



Regulation Review

Regulation Review: ACA Post-Election Surge

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Nearly three weeks after President Obama's reelection, the Administration has officially published three proposed rules implementing his signature legislative package, the Affordable Care Act (ACA). The proposals are relatively uncomplicated compared to other ACA rules; together, they take up a brisk 93 pages. Nevertheless, they represent some of the more notable changes mandated by the law.

The first [proposal](#), from the Department of Health and Human Services (HHS), implements one of the ACA's key directives: the prohibition against denying insurance to those with pre-existing conditions. Insurance companies will no longer be able to use "factors such as health status, medical history, gender, and industry of employment" to determine eligibility or in raising premium levels. The new policy takes effect January 1, 2014.

The second [proposal](#), also from HHS, sets standards for the "essential health benefits" (EHB) plans must provide in established exchanges. The EHB requirement mandates that exchange health plans must include a baseline level of care across a number of areas. In addition, plan providers must provide an actuarial value that demonstrates a plan's quality. The rule would also take effect January 1, 2014.

The third [proposal](#), a joint rulemaking from the Internal Revenue Service, the Employee Benefits Security Administration, and HHS, adjusts the level of rewards for consumers participating in "wellness programs." Under a wellness program, an individual can earn certain rewards for actively maintaining a healthy lifestyle. This rule would increase the limit on such rewards to as much as 50 percent of the cost of coverage for those following anti-smoking programs. As with the above proposals, this rule would take effect in 2014.

Breakdown:

Total Regulatory Costs: \$86.7 Million

Total Paperwork Burden: 17,497 hours

Analysis:

Timing is a major issue with ACA implementation. These three proposals are notable for all being a part of the Act's later deadline: January 1, 2014. Their date of publication is also interesting.

Only the EHB rule had an [entry](#) in the most recent Unified Agenda, and it was scheduled for release last April. The absence of entries for the other proposals is because no Unified Agenda has been published since the fall 2011 edition.

However, the relative speed of their review periods suggests they were both Administration priorities. The pre-existing conditions rule sat idle for a mere [12 days](#) and the wellness program rule faced only a [week](#) of review.

For reference, HHS has had 11 recent rules under review for more than 90 days.

It seems that these published burdens pale in comparison to other ACA rules. This may be due to the limited nature of the cost-benefit analyses. For instance, the wellness program rule only includes qualitative statements in its cost-benefit analysis.

Another example is how the pre-existing condition rule only includes an estimate of the administrative costs of filing new “rate review” forms. This is far from the primary economic concern that this regulation imposes. Due to a variety of factors, those with pre-existing conditions are likely to be in particularly poor health. Providers that take on those with pre-existing conditions will largely have to pay out more in benefits than they take in premiums. While other parts of the ACA (theoretically) seek to mitigate this cost shifting, it is still the core economic problem in insuring such a population.

The delay of the EHB rule as well as difficulties that states and the federal government face in implementing the exchanges are examples of how tenuous ACA implementation stands.