Regulation Review

Regulation Review: Health Care Exchanges Final

MARCH 13, 2012

Background:

Just two weeks before the Supreme Court decides the fate of the Patient Protection and Affordable Care Act (PPACA), the Obama administration will soon finalize one of the law's key components. On March 27, Health and Human Services (HHS) will formally publish its final rule implementing the insurance exchanges.

The rule establishes the basic parameters states must follow to create exchanges. In addition, the regulation sets baseline standards that insurance providers and employers must meet in order to participate. PPACA mandates that exchanges become operational by 2014.

Although the administration would like to highlight the "flexibility" this rule provides, it presents one of PPACA's most expansive regulatory burdens. The interim final rule is the product of two proposed rules published last July and August, respectively. The 644-page pre-publication version reveals a billion dollar surge in regulatory costs and a perplexing analysis of the paperwork burden.

Costs:

Here is a breakdown of costs, based on the proposed rules and the final language:

- Regulatory Costs and Benefits:
  - Proposed Rules: **$2.1 Billion** ($424 million annually from 2012-2016)
  - Final Rule: **$3.4 Billion** ($690 million annually from 2012-2016)
  - No quantified estimates of benefits in either version
  - Paperwork Burden:
    - Proposed Rules: **1,143,288 burden hours**
    - Final Rule: To Be Determined
    - Net Change: **$1.3 Billion** in compliance costs; no paperwork burden estimates available

The information collection analysis required by the Paperwork Reduction Act (PRA) gave no quantified estimates of the final paperwork burden. It does explicitly list 39 separate information collection requirements (ICR) that "differ" from the proposed version. HHS plans to issue notices "in the coming weeks" on these requirements. The PRA section also lists 11 requirements for which the Centers for Medicare & Medicaid Services plans "to seek approval at a later date."

Combined, the final burden estimates for 50 ICRs will only become available via notices at some undefined future date. This transparency dodge is yet another example in a long line of PPACA regulations running afoul of the standard rulemaking process.