

Small Business in Waiver World

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Small business suffers when regulations are vaguely stated, poorly advertised, and inscrutably administered. HHS's process for granting waivers for limited-benefit health insurance plans ("mini-meds") is an excellent example. The rules governing applications have been hazy and communications with employers spotty. Such shortcomings fall especially hard on small businesses that lack HR departments and internal insurance expertise. The onus falls on small-business owners to navigate news stories and bureaucratic labyrinths – an unaffordable time burden, especially in today's troubled business environment.

Mini-meds are inexpensive health insurance policies whose benefits are typically capped at \$25,000–\$100,000 per year. PPACA banned the sale and renewal of mini-meds as of September 23, 2010 – over three years before exchanges and subsidies are supposed to facilitate insurance purchases by those with modest incomes. This three-year-plus gap meant that in the interim, mini-med subscribers and employers would have to shift to costly comprehensive policies or drop coverage altogether.

In September 2010, with employers threatening to drop coverage, HHS granted waivers to 30 employers and labor unions – freeing them, but not others, from the mini-med ban for one year. More followed, so that by March 6, 2010, 1,040 waivers exempted 2.6 million people from the ban for one year. A federal government [website](#) lists the following (vague) criterion for judging waiver applications: "[W]aivers last for one year and are available only if the plan certifies that a waiver is necessary to prevent either a significant increase in premiums or a decrease in access to coverage."

At best, the waiver process has been inadequately communicated. Consider this chronology:

- [1] [9/3/10](#): HHS listed documents required of waiver applicants. To qualify, the employer had to show that "compliance with the interim final regulations would result in a significant decrease in access to benefits or a significant increase in premiums."
- [2] [9/30/10](#): *The Wall Street Journal* reported that without a waiver, McDonald's might drop coverage for 29,500 employees. Timing was left vague, however: "Federal officials say there's no guarantee they can grant mini-med carriers a waiver. They say the answer may not come by November, when many employers require employees to sign up for the coming year's benefits."
- [3] [10/1/10](#): *The Journal* reported that, "[The Secretary of HHS] will 'exercise her discretion' in enforcing a new health-law requirement, a move that could help McDonald's Corp. and other employers from disrupting their health-care policies for hourly workers."
- [4] [10/7/10](#): *USA Today* reported that waivers had been granted to 30 employers and unions. Note that this was only a week after "the answer may not come by November."
- [5] [11/9/11](#): *The New York Times* wrote, "Concerned about the potential disruption that would be created by enforcing the new rules, the administration has granted dozens of additional waivers and also made clear that it would modify other rules affecting these policies."
- [6] [11/5/10](#): HHS listed general criteria for assessing waiver applications, but not explicit rules.
- [7] [12/9/10](#): HHS specified two exceptions to the rule that no new mini-med policies could be sold after 9/23/10.
- [8] [2/10/11](#): FOX Business reported "just over 50 applications had been denied [waivers] as of the end of December." The article quoted Sen. Orrin Hatch: "My home state of Utah has numerous small

businesses and I have heard from many of them asking why they were not able to get waivers like the 700 plus entities who were able to receive them. Many of these businesses had not even heard there was a waiver process.”

[9] [2/16/11](#): *The New York Times* reported that 4 of the 50 states had been granted waivers, adding, “Lawmakers said that many other states, insurers and employers needed similar exemptions from some of the law’s requirements and would seek waivers if they knew of the option.”

[10] [3/7/11](#): *The Hill* reported that HHS had granted 126 more waivers, bringing the total to 1,040 and covering 2.6 million enrollees.

Regardless of what one thinks about mini-meds or waivers in general, small businesses have a severe disadvantage in tracking vague, shifting rules and timetables. Also, the process of applying for waivers is laborious and must be done each year. For the sake of small business, some general principles would have improved the process:

- Rules for granting and denying waivers could have been explicit and objectively determined.
- Rules could have been crafted well enough to remain stable over time.
- Notifications and clarifications should have been more efficient.
- Steps could have been taken to avoid suspicion of favoritism.
- Waivers could have lasted through 2014, rather than requiring annual renewals.
- A universal waiver could have been granted to all mini-med holders.
- Best of all would have been to leave the ban out of the law entirely until the exchanges and subsidies began in 2014.

The ban on mini-meds constitutes only one tiny piece of PPACA, and yet it has given rise to a great deal of confusion and rancor for nearly six months. As the rest of the decade ticks away, countless other pieces of PPACA are scheduled to fall into place. The uncertainties that the waiver process generated should serve as a cautionary tale for future regulatory roll-outs.