



## **Federal official says Affordable Care Act policies on solid legal ground**

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MILWAUKEE -- The Affordable Care Act is on solid legal ground, having passed six sets of government legal reviews, Marquette University Law School students were told today by Assistant Secretary of Labor Phyllis Borzi, who contributed to earlier health reform attempts under President Bill Clinton, became an expert on the ERISA employee benefit system and helped draft the COBRA provision for federal employees.

"People who criticize the president, saying he's a lawbreaker and doesn't pay any attention to the law, they're just blowing smoke," said Borzi, assistant secretary of labor for the Employee Benefits Security Administration.

She said any changes to the ACA, including extensions to the deadline to sign up for Obamacare, undergo the same legal steps. She said the way the rules are written, most of the regulatory authority is granted to the Department of Labor, the Department of Treasury, the IRS and the Department of Health and Human Services.

Policy options must be approved by each agency's lawyers.

"The job of the lawyers in each of these buildings is to opine as to whether or not we have the legal authority to do the policy option we want," she said. "Many, many, many times, the lawyers tell us, 'Even though that's the right policy, that's the way to implement the law, the statutory language is unforgivable. So we do not have the authority to do what we want to do to make it work. So then we have to go back to the drawing board.'"

Once a policy is approved at those steps, it then goes to the White House Office of Legal Counsel then to the Justice Department.

"At any stage of the process, one 'no' stops us in our tracks," she said.

Borzi maintains that President Barack Obama's support alone could not have achieved the passage of what is now dubbed Obamacare.

"I used to say that health reform would happen if a president puts it at the top of the agenda and if we had genuine campaign finance reform, which would minimize the influence of campaign donations," Borzi said. "What we learned is that doesn't matter. It was only when the system was on the brink of crisis that we got Congress to do something."

Borzi said the general public also needs better information about the ACA.

"More than 3.5 million young adults have been able to stay on their parents' plans, but most people however, do not know that that's a provision of the ACA," she said.

She said it also hasn't been publicized enough that even after the March 31 deadline passes for open enrollment in the ACA Marketplace, people who lose their employer health insurance plan -- due to job loss, divorce, etc., will be given special enrollment periods.

Borzi said that after the open enrollment push ends, the administration's next step will be reaching out to small employers to help them set up health coverage for their employees.

Borzi sympathizes with the challenges faced by employers to offer affordable health care plans for workers.

She says employee benefits regulations have always been complex and that even for well-intentioned companies, "It's hard to know how to do the right thing."

She said she grew up in a family of entrepreneurs and knows the special challenges faced by their small businesses, which included convenience stores, gas stations and an appliance business. She said her brother has seen some of his small businesses fail financially because he tried to do the right thing by paying for his employees' health plans.

"A surer way to bankruptcy cannot be found than paying 100 percent of (your employees') health insurance," she said. "But for his people, the people that he hired, it was great."

A student asked Borzi whether the Affordable Care Act undermines the negotiating power of labor unions.

"I disagree completely," she replied, "They just have to negotiate different things in different ways. They have to adjust."

She conceded that some labor unions have been unhappy because the ACA turned down their request to allow certain low-income union workers to qualify for federal subsidies.

"The extraordinary contributions of the labor unions is that they have developed plans that provide this kind of coverage," she said. "The (ACA) law was never designed to provide subsidies to people who already had coverage. So, some of the unions have been very loudly decrying the fact that they didn't get special treatment, but lots of unions have been figuring out how to be smart in bargaining and figure out to protect the benefits they have."

-- *Kay Nolan*  
*For WisPolitics.com*