THE VOICE OF DISABILITY SERVICE PROVIDERS

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Impact on ACCSES Members and Persons Served of Administration's Decision to Delay Health Reform Employer Fines and Reporting Requirements

In a July 2 blog post, which surprised many healthcare reform observers, Mark Mazur, the Assistant Secretary for Tax Policy with the United States Department of the Treasury, announced that the Administration will delay for one year the Affordable Care Act (ACA) employer and insurer reporting requirements.[1] Before the change, ACCSES members who are employers were required to report in 2014 if they offered affordable coverage to their employees. Without employers reporting coverage data in 2014, Mazur stated it would be impractical for the Administration to track which large employers failed to offer coverage to employees seeking subsidized insurance on the exchange, and apply fines against those employers accordingly. The change means that not only will our employers not have to report that coverage information until 2015, implementation of any fines will be delayed a year as well.

ACCSES members have been very vocal about their concerns about the impact that the employment requirements within the ACA could have on non-profit social service providers to continue to serve individuals with disabilities with the same intensity that they have in the past. We have also raised concerns about how the fines are calculated to include employees who are eligible for Medicaid, and how those fees will be applied in states which refuse to expand Medicaid.

We will continue to dialogue with the federal agencies implementing the ACA to inform them of the unique nature of our businesses and services so that health care reform can be implemented in a manner which does not threaten the sustainability of providing services to people with disabilities.

The Effect on the Number of Individuals Covered:

The "Shared Responsibility" provisions of the ACA are designed as a long term and massive multi-prong strategy to expand insurance coverage to the uninsured and underinsured by implementing new requirements for:

1) issuers to provide coverage to those previously denied because of pre-existing conditions;
2) individuals without coverage to purchase insurance, even and especially when young and healthy;

[1] Sec. 6055 of the ACA requires issuers and employers who provide coverage to individuals to report a list of information to the IRS.

3) the federal government to pay part of the premiums for individuals who cannot afford insurance;
4) large employers to offer insurance or pay fines; and an
5) expansion of the Medicaid program to all low-income adults regardless of health status.

One of the prongs of the insurance market overhaul was weakened when the Supreme Court last year ruled that the expansion of Medicaid was unconstitutional unless each states has the option to not expand its Medicaid program.[2] With yesterday's announcement, another prong of the strategy temporarily lost its enforcement teeth, and many are worried that this could result in a significant reduction in the number of insured through employer coverage.

Certainly there could be more pressure on the exchanges and on the Medicaid program to assume the burden of providing coverage for employees whose employers fail to offer coverage. However, before the year delay, a CBO report predicted that even with the employer "mandate," employer coverage will drop in the next few years, with employers preferring to pay the fines than pay for coverage. The predicted downward trend in employer coverage suggests that the one-year delay might not significantly impact the number of individuals who gain insurance coverage.

The Effect on Large Employers:

The ACA penalizes employers with 50 or more full time equivalent employees if they fail to provide affordable health insurance to full time employees who subsequently qualify for subsidized private coverage offered within one of the new health insurance marketplaces, also created by the ACA.[3] The fines against employers are meant to create a disincentive for employers to drop health insurance coverage for employees, and also to help cover the cost of covering individuals on the exchanges.

The delay is unquestionably a "win" for large employers who are working to prepare for the new requirements in an atmosphere in which Treasury, the Department of Labor and the Department of Health and Human Services continue to issue guidance, regulations and Q&As on a weekly basis. In March, the United States Chamber of Commerce submitted comments requesting the U.S. Treasury Department delay for one year employer financial penalties citing that the requirements are too complicated and employers will not have adequate time to accommodate the demanding provisions. Republican leaders of the House Energy and Commerce Committee sent a letter to Treasury and HHS asking the agencies to detail the meetings and discussions that led up to the decision.

By delaying the fines, the Treasury is also providing more time for states to voluntarily expand the Medicaid program to cover their low-income population. In states which fail to expand the program, employers will be responsible for offering coverage or paying fines for employees who would receive Medicaid if they lived in states which choose to expand the program.

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[2] Indeed, the Supreme Court decision was causing employers serious concern, since they would bear the burden of covering many low-income employees if their state refused to expand Medicaid. The delay in the fines alleviates that burden for a year while state legislators and Governors continue to debate expansion. Legislators in states that do not expand in 2014 can expect more pressure from their business lobbies in their 2014 sessions.
[3] Sec. 4980H of the ACA details the penalties large employers could face for failing to offer avoidable health coverage.

The Effect on Government Spending:

The one-year delay will be expensive for the federal government and taxpayers. Even if employers chose to pay fines rather than offer affordable coverage to their employees, those fees would have helped to offset the cost of the number of individuals entering the exchange who qualify for federal subsidies. But with the delay, employers can avoid fines while the federal government must start paying subsidies toward health coverage for qualified individuals, who could include the employers' employees. In May, the Congressional Budget Office (CBO) predicted that the employer fines would raise $10 billion in 2014.

Conclusion:

The ACA remains a lightening rod of political controversy in Washington, DC and around the country. This latest decision has once again fanned the flames of partisanship in Congress, but it might serve to quell opposition and alleviate concerns from employers who must deal with the logistical realities of implementing health care reform on the ground. It also gives states the opportunity to focus on implementing exchanges, and for some states the opportunity to expand Medicaid, without also having to tackle disruption in the employer-sponsored insurance realm. For ACCSES members, it gives employers time to forecast the costs associated with the new requirements and advocate for their state to expand Medicaid, if it does not in 2014. The delay also provides more time for ACCSES members to communicate its unique position to the agencies responsible for implementing the employer responsibility provisions of the ACA.

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