Obama Re-Election to Accelerate Release of Health Care Reform Law Guidance

President Barack Obama's re-election last week is certain to accelerate the release of long-awaited guidance and regulations employers need to comply with the health care reform law, observers say.

"There will be an avalanche of regulations," said Gretchen Young, senior vice president-health policy with the ERISA Industry Committee in Washington.

"There are many regulations that are very far along and that we expect to see issued soon. Everyone is bracing for an onslaught of regulations," added Frank McArdle, an independent benefits consultant in Bethesda, Maryland.

Some of those regulations likely had been completed prior to the election, but the administration delayed their release to avoid potentially politically damaging fallout, observers say.

Costs, penalties

One set of guidance likely to have been delayed involves a section of the Patient Protection and Affordable Care Act that, starting in 2014, creates a three-year, $25 billion federal reinsurance program — largely funded by employers — that will partially reimburse commercial insurers writing coverage for individuals with high health care costs.

Consultants have estimated that the assessment for the Transitional Reinsurance Program will be between $60 to $90 per health care plan participant. That would mean large employers would face millions of dollars in new assessments for a three-year period starting in 2014 — a cost the administration would not have wanted to be disclosed prior to the election, some say.

"There was no way we would see guidance with those kind of numbers" before the election, said Chantel Sheaks, a principal with Buck Consultants L.L.C. in Washington. "Employers with big, generous plans will be very angry when they see those numbers," she added.

With the election over, guidance on the assessment rates and other information employers will need to comply with the reinsurance program should be released in the coming weeks.

"There is no reason why the information should not come out very soon," Young said.

Guidance also is expected on a reform law provision of critical importance to nearly every company: the imposition of a stiff $2,000-per-full-time-employee penalty on employers that do not offer qualified coverage to employees.

The law says the penalty applies even if just one full-time employee is not offered coverage. Last year, the Treasury Department said it "contemplated" in forthcoming regulations to make clear that the penalty would not apply if an employer offered coverage to "substantially" all full-time employees.

But 18 months later, employers still are waiting for that guidance.

And some health care reform law issues may be discussed during the remaining weeks of the current legislative session as lawmakers look for ways to reduce the federal budget deficit.

House Speaker John Boehner, R-Ohio, suggested as much last week. Parts of the health care reform law are "very expensive," and at a time "when we're trying to find a way to create a path toward a balanced budget, everything has to be on the table," he said during a television interview.

Health insurance exchanges

Such "expensive" reform law provisions certain to be discussed, observers say, include the subsidies that will be provided to the uninsured, starting in 2014, to offset the cost of buying coverage in public health insurance exchanges.

Those subsidies will be available to those with incomes up to 400 percent of the federal poverty level. By contrast, in Massachusetts, whose 2006 health care reform law was in certain ways a model for the federal law, the subsidies are available to those with incomes up to 300 percent of the federal poverty level.

"We may see negotiations where there will be give and take" among lawmakers, McArdle said, referring to the subsidies and other costly provisions in the law.

One change, widely expected, came last week, and involves state notification to federal regulators on whether they will set up insurance exchanges where the uninsured and others could purchase coverage.

The deadline for the notification is Nov. 16. But states now have until Dec. 14 to submit a blueprint to federal regulators on how the exchange would operate, according to a letter Health and Human Services Secretary Kathleen Sebelius sent to state governors.

The administration also said the states would have until Feb. 15, 2013, to indicate if they would instead prefer to set up exchanges in partnership with the federal government.

Court decisions

Just as lawmakers and regulators are certain to tinker with the law, upcoming decisions by federal courts also could have an impact.

Dozens of organizations have challenged a health care reform law regulation that will require employers, including nonprofit affiliates, such as hospitals and universities, of religious organizations, to extend coverage for prescription contraceptives.

In addition, a suit over premium subsidies, if successful, could stymie the main intent of the health care reform law — a big reduction in the 50 million people in the United States who are uninsured.

That suit, filed by Oklahoma Attorney General Scott Pruitt, challenges the legality of Internal Revenue Service regulations that say premium subsidies can be provided to eligible individuals who obtain coverage in exchanges set by the states and the federal government.

The Oklahoma suit says the health care reform law makes it clear that the subsidies are available for coverage through exchanges only set up by the states.

Because many states may decide against setting up exchanges, millions of people in states where the federal government sets up exchanges — because the states don't — would not be eligible for premium subsidies.

"Court challenges will continue to be a thorn in the side of the administration," Sheaks said.