

AN ALERT FROM THE BDO HEALTHCARE PRACTICE

# BDO KNOWS: HEALTHCARE

## ► SUBJECT

### SUPREME COURT RULES ON AFFORDABLE CARE ACT: BDO'S PERSPECTIVE

## ► DISCUSSION

On June 28, 2012, the U.S. Supreme Court issued a landmark ruling on the constitutionality of key provisions of the Patient Protection and Affordable Care Act (ACA). For American businesses in general, and the healthcare industry in particular, the Supreme Court's decision to uphold President Obama's overhaul law removes a great deal of uncertainty.

After months of legal challenges, the ruling gives hospitals, insurance companies, biotech firms and drug makers' clarity on the impact of ACA and when the initial provisions of the law are expected to take effect in 2014.

As previously anticipated and now reiterated by the ruling, the legislation is considered a windfall for much of the healthcare industry by making coverage affordable for tens of millions of uninsured Americans. But there are also significant challenges for some companies and sub segments.

Stocks of major health insurance companies dropped as analysts examined the Supreme Court's decision. UnitedHealth Group declined 3 percent, while WellPoint lost almost 6 percent. At the same time, hospital chain stocks rose. Hospital Corp. of America was up 7 percent, and Quest Diagnostics, which runs laboratories, was up 2.5 percent. The stock market's response to this ruling was quite different from the time the original legislation was enacted.

As a response to this ruling, it is important to reevaluate what it means to various constituents.



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## MEDICAID

You may recall that the expansion of Medicaid under the ACA primarily extended the program that covers only specified categories of needy individuals to coverage for all individuals with incomes below 133 percent of the federal poverty level. The statutory amendments implementing this expansion were structured so that if a state refused to implement the mandatory expansion, the Secretary of Health and Human Services could use her existing enforcement authority to withhold part or all of that state's Medicaid funding. The Supreme Court's ruling did not invalidate this, but essentially limited the Federal Government's ability to force states that were unwilling to take on this expansion by threatening the loss of funding under the existing Medicaid program. Instead, states at their option are now free to implement Medicaid expansion, and if under the expansion they fail to comply with federal laws, they may suffer Federal Medicaid funding withholds. For the states that opt out, providers, particularly public providers, will continue to experience high costs for uncompensated care provided to the low income uninsured population.

## HEALTH INSURERS

The Supreme Court ruled that the most controversial element of the ACA, the individual mandate, was a valid exercise of Congress' power to impose taxes. As a result of this decision, most individuals will be required to obtain health insurance coverage or pay a penalty beginning in 2014, as planned. While the penalties for failure to obtain health insurance will likely be much lower than the cost of the typical insurance premium, the insurance mandate is expected to increase the number of individuals who obtain health insurance coverage. The health insurance industry will have to continue market reforms. Additionally, the burdens of the tax on premiums and mandated medical loss ratios stay. Looking into the future, we believe that insurers are likely to respond to market reforms with innovative new products and improved service delivery and will likely benefit greatly from the tens of millions of new lives participating in insurance coverage.

## PROVIDERS

The Supreme Court's ruling has no direct impact on the delivery system or payment system reforms enacted under the ACA. Medicaid primary care increases and disproportionate share reductions remain, as do the significantly increased compliance requirements and related costs. Additionally, the provisions of the ACA that relate to accountable care organizations (ACOs) remain intact, as do the various demonstration projects and pilot programs. We believe that even if the ACA was completely struck down by the court's decision, the impetus relating to care transformation and reimbursement embodied in the ACO concept would have survived and continued to develop, transforming the entire industry.

It is believed that the healthcare law will bring an influx of new patients, which hospital operators hope will offset the impact of negative trends such as reduced government reimbursement and the additional compliance costs of regulatory scrutiny and quality of care measures.

## HEALTH INSURANCE EXCHANGES

Health insurance exchanges will go into effect as anticipated. In accordance with the provisions of the ACA, the state plans related to the exchanges require approval by Health and Human Services (HHS) no later than January 1, 2013. As a result of this litigation, many of the states suspended implementation. The impact of this will be potential delays and states not meeting the January 1, 2013 deadline. The federal government may have to step in and run the exchanges on behalf of the states because of the delays, causing an additional financial burden on the federal government in the short term. Certain states, however, have pushed ahead regardless of the outcome of the Supreme Court's decision and are expected to meet the required deadline. It has become clear that several states would have continued to establish insurance exchanges irrespective of the Supreme Court's decision.

## MEDICAL DEVICE AND PHARMACEUTICAL INDUSTRY

The excise tax on the medical device industry will remain in place as will similar taxes on pharmaceutical companies. We expect these taxes to be challenged as the powerful pharmaceutical and biotechnology lobby gains momentum.

## EMPLOYERS

The most controversial element of the ACA remains with the individual mandate and employers' requirements to provide insurance or face penalties. As the Supreme Court upheld the ACA, a significant burden will shift to employers, many of which we believe were sitting on the sidelines patiently waiting for the decision. Employers will now be required to update both their summaries of benefits and coverage in conformance with new guidance prior to the next open enrollment period as well as their payroll systems in order to report healthcare coverage on W-2s for 2012. Employers will also need to start considering whether they are going to eliminate their health plans in lieu of participation in one of the many state exchanges and, in many cases, will have to give effect to plan design changes in order to mitigate the so-called "Cadillac Tax". Many of these requirements will be costly to employers, and as some economists believe, will be negative to the already dire employment situation in the United States. Others believe differently. The CEO of Sageworks, a large technology company, told ABC News, "It's very important to remember the psychology of people who run privately held companies. If the owners or managers have time to plan, the legislation is less important than the time horizon".

## CONSUMERS

Overall from a consumer standpoint, the belief is that this decision is likely to lead to the biggest change in healthcare coverage in our lifetime. Lower income families who don't have access to employer-sponsored health plans stand to benefit the most. Additionally, there will be a tremendous increase in the number of people being covered or subsidized by the federal government. It is widely believed that healthcare costs in many states will increase with the new rule requiring managed care providers to insure people with pre-existing conditions, but people eligible for subsidies will see costs decrease based on a percentage of their income. Additionally, states will put significant pressure on health insurers and managed care companies regarding premium increases.

## CONCLUSION

In conclusion, it is clear that the country remains polarized with respect to the ACA and will continue to be so for a number of years. There is no doubt that this polarization will lead to further challenges to the legislation, both legally and politically. Analysts, politicians, business leaders and economists are continually trying to predict the overall impact of the ACA, but, of course, it means different things to different constituents. Furthermore, these laws are so vast and so complex that socio-economic or political changes will no doubt impact our assessment in years to come. Change is here to stay and, as with many aspects of the ACA, the momentum is already too great to reverse what has already been achieved.

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