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Millions May Avoid Obamacare Penalty as Deadline Looms

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MARCH 14, 2014

By Bloomberg News Service

Obamacare's requirement that all Americans carry insurance or face penalties, part of the effort to gain universal coverage, may not be much of a rule at all.

Millions of people may be exempt from the requirement known as the individual mandate under rules issued by the Obama administration. Homeless people or homeowners who've been foreclosed upon can apply for an exemption. So can those whose utilities have been shut off, who have suffered domestic violence or who have experienced a death in their families.

In December, the administration said people whose existing health plans had been canceled wouldn't have to comply with the mandate. Last week, the government said that exemption will be extended through 2016. In a catch-all category, anybody who believes they've had a "hardship in obtaining insurance" can apply for an exemption -- documentation is optional.

"If you're a consumer and you're looking at this, it leaves a lot of ambiguity," Dan Mendelson, the president of Avalere Health, a Washington consulting firm, said by telephone. "You don't know if you qualify for a hardship exemption but you are very likely to fall into one of these categories -- or are able to get into one of these categories."

Republican opponents of the Patient Protection and Affordable Care Act said the law's individual mandate is so riddled with exemptions that it's almost impossible to run afoul of it. They have pressed the Obama administration to formally lift it. House Speaker John Boehner, an Ohio Republican, said the administration may have intentionally gutted its own mandate.

'Huge' Decision

"Quietly, without any fanfare, there's a real question about whether the White House has just abandoned the individual mandate, the heart of Obamacare itself," Boehner said yesterday at a news conference. "This is a huge public policy decision that could affect millions of Americans."

The House is scheduled to vote today on legislation that would repeal the individual mandate for five years in order to finance a new system to pay doctors who participate in Medicare, the U.S. health program for the elderly and disabled. The bill won't pass the Senate, which is controlled by Democrats, and Obama has said he would veto it.

Repealing the mandate "would result in higher numbers of uninsured Americans, higher premiums for those who remain insured, and fewer premium tax credits for middle-income families, and would increase cost-shifting of uncompensated care to health-care providers, workers, and businesses," the White House said in a memo opposing the House bill.

Greater Coverage

The goal of the 2010 Affordable Care Act is to provide access to health coverage for the nation's estimated 48 million uninsured. Major provisions took effect Jan. 1, including the sale of health plans through new government insurance marketplaces. More than 4.2 million Americans have enrolled in private health insurance through the exchanges, the administration said this week.

No provision of the law is more controversial than the individual mandate, a concept that even Obama didn't support until after he was elected president. Health insurers have said that to remain financially viable while offering coverage to everyone, regardless of whether they are sick as the law maintains, the government also must require all Americans to obtain insurance. The theory is that premiums from young and healthy people who don't need much medical care can balance the risk and cost of caring for those who are older or unhealthy.

Concerns Raised

"We have consistently raised concerns about any effort to sever the link between insurance market reforms and the individual mandate," Robert Zirkelbach, a spokesman for America's Health Insurance Plans, the industry's Washington lobby group, said in an e-mail.

Most Americans don't have to worry about the law's mandate because they're covered by health plans offered by employers or government programs, including Medicare and Medicaid. Only about 5 percent of the population bought insurance for themselves in 2012, according to the Kaiser Family Foundation, a Menlo Park, California-based nonprofit group that studies health-care issues.

With just weeks until the March 31 enrollment deadline for 2014, the Obama administration has begun warning Americans that a penalty will apply if they don't carry insurance starting April 1. The government publicly released the form Americans must use to apply for an exemption late on Dec. 19, as part of regulatory guidance. It wasn't accompanied by a news release.

'Hardship' Cases

"The Affordable Care Act requires people who can afford insurance to buy it, so that their medical bills are not passed onto the rest of us, which drives up health-care costs for everyone," Joanne Peters, a spokeswoman for the Health and Human Services Department, said in an e-mail. The form "allows a limited number of individuals who are facing hardship to apply for an exception. This exception also makes it easier to find insurance by allowing those individuals to access catastrophic-level plans."

Before enrollment began in October, administration officials had said they hoped to meet a Congressional Budget Office enrollment target of 7 million people in private plans in 2014. The CBO revised that estimate to 6 million in February.

There are 14 categories of exemptions, including one covering low-income people who have been denied Medicaid coverage in the 25 states that have declined to expand that program under the health-care law. That population alone may number about 5 million, according to the Kaiser foundation.

Firm Deadline

U.S. Health Secretary Kathleen Sebelius reiterated earlier this week that the administration will neither extend the March 31 deadline to sign up for Affordable Care Act plans or lift the mandate to carry coverage. People liable for the mandate who don't have insurance will pay fines, in the form of extra taxes next year, amounting to as much as 1 percent of their income. Exemptions from the mandate will be decided on a case-by-case basis, the government said.

It's likely that the administration has tried to make the mandate easy to avoid, said Joseph Antos, a health economist at the nonprofit American Enterprise Institute who advises the Congressional Budget Office. Mendelson, of Avalere Health, said the government would be wise to clarify who is likely to be approved for an exemption.

“They know that the individual mandate will be very hard to enforce, and the penalty for not complying both difficult to determine and politically disastrous to try to collect,” Antos said in an e-mail. The government’s published list of exemptions, he said, is probably intended “to give people who don’t like the mandate ideas of how they can avoid it.”

