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Health Care Law Will Let States Tailor Benefits

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WASHINGTON — In a major surprise on the politically charged new [health care law](#), the Obama administration said Friday that it would not define a single uniform set of “essential health benefits” that must be provided by insurers for tens of millions of Americans. Instead, it will allow each state to specify the benefits within broad categories.

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The move would allow significant variations in benefits from state to state, much like the current differences in state [Medicaid](#) programs and the [Children’s Health Insurance Program](#).

By giving states the discretion to specify essential benefits, the Obama administration sought to deflect one of the most powerful arguments made by Republican critics of [President Obama’s](#) health care overhaul — that it was imposing a rigid, bureaucrat-controlled health system on Americans and threatening the quality of care. Opponents say that the federal government is forcing a one-size-fits-all standard for [health insurance](#) and usurping state authority to regulate the industry.

This criticism has inspired legal challenges to the new law — with the Supreme Court set to decide next year whether the government can require Americans to buy health insurance — and helps explain why public opinion of the law remains deeply divided.

The law is looming as a central issue in the 2012 presidential race, with Republican presidential candidates being evaluated on the strength of their opposition to it. The announcement by the administration follows its decision this year to jettison a program created in the law to provide long-term care insurance, a move that disappointed liberal backers of the program championed by the late Senator Edward M. Kennedy.

The action Friday prompted questions among supporters of the new health care law. Prof. Timothy S. Jost, an expert on health law at Washington and Lee University, said, “The new bulletin perpetuates uncertainty about what benefits an insurer will be required to cover under the Affordable Care Act.” From the consumer’s point of view, Professor Jost added, “I wish the [Department of Health and Human Services](#) had signaled that there would be more uniformity and less flexibility.”

Chris Jacobs, a health policy analyst for Senate Republicans, said the new policy “gives states the flexibility to impose more benefit mandates, not fewer,” and would lead to higher insurance premiums, contrary to what Mr. Obama promised in the 2008 campaign.

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The new law lists 10 categories of “essential health benefits” that must be provided by insurance offered in the individual and small-group markets, starting in January 2014. These include preventive care, emergency services, maternity care, hospital and doctors’ services, and prescription drugs.

Kathleen Sebelius, the secretary of health and human services, had been expected to provide details of what services and benefits must be provided in each category. Instead, in an insurance bulletin issued Friday, Ms. Sebelius said the federal government would respect the states’ role, giving them “the flexibility to design coverage options that meet their unique needs.”

Under this approach, each state would designate an existing health insurance plan as a benchmark. The benefits provided by that plan would be deemed essential, and all insurers would have to provide benefits of the same or greater value. Plans could modify coverage within a benefit category so long as they did not reduce the value of coverage.

Each state would choose one of the following health insurance plans as a benchmark:

- ¶ One of the three largest small-group plans in the state.
- ¶ One of the three largest health plans for state employees.
- ¶ One of the three largest national health insurance options for federal employees.
- ¶ The largest health maintenance organization operating in the state’s commercial insurance market.

While working on health care legislation in 2009 and 2010, Congress spent many hours debating how to balance the goals of comprehensive benefits and affordable coverage.

Sherry A. Glied, an assistant secretary of health and human services, said the administration’s approach “builds off the experience of today’s marketplace and will minimize disruption to it.”

Steven B. Larsen, deputy administrator of the federal Centers for Medicare and Medicaid Services, said, “The state is always in control of what the essential benefits package is in that state.”

In recent months, federal health officials have taken a number of steps that could help inoculate Mr. Obama against charges that he was foisting a rigid, inflexible model of health care on the nation.

Several states have received temporary waivers from tough new federal standards that require insurers to spend more of each premium dollar for the benefit of consumers. Federal officials have also provided temporary exemptions from some provisions of the law for some employers and labor unions offering bare-bones coverage.

The new law says that the scope of essential health benefits must be “equal to the scope of benefits provided under a typical employer plan.” But the law itself specifically requires some benefits not widely available in employer-sponsored health plans, like “habilitative services” for people with conditions like [autism](#) or [cerebral palsy](#).

Under the new law, each state is supposed to have an insurance exchange or marketplace where consumers can compare options and buy insurance. Health plans must offer the essential benefits, regardless of whether the coverage is sold inside or outside the exchange.



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The government will offer subsidies to help low-income people buy insurance through exchanges. The subsidies will help cover the cost of essential benefits. States can require insurers to provide additional benefits, but states will have to pay much of the extra cost.

The law also says that the definition of essential benefits must not “discriminate against individuals because of their age, disability or expected length of life.”

Sara Rosenbaum, a professor of health law and policy at George Washington University, said the new bulletin “does not offer any guidance on this crucial part of the law.”

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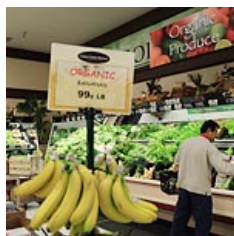
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