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It's a Mad, Mad, Mad, Mad ObamaCare

The law's implementation is turning into one pratfall after another.

For sheer political farce, not much can compete with ObamaCare's passage, which included slipping the bill through the Senate before dawn three Christmas eves ago. But the madcap dash to get ready for the entitlement's October 2013 start-up date is a pretty close second.

The size and complexity of the Affordable Care Act meant that its implementation was never going to be easy. But behind the scenes, even states that support or might support the Affordable Care Act are frustrated about the Health and Human Services Department's special combination of rigidity and ineptitude.



Editorial board member Joe Rago on the challenges of implementing ObamaCare.

To take one example, for the better part of a year states and groups like the bipartisan National Governors Association and the National Association of Medicaid Directors have been begging HHS merely for information about how they're required to make ObamaCare work in practice. There was radio silence from Washington, with time running out. Louisiana and other states even took to filing Freedom of Information Act requests, which are still pending.

Now post-election, new regulations are pouring out from HHS—more than 13,000 pages so far and yet nuts-and-bolts questions are still unanswered. Most of what we know so far comes from a 17-page question-and-answer document that HHS divulged this week, though none of the answers have the force of law and HHS says they're subject to change at any moment.

HHS is generally issuing rules with only 30 days for public comment when the standard is 60 days and for complex regulations 90 days and more. But the larger problem is that HHS's Federal Register filings reveal many of the rules were approved in-house and ready to go as early as May. Why the delay?

To take another example, the feds are building a data hub to determine who is eligible for Medicaid and ObamaCare's "exchanges," the bureaucracies that will dispense insurance subsidies and police the market. Many states have cut administrative costs by combining the application process for Medicaid, food stamps, cash assistance and other antipoverty programs, but HHS's privacy rules say the hub can only be used for ObamaCare. So HHS will force states to become less efficient and flatly refuses to reconsider.

In a word, HHS is treating the states not as the partners it needs to give ObamaCare any chance of success, but as serfs.

[Enlarge Image](#)



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Secretary of Health and Human Services Kathleen Sebelius

HHS did finally if "conditionally" approve the exchange blueprints of six states this week, though it has yet to release any formal objective standards for conditional approval. Some 24 states are refusing to participate, so the agency will be running a federal fallback exchange that it won't reveal how it will operate.

A federal exchange is a vast undertaking. The clearinghouses will be open to the uninsured but also to small businesses and people who already buy plans on the individual market. On average about a quarter of a state's population are expected to at least browse the exchange options, and the share will be far higher in states with large numbers of uninsured people under 65, like New Mexico (24%), Georgia (22%) and Texas (27%).

If 20% of Americans use exchanges, that's 62 million people. At a House Energy and Commerce hearing on Thursday, ObamaCare point man Gary Cohen all but took the Fifth on how he'll deal with this and other challenges.

The exchange naysayers now notably include [Chris Christie](#) of New Jersey and Bill Haslam of Tennessee. Sure, they're Republicans, but both Governors flirted with the idea and wanted to participate if it would result in a saner and more rational marketplace. The costs and risks were too high.

HHS also declared this week that states can decide either to expand Medicaid (after the Supreme Court decision made it optional), or not. But states are not allowed to make the partial expansion that many states would have considered. This all-or-nothing political gambit is meant to put the Governors in a bad political spot at home if they don't expand, but the irony is that many of them would participate if HHS gave them more flexibility to manage their own programs and control costs.

Yet HHS has made it almost impossible to qualify for Medicaid waivers. States aren't even allowed to "go green" by using digital instead of paper applications. These "maintenance of effort" rules weren't carved in stone tablets by LBJ. HHS formalized them in a regulation this February.

In other implementation hilarity, no fewer than 18 Democratic Senators and Senators-elect came out last week against ObamaCare's \$28 billion tax on medical device sales—and not just the usual penitents from Massachusetts and Minnesota. The list includes Chuck Schumer, Dick Durbin and Patty Murray.

"With this year quickly drawing to a close, the medical device industry has receive little guidance about how to comply with the tax—causing significant uncertainty and confusion for businesses," they write about the tax most of them voted for.

The last entitlement to get off the ground was President Bush's Medicare prescription drug benefit. Those rules were tied up with a bow by January 2005, giving business and government nearly a year to prepare—and that was far simpler than re-engineering 17% of the economy. No one knows where the current magical mystery tour is headed, especially not HHS.

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