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No Sign of Key Regs at OMB, Heightening Uncertainty Over Health Care Law Implementation

By John Reichard, CQ HealthBeat Editor

It's widely assumed that the Obama administration is holding up action on major regulations in the weeks leading up to the Nov. 6 election — a tactic that may avoid political headaches but also is delaying efforts to implement the health law.

States and insurers are awaiting the issuance of at least a half-dozen regulations before they can make key design decisions on insurance exchanges and prepare health plan offerings to be sold in the new marketplaces. The rules they are waiting for are nowhere to be seen on the White House Office of Management and Budget website that tracks which regulations federal budget officials are reviewing.

Since OMB review of regs can take weeks and months to complete before they are formally published, it's unclear how quickly the regulations would or even could be issued once the election is over.

That in turn heightens the uncertainty about whether insurance exchanges will be ready to enroll people on Oct. 1, 2013, as the health care law ([PL 111-148](#), [PL 111-152](#)) requires, and whether there will be a plentiful choice of plans once they do.

Among the proposed regulations still not out: rules governing state insurance markets; rules on the federally facilitated exchange, which steps in to offer coverage in a state that chooses not to open its own exchange; regulations on essential health benefits (See [related story](#), CQ HealthBeat, Sept. 19, 2012); a notice concerning benefit and payment provisions, which includes risk adjustment to pay plans based on the health status of their enrollees and reinsurance to protect them from unusually high early losses in the exchanges; rules on establishing the actuarial value of a plan sold on an exchange; and rules on exchanges that would deal with such matters as appeals of eligibility determinations and oversight of health plans offered on exchanges and the financial integrity of those plans.

The administration has been creative about finding ways to move planning forward, through the issuance, for example, of guidance documents rather than full-blown regulations. But even health care law supporters appear to be getting nervous about the absence of new rules coming out of the regulatory pipeline.

"Reginfo.gov does not show any ACA regulations pending" at OMB's Office of Information and Regulatory Affairs, said Washington and Lee University Law School Professor Timothy Jost, a supporter of the law who closely tracks its implementation. "I do think it is important that we get regulations out soon on a lot of 2014 reform issues, including the EHB, the market reforms, the

exchanges, and others and think that it is unfortunate that the regulations are not out or visibly moving," Jost said in an email.

"You always want stakeholders who want to implement this to have enough information to do so," said Senate Finance Committee Democratic aide Tony Clapsis at a Washington, D.C., forum Tuesday. However, Clapsis suggested that any difficulties occurring right now are manageable and will ease in coming weeks. "I think, for states who want to implement exchanges, and if you talk to those states that are really active in trying to do so, they feel they have more than enough information." Much state activity is occurring on EHBs, or essential health benefits, he added. "You're starting to see kind of all of that. I think you'll see that accelerate very quickly as soon as we get past this election," he told the forum sponsored by Politico.

For their part, insurance industry officials say plans are busily preparing for the new law. But "there is a tremendous amount of work that needs to be done," emphasized Dan Durham of America's Health Insurance Plans in recent testimony before the House Ways and Means Health Subcommittee. "There is an urgent need for more regulatory clarity with respect to exchanges and insurance market reforms," he said.

"Unless such guidance is forthcoming, it will be difficult for health plans to complete product development, fulfill network adequacy requirements, obtain necessary state approvals and reviews, and ensure that their operations, materials, training and customer service teams are fully prepared for the initial open enrollment period that begins on Oct. 1, 2013," Durham said.

Administration officials declined to comment on when the regulations would be issued. But they have consistently said the law will be implemented on time. A Health and Human Services official repeated that prediction in an email this week. "HHS has worked to give states maximum flexibility in implementing the law and consumers in all fifty states will have access to an exchange" by next October, the official said.

John Reichard can be reached at jreichard@cq.com.

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