and was emphatically rejected by a number of Swiss cancer experts and organizations, some of which called the conclusions "unethical." One of the main arguments used against it was that it contradicted the global consensus of leading experts in the field — a criticism that made us appreciate our unprejudiced perspective resulting from our lack of exposure to past consensus-building efforts by specialists in breast-cancer screening. Another argument was that the report unsettled women, but we wonder how to avoid unsettling women, given the available evidence.

The Swiss Medical Board is nongovernmental, and its recommendations are not legally binding. Therefore, it is unclear whether the report will have any effect on the policies in our country. Although Switzerland is a small country, there are notable differences among regions, with the French- and Italian-speaking cantons being much more in favor of screening programs than the German-speaking cantons — a finding suggesting that cultural factors need to be taken into account. Eleven of the 26 Swiss cantons have systematic mammography screening programs for women 50 years of age or older; two of these programs were introduced only last year. One German-speaking canton, Uri, is reconsidering its decision to start a mammography screening program in light of the board's recommendations. Participation in existing programs ranges from 30 to 60% — variation that can be partially explained by the coexistence of opportunistic screening offered by physicians in private practice. At least three quarters of all Swiss women 50 years of age or older have had a mammogram at least once in their life. Health insurers are required to cover mammography as part of systematic screening programs or within the framework of diagnostic workups of potential breast disease.

An audio interview with Dr. Mette Kalager about the Swiss Medical Board recommendation is available at NEJM.org

It is easy to promote mammography screening if the majority of women believe that it prevents or reduces the risk of getting breast cancer and saves many lives through early detection of aggressive tumors.[4] We would be in favor of mammography screening if these beliefs were valid. Unfortunately, they are not, and we believe that women need to be told so. From an ethical perspective, a public health program that does not clearly produce more benefits than harms is hard to justify. Providing clear, unbiased information, promoting appropriate care, and preventing overdiagnosis and overtreatment would be a better choice.

The views expressed in this article are those of the authors and do not necessarily reflect those of all members of the expert panel of the Swiss Medical Board.

Disclosure forms provided by the authors are available with the full text of this article at NEJM.org.

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The Legality of Delaying Key Elements of the ACA

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Under the Affordable Care Act (ACA), the employer mandate — the requirement that most employers offer health insurance to their workers or pay a tax penalty — was scheduled to go into effect on January 1, 2014. Last summer, however, the Obama administration announced that it was delaying the mandate for a year. The administration has now extended the delay for mid-size firms until 2016.

The latest delay has spurred another round of accusations from critics of health care reform that the Obama administration has acted unlawfully in implementing the ACA. Similar accusations followed the announcement of a 1-year delay for some insurers of the ACA caps on out-of-pocket costs, as well as the decision to allow people to keep

Delays in Implementation of ACA Provisions.

Action	Date Announced	Description	Statutory Effective Date	New Effective Date
Delay of caps on out-of-pocket spending	February 20, 2013	Delayed imposition of caps on out-of-pocket spending for insurers that use more than one company to administer benefits	Plans with policy years starting on or after January 1, 2014	Plans with policy years starting on or after January 1, 2015
Mandate delay for all employers	July 2, 2013	Postponed the application of the employer mandate for all employers	January 1, 2014	January 1, 2015
First "like it, keep it" fix	November 14, 2013	Encouraged state insurance commissioners not to enforce new ACA rules governing health insurers (e.g., community rating, guaranteed issue) for renewed plans that were in effect on October 1, 2013	Plans with policy years starting on or after January 1, 2014	Plans with policy years starting on or after October 1, 2014
Mandate delay for mid-size employers	February 10, 2014	Postponed the application of the employer mandate for mid-size employers (51–100 employees)	January 1, 2014	January 1, 2016
Second "like it, keep it" fix	March 5, 2014	Encouraged state insurance commissioners not to enforce new ACA rules governing health insurance for renewed plans that were in effect on October 1, 2013	Plans with policy years starting on or after January 1, 2014	Plans with policy years starting on or after October 1, 2016

their preexisting health plans through 2016, even if the plans are out of compliance with the ACA (see table). A heated, confusing, and often ill-informed debate has now erupted over the legality of delaying portions of the health care reform law.

In the administration's view, the delays are a routine exercise of the executive branch's traditional discretion to choose when and how to enforce the law. As the Supreme Court noted in its 1985 decision in *Heckler v. Chaney*,[1] an executive agency "generally cannot act against each technical violation of the statute it is charged with enforcing." Instead, agencies must set priorities about how most effectively to deploy their limited resources. Ticketing fewer jaywalkers, for example, may allow the police to lock up more armed criminals. Because agencies are in the best position to select enforcement targets, *Heckler* held that they have wide discretion to choose not to enforce the law in discrete cases. As a result, the courts are loath to interfere when agencies enforce laws less vigorously than some people would prefer.

Yet the executive branch's authority to decline to enforce statutes is not limitless. The U.S. Constitution imposes a duty on the President, as head of the executive branch, to "take Care that the Laws be faithfully executed." The President may decline to enforce a law, but ignoring it altogether would violate his constitutional duty.

At what point does a decision not to enforce the law ripen into a decision to dispense with it? The answer is not always clear. Take, for example, the delay of the ACA's insurance rules for people who want to keep their current, nonconforming plans. Viewed one way, the delay just postpones enforcing the ACA's rules against relatively few existing health plans, even as those rules take effect for the large majority of plans, including plans sold on the insurance exchanges. From another perspective, the delay flouts provisions of the ACA that had become politically inconvenient. No crisp line separates routine nonenforcement from blatant disregard.

For several reasons, however, the recent delays of ACA provisions appear to exceed the scope of the executive's traditional enforcement discretion. To begin with, the delays are not "discretionary judgment[s] concerning the allocation of enforcement resources" that, per *Heckler*, are at the core of the executive branch's power to decline to enforce laws.[2] Instead, they reflect the administration's policy-based anxiety over the pace at which the ACA was supposed to go into effect. The mandate delays, for example, were designed to "give employers more time to comply with the new rules."[3] Similarly, the postponement of the insurance requirements aims to honor the President's promise that "if you like your health care plan, you can keep it."

To sharpen the point: even if the administration lacked the capacity or desire to take action against those who failed to comply with the ACA, it could have remained silent about its enforcement plans. Most employers and insurers would still have felt obliged to adhere to the law. Because the administration wanted to relieve them of an unwanted burden, however, it publicly com-

mitted itself to nonenforcement, thereby licensing employers and insurers to disregard the ACA's terms.

Encouraging a large portion of the regulated population to violate a statute in the service of broader policy goals — however salutary those goals may be — probably exceeds the limits of the executive's enforcement discretion.[4] The U.S. Court of Appeals for the D.C. Circuit has said that "an agency's pronouncement of a broad policy against enforcement poses special risks that it has consciously and expressly adopted a general policy that is so extreme as to amount to an abdication of its statutory responsibilities."[5] The ACA delays appear to be just such broad — and worrisome — policies.

The administration's legal claim is strongest in defending the employer-mandate delays. The Internal Revenue Service (IRS) has an established practice, stretching back at least three presidential administrations, of affording "transition relief" to taxpayers who might otherwise struggle to comply with a change in the tax code. In the administration's view, that practice confirms that the IRS's general authority, per the Internal Revenue Code, to "prescribe all needful rules and regulations" to run the tax system includes the specific power to delay the effective date of new tax laws.

This is a plausible argument. The persistence of the IRS practice is some evidence that Congress has, by declining to rebuke the agency, acquiesced to its view that it can properly use its enforcement discretion to delay tax statutes. Extensions of transition relief, however, have typically been brief — usually just a few months — and covered taxes of marginal importance that affected few taxpayers. In 2007, for example, the IRS gave tax preparers an extra 6 months to plan for enhanced statutory penalties that would apply if they improperly filled out tax returns. Such examples provide slim support for a sweeping exemption that will relieve thousands of employers from a substantial tax for as long as 2 years.

Some legal scholars have defended the delays on the grounds that the courts tend to be tolerant of agencies that miss statutory deadlines or otherwise fail to discharge their duties in a timely manner. The concern about the delays, however, is not that federal officials have failed to act, but rather that they have acted to relieve regulated parties of their statutory obligations. The proper legal question is whether those actions exceed the President's constitutional authority, not whether an agency should be held to account for missing a deadline.

In short, the delays appear to exceed the traditional scope of the President's enforcement discretion. To some extent, the President's willingness to press against legal boundaries is an understandable and even predictable response to the difficulties of implementing a complex statute in a toxic and highly polarized political environment. Congress's unwillingness to work constructively with the White House to tweak the ACA has increased the pressure on the administration to move assertively to manage the challenges that inevitably arise in rolling out a massive — and critically important — federal program.

The delays nonetheless set a troubling precedent. They are unlikely to be challenged in court — no one has standing to sue over the employer-mandate delays, and no insurer has thought it worthwhile to challenge the "like it, keep it" fix. But a future administration that is less sympathetic to the ACA could invoke the delays as precedent for declining to enforce other provisions that it dislikes, including provisions that are essential to the proper functioning of the law. The delays could therefore undermine the very statute they were meant to protect — and perhaps imperil the ACA's effort to extend coverage to tens of millions of people.

More generally, the Obama administration's claim of enforcement discretion, if accepted, would limit Congress's ability to specify when and under what circumstances its laws should take effect. That circumscription of legislative authority would mark a major shift of constitutional power away from Congress, which makes the laws, and toward the President, who is supposed to enforce them.

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