



## Insight

# The Affordable Care Act at 3: Big Cost Burden, Big Consumer Impact

SAM BATKINS | MARCH 25, 2013

As the Affordable Care Act (ACA) celebrates its third anniversary, the law has already imposed \$21 billion in private-sector burdens, \$9.8 billion in unfunded state liabilities, and 111 million paperwork burden hours. When the American Action Forum (AAF) reviewed the law's regulatory impact [last year](#), the ACA had imposed a combined cost of \$12.4 billion and 50 million hours, meaning in the last year the administration has more than doubled the cost of implementation and added 21 million compliance hours.

The macro figures, \$30.8 billion in costs and 111 million hours, might give policymakers some concern, but the real impact is how these figures affect the healthcare market, consumers, and small businesses.

## HEALTHCARE MARKET: PREMIUM INCREASES

Perhaps the strongest criticism against the law during passage was that it did nothing to bend the healthcare cost curve. With rising Medicare and Medicaid costs, fixing those programs and finding a way to provide affordable coverage for more Americans remains elusive, especially for the ACA. On several occasions, the law's own regulations admit that new regulatory provisions will drive up the cost of health insurance premiums.

In the "Notice of Benefit and Payment Parameters" regulation, the administration conceded that premiums would increase, states would bear unfunded costs, and issuers would pay upfront costs. The regulation noted, "There are administrative costs to States to set up and administer these programs. For issuers not receiving payments, any contribution is an additional cost, which an issuer could pass on to beneficiaries through premium increases. There are also reporting costs for issuers to submit data and financial information." In total, the rule imposes more than 1 million paperwork hours, half of a billion dollars in costs, but it declines to quantify the economic impact of higher premium increases.

Conceding premium costs was not an isolated instance. For example, the final ACA rule on "Preexisting Condition Exclusions" noted that if HHS failed to grant a waiver, "[T]he restricted annual limit provisions of these interim final regulations would result in a significant decrease in access to benefits or a significant premium increase." The final cost of this regulation was somewhat trivial, \$4.9 million and 38,000 hours, but again, the administration declined to quantify the potential impact of premium spikes.

Although the administration has admitted some of its rules could increase healthcare costs, AAF performed separate research of the market. In sum, [AAF confirmed](#) what many feared when the President signed the legislation: premiums will increase. AAF surveyed large health insurers that cover a majority of patients in the U.S. The survey areas included Atlanta, GA, Austin, TX, Chicago, IL, Phoenix, AZ, and Milwaukee, WI. The results are sobering: young and healthier individuals, including small employers, can expect a 169 percent premium increase, averaged across the five cities. Consumers in Milwaukee could experience the greatest sticker shock, with a 190 percent increase in 2014.

Even if these figures are high-end estimates, they confirm previous regulatory presumptions. All that is left is to review future data to determine how high premium increases might actually go. Although the administration might [try to issue new rules](#) to curtail rising premiums, the layered regulatory apparatus will do little to improve quality and stabilize rising healthcare costs.

## INDIVIDUAL IMPACT

Beyond the political scapegoats in the healthcare debate, large insurance companies, individuals also face strong regulatory headwinds. Many of the \$30 billion in costs will eventually affect individuals, in some form.

For example, pending ACA rules mandating nutrition labeling could drive up food prices. Although labeling might seem innocuous, even the administration admits there are huge costs, and \$0 in quantified benefits from the proposed rule. The menu labeling proposal conceded, “Prices rise to reflect new costs, but generally not by enough to completely offset them. If the expense of meeting the proposed requirements cause prices to increase for some or all restaurant and restaurant-type foods offered for sale by covered establishments, then the consumption of these foods will fall, further reducing profits for some, or all, of these establishments.” This proposal could cost more than \$750 million, impose 2.6 million paperwork hours, and cause some businesses to forgo certain consumer products.

Beyond the indirect costs, there are also more direct regulatory provisions that affect individuals. The infamous “Tanning Services Excise Tax” is only going to impose [10,000](#) annual hours of paperwork, according to the White House, but many admit the actual consumer impact will be much greater. However, like many ACA rules, the administration never placed a cost on the macroeconomic impact of the rule.

Looking past the broad regulatory costs placed on individuals, there are often overlooked paperwork requirements. At 111.4 million hours, it would take 55,742 employees, working 2,000 hours in a year, to complete the required ACA red tape.

One rule went so far as to require an accounting of the value of food brought to meetings: “reporting payments or other transfers of value that fall under the ‘food’ nature of payment category is quite complicated, both in terms of calculating the value of the payments and determining who should be reported as having received payments.” Physicians and businesses would likely agree with that statement, and would probably prefer to avoid the rule’s \$1.9 billion in costs and close to 8 million paperwork burden hours.

## SMALL BUSINESS IMPACT

The policy implications of the employer mandate, the 50-employee threshold, and the meager tax credit are well known. Perhaps less obvious are the numerous occasions when the administration conceded its ACA rules would impose significant costs on small businesses.

Under the Regulatory Flexibility Act, agencies must determine if a regulation would impose a “significant economic impact on a substantial number of small entities” (SISNOSE). This term is undefined among agencies, but HHS states that if a rule reduces revenue or raises prices by 3 to 5 percent within a five-year period, it imposes a SISNOSE. Regulations rarely trigger this threshold, but to date, the ACA has implemented 11 regulations that would have a significant economic impact on small businesses.

## ACA Rules Burdening Small Businesses According to HHS

<u>Regulation</u>	<u>Cost</u>	<u>Paperwork Burden</u>
Proposed Menu Labeling	\$757.1 Million	622,000 Hours
Final Shared Savings Program	\$451 Million	N/A
Proposed Vending Machine Labeling	\$423.1 Million	842,000 Hours
Final Physician Fee Schedule	\$172.9 Million	365,197 Hours
Proposed Covered Outpatient Drugs	\$81.4 Million	391,212 Hours
Final Billing for Skilled Nursing Facilities	\$29.93 Million	913,884 Hours
Final Payment Policies	\$11.58 Million	196,509 Hours
Final Patient Notification Requirements	\$2.55 Million	138,032 Hours
Final Outpatient Prospective Payment	N/A	1,010,876 Hours
Final Inpatient Prospective Payment	N/A	6,838,293 Hours
Final Hospital Payment System	N/A	N/A <sup>[1]</sup>
<b><u>Aggregate Small Business Impact:</u> \$1.9 Billion and 11.3 Million Hours</b>		

The listed costs of \$1.9 billion and 11.3 million hours are as reported by the agencies, taking everything listed in the Federal Register at face value. However, the reality for millions of affected firms is a regulatory tax of 3 to 5 percent, a tax the administration admits. These burdens will appear nowhere on CBO's fiscal tables, but they will undoubtedly affect health insurance coverage, consumer products, and the amount of time Americans spend completing federal paperwork.

## CONCLUSION: PAST IS PROLOGUE?

After \$30 billion in burdens and more than 111 million hours, 2013 is the real race to the finish for the ACA. As the administration places the finishing touches on regulatory implementation, expect rules to undergo expedient White House review, provide brief comment periods, and contain [incomplete benefit-cost analyses](#). Currently, there are three ACA rules under review at the White House and the administration still must finalize menu labeling and outpatient drug rules.

If past is prologue, the 2014 report on ACA burdens will catalogue higher costs, more paperwork, and additional layers of red tape on the U.S. healthcare system.

[\[1\]](#) According to the rule, "These requirements are exempt from the PRA [Paperwork Reduction Act] in accordance with the provisions of the Affordable Care Act." *75 Fed. Reg.* 72238