

Insight



Health Care Implementation: A “Train Wreck” Looming? The Affordable Care Act’s Past, Present, and

SAM BATKINS | MAY 24, 2013

The future of the Affordable Care Act (ACA) is far from certain. However, with current estimates and a calendar of pending proposals, we can put a price tag on some of its future implementation. Pending proposals will impose at least **\$4.6 billion in costs** to states and the private sector in addition to **13.2 million paperwork burden hours**. To put the paperwork burden in perspective, assuming an [average hourly rate](#) for compliance, the time would cost \$412 million. In total, there are 63 imminent ACA regulations that are not yet final.

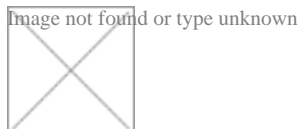
The Past

To date, final rules have imposed **\$26.9 billion in costs** on the private sector and states. This is in addition to more than **97 million paperwork burden hours**. The administration also admits to 11 regulations that will impose substantial burdens on small businesses, the equivalent of a regulatory tax of three to five percent. Small businesses face close to \$2 billion in burdens and more than 11 million paperwork hours as a result of the ACA.

The Present

There are several significant rulemakings pending for 2013 and 2014 that the White House has not yet finalized. Here are the most recent figures from the [Unified Agenda](#) on proposed rules that are not yet final.

- 33 regulations in proposed form, 36 percent of which are late; 4 proposals have missed their final rule scheduled deadline; 8 of the proposed rules missed their initial deadline.
- 15 regulations published in the Unified Agenda of federal rulemakings awaiting formal publication, of which 10 are late; 2 are already passed their final rule schedule and 8 should have proposed versions.
- 15 long-term regulations scheduled for publication in 2014 or 2015, one of which is economically significant (impact on the economy of \$100 million or more).





The table below details a few pending ACA regulations that the administration acknowledges will impose substantial costs, with no monetized benefits. Combined, these five regulations alone could add \$1.8 billion in costs and more than 7.1 million paperwork burden hours.

Notable Pending ACA Regulations

| <u>Regulation</u> | <u>Cost</u> | <u>Paperwork Hours</u> |
|---|---------------|------------------------|
| Nutrition Labeling for Menu Items | \$757 million | 2,677,372 |
| Medicaid State Plans | \$580 million | 489 |
| Nutrition Labeling for Vending Machines | \$421 million | 842,048 |
| Medicaid: Covered Outpatient Drugs | \$81 million | 391,212 |
| Exchanges; Essential Coverage Provisions | | 3,265,643 |
| <u>Totals: \$1.8 billion and 7.1 million hours</u> | | |

The nutrition labeling rules were scheduled for publication in April but they have not yet arrived at the [White House](#). In fact, none of the above rules are currently under review, meaning it will likely be months until formal publication. Currently, the administration is reviewing four ACA rules, one of which was supposed to be published in March.

Not surprisingly, there have been implementation hurdles and blunders for the administration. AAF first reported in 2012 that [47 percent](#) of health care regulations had missed their implementation deadline. In AAF's [three-year update](#) to the law, we recorded 29 missed deadlines during implementation. Little has changed as the number of missed deadlines continues to increase. As Senator Max Baucus (D-MT), one of the chief architects of the ACA, recently described it, implementation has been a “train wreck.”

The table below details ACA regulations that have not yet been formally released but are scheduled for publication in 2013. Two of the measures are “economically significant” and 10 of the 15 are past their scheduled implementation date. Two of the rules, “Branded Prescription Drug Fee” and “Health Benefits Changes,” should have final published rules but the administration has yet to release even the proposed rules.

ACA Regulations Scheduled for 2013

| <u>Regulation</u> | <u>Next Action</u> | <u>Missed Deadline</u> |
|--|-----------------------------|------------------------|
| <i>Administrative Simplification: Plan Certification</i> | Proposed Rule by 3/2013 | X |
| Branded Prescription Drug Fee | <i>Final Rule by 4/2013</i> | X |
| Conforming Changes | Interim Rule by 6/2013 | |
| Disproportionate Share Hospital Payment | Proposed Rule by 3/2013 | X |
| Federal Employees: Group Life | Proposed Rule by 3/2013 | X |
| Federal Employees: Health Benefits | Proposed Rule by 3/2013 | X |
| Federal Employees: Disputed Claims | Proposed Rule by 3/2013 | X |
| Federal Employees: Misc. Changes | Proposed Rule by 5/2013 | |
| Federal Employees: Health Benefits Changes | <i>Final Rule by 3/2013</i> | X |
| Indoor Tanning: Excise Taxes | Final Rule by 6/2013 | |
| Medical Loss Ratio for Section 833 Orgs | Proposed Rule by 12/2012 | X |
| Nondiscrimination Under PPACA | Proposed Rule by 3/2013 | X |
| Privacy Act Exemption | Interim Rule by 9/2013 | |
| <i>Prospective Payment System for Health Centers</i> | Proposed Rule by 6/2013 | |
| Notice Requirements Under Section 6056 | Proposed Rule by 12/2012 | X |

The Future

After 2013, the vast majority of the ACA will be final if the administration can keep up with its schedule. In total, the health care law will produce approximately 129 rules during a two-and-a-half year implementation

schedule. There are, however, several measures the White House identified in its Unified Agenda that are scheduled in 2014 or later. The earliest the public is likely to see one of these rules is next March, when the administration is set to release an advanced notice of proposed rulemaking for “Nondiscrimination on the Basis of Disability.”

There are 15 “long-term” actions but some of these rulemakings have already appeared previously. For example: dependent coverage rules, grandfathered health plans, and preexisting condition exclusions were originally published in 2010, immediately after the President signed the ACA. According to the Unified Agenda, the administration plans updates to all three of these previous regulations. The 2010 grandfathered health plan rule is the only economically significant measure of the three with \$72 million in costs and almost 600,000 paperwork burden hours.

Conclusion

To date, the ACA has imposed \$30 billion in costs, with \$5 billion in quantified benefits, but these overall figures are subject to the 63 remaining rulemakings. With dozens of missed deadlines, sequestration, and thousands of pages of regulations still left to write, the White House must somehow avoid its own regulatory “train wreck.”