

Background Paper 2

Allowing State Experimentation by 2014

“Obama offers states more flexibility in health-care law”

Washington Post Staff Writers
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“President Obama sought to defuse criticism of the new health-care overhaul Monday by saying he is willing to give states an earlier opportunity to opt out of certain key requirements - but only if they can find their own ways to accomplish the law's goals....”

“The change in timing is significant, because 2014 is when the provisions in question are to go into effect, so states could - in theory, at least - get permission early enough to avoid the requirements....”

"I think that's a reasonable proposal. I support it," Obama told the governors who convened at the White House on Monday [28 Feb 2011] as part of the National Governors Association's semi-annual meetings. "It will give you more flexibility more quickly, while still guaranteeing the American people reform. If your state can create a plan that covers as many people as affordably and comprehensively as the Affordable Care Act does - without increasing the deficit - you can implement that plan. And we'll work with you to do it.

“The governors said Obama's willingness to release them earlier from some of the law's requirements was welcome.... ‘A number of our fellow governors would be very interested in supporting this,’ said Washington Gov. Chris Gregoire (D), the NGA's chairman.....”

http://www.washingtonpost.com/wp-dyn/content/article/2011/02/28/AR2011022806664.html?wprss=rss_politics

State “Innovation Waivers”

Although the President has endorsed the idea of innovation waivers, congressional action would still be required to approve changes in the language of the Patient Protection and Affordable Care Act (PPACA) of 2010. There are two proposals in Congress that would allow states to design their own plans that meet or beat the provisions of PPACA.

The Sanders-Leahy Bill, S. 73

The “State Leadership in Health Care Act” amends PPACA to limit the ability of HHS to deny state waivers.

The Sanders-Leahy Bill permits the Secretary of Health and Human Services (HHS) or the Secretary of the Treasury to deny waivers only if: (1) the state plan does not meet requirements for granting a waiver, (2) the Secretary of HHS or Treasury notifies the state in writing of the requirements that the state plan did not meet and provides the

state with information used in making such a determination, and (3) the state is given an opportunity to appeal.

The federal waivers would allow a state to: (a) collect all the federal funding and use it for financing coverage for individuals through a plan designed by and for that state, and b) coordinate this waiver process with Medicare, Medicaid and CHIP waiver processes that may be required depending on the design of the system.

The Wyden-Brown Bill, S 3958

Another bill occasionally mentioned is one sponsored by Sens. Ron Wyden (D-Ore.), Scott Brown (R-Mass.) and Mary Landrieu (D-La.), the "Empowering States to Innovate Act". The bill would move the date for states to ask federal officials for "innovation waivers" from 2017 to 2014.

This bill would give ultimate waiver authority to the HHS secretary. The waivers granted would be dependent upon the administration's preferences. Therefore, a state preferring a Single Payer model would have to hope the administration in power at the time was sympathetic.

Even more problematic to proponents of state flexibility is that states would not be able to fold other health programs into their waiver request. Provisions in PPACA regarding Medicare, Medicaid, State Children's Health Insurance Program (SCHIP), Taft-Hartley plans and other programs would not be waived, leaving large obstacles in the path of a potential single-payer system.

Comparison of the two bills

The Wyden-Brown bill does just one important thing. By advancing the date to 2014 the bill allows states to apply for innovation waivers essentially at the start of implementation of PPACA, avoiding a costly two-step process. Note, however, that as of October 2011, many states have already spent millions of federal dollars setting up the infrastructure for the private health insurance exchanges that will be needed for PPACA to start to work on 1/1/14."

Like the Wyden-Brown bill, the Sanders-Leahy bill allows for waivers beginning in 2014. Unlike the Wyden-Brown bill, S. 73 strictly limits the discretion of the HHS Secretary in refusing to grant waiver applications by a state, lessening the prospect of denial simply for political reasons. The bill also allows inclusion of federally protected programs (Medicare, Medicaid, etc.) in a state's plan for which it is applying for federal waivers."

During conversations with our elected officials

- Ask our elected state officials to call for Congress to pass S. 73/ HR 439.