered to their full-time employees. We expect to publish proposed rules implementing these provisions this summer, after a dialogue with stakeholders – including those responsible employers that already provide their full-time work force with coverage far exceeding the minimum employer shared responsibility requirements – in an effort to minimize the reporting, consistent with effective implementation of the law.

Once these rules have been issued, the Administration will work with employers, insurers, and other reporting entities to strongly encourage them to voluntarily implement this information reporting in 2014, in preparation for the full application of the provisions in 2015. Real-world testing of reporting systems in 2014 will contribute to a smoother transition to full implementation in 2015.

We recognize that this transition relief will make it impractical to determine which employers owe shared responsibility payments (under section 4980H) for 2014. Accordingly, we are extending this transition relief to the employer shared responsibility payments. These payments will not apply for 2014. Any employer shared responsibility payments will not apply until 2015.

During this 2014 transition period, we strongly encourage employers to maintain or expand health coverage. Also, our actions today do not affect employees' access to the premium tax credits available under the ACA (nor any other provision of the ACA).