

Business Considerations in Response to the Healthcare Decision

The Supreme Court decision of June 28, 2012 returns healthcare reform to the headlines and will likely act as a catalyst to accelerate those initiatives that were on hold pending the ruling. As the healthcare landscape picks up steam, public and private organizations may need to adjust their plans to respond to the complex implications of these changes and assess their readiness to comply with the Affordable Care Act (ACA)¹.



In a widely awaited ruling, The Supreme Court of the United States (SCOTUS or Court) upheld the ACA except for a Medicaid-related provision.²

The Court rulings answer some questions, but raise others. Organizations will need to reassess implementation schedules and internal skills and systems needed to comply with ACA. Those preferring to wait until all questions are answered may be forced to react in the face of financial reporting, tax or other federal deadlines.

Business Considerations

As organizations revisit compliance with ACA, understanding the interdependencies of the healthcare ecosystem³ becomes critical. State governments will be closely watched for their reaction to the ruling and the impact it has on the formation, structuring and implementation of Health Benefit Exchanges (HBE) as well as the decision to move forward with a Medicaid expansion. A majority of states⁴ have not yet moved past the initial HBE planning stage – and unless deadlines are adjusted – will be challenged to meet the November 16, 2012⁵ declaration date. This may open the door to the business considerations of other options such as a federally facilitated model.

Health insurers should be monitoring the states they serve carefully and planning now for various scenarios: a state-based exchange, federally facilitated, private or

hybrid exchange models for distribution of their products. Health insurers should immediately reevaluate their risk pool and their product offerings including whether there are opportunities to reach out to the healthy, younger uninsured while planning to serve the broader population of uninsured.

Employers, who may have been waiting to assess their benefit plans, will need to complete their health insurers' evaluation and amendment process for the near-term changes (such as the flexible spending plan changes and Form W-2 reporting), keeping a close eye on how the ruling affects the HBEs and health insurers. Employers are also likely to revisit their longer term employee benefits, education and communication strategy, and may need to revamp HR/benefit systems as part of the process. As tax or accounting provisions⁶ that are not yet in effect phase in, systems and processes will need to be evaluated. As an example, the trust fund fee for health insurance issuers⁷ and employers with self-insured plans will apply to policy/plan years that end after September 30, 2012,

"With 18 months before the provisions go into effect, and much less time before companies must design new plans and offer them to their employees, they have to now treat the law as a business reality."

Businessweek.com, June 29, 2012

and those affected will need to start quickly assessing the systems available to facilitate compliance.

With ACA remaining virtually intact, there are no changes in requirements for life science companies. They will, however, need to begin capturing all global payments to physicians and teaching hospitals under the Physician Sunshine Act⁸ as early as January 1, 2013. In addition, medical device companies may need to accelerate their programs now to ensure that they have the systems and processes in place to comply with the excise tax requirements.

Finally, healthcare providers should be monitoring states' decisions on accepting the increased Medicaid and establishing HBEs, while continuing their ongoing transformational programs to deliver better quality and reduce the cost of care.⁹ The unsustainable cost of care and the challenge for providers to "do better with less" continue driving change, including the transition from fee for service to value-based purchasing; new models of

risk-sharing with insurers and physicians; increasing focus on health management/wellness; and the opportunity to use clinical and financial data to lower costs and improve outcomes. While there is now greater clarity regarding access to insurance coverage, which is the third key aspect of reform along with quality and cost, there still remains potential for unreimbursed charity care from possible gaps in Medicaid coverage and from individuals who may reject coverage voluntarily and will be liable for the tax.

The effects of ACA from this point on will reverberate across the interdependent healthcare ecosystem of public and private organizations for many years to come subject to the ongoing dynamics of the legislative and regulatory process. However, in the short term, leading organizations need to recalibrate their governance, monitoring and compliance processes to succeed in this evolving environment.

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¹ "Healthcare legislation" typically references the product of two bills: Patient Protection and Affordable Care Act (PPACA), Pub. L. No. 111-148, March 23, 2010 also referred to as the Affordable Care Act, and Healthcare and Education Reconciliation Act of 2010 (HCERA), Pub. L. No. 111-152, March 30, 2010.
[PUBLIC LAW 111-148—MAR. 23, 2010, 111th Congress](#)
[PUBLIC LAW 111-152—MAR. 30, 2010, 111th Congress](#)

² Supreme Court of the United States, Syllabus, *NATIONAL FEDERATION OF INDEPENDENT BUSINESS ET AL. v. SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.*, October Term 2011.

³ KPMG uses the term "healthcare ecosystem" to encompass the interdependencies of providers, health insurers, life science companies, State and federal governments as well as all employers providing health benefits.

⁴ *Few States Set for Health Exchanges*, "While 34 states and Washington, D.C. received exchange planning grants totaling \$856 million, only 14 of them have passed legislation authorizing an exchange, and a couple more are moving ahead under executive orders from the governor." Politico.com, J. Lester Feder and Jason Millman, May 21, 2012.

⁵ *American Health Benefit Exchanges, ALERT! Draft Exchange Blueprint Guidance Released by the Department of Health and Human Services (HHS)*, ncsf.org, May 17, 2012. Regulations implementing the ACA require HHS to approve or conditionally approve state-based exchanges no later than Jan. 1, 2013, for operation in 2014. To receive HHS approval or conditional approval for a state-based exchange or a state partnership exchange, a state must complete and submit an exchange blueprint which must be submitted to HHS by Nov. 16, 2012.

⁶ For tax requirement details please see *Summary of Tax Provisions in Health Care Reform*, KPMG LLP, March 2010 or accounting considerations at *U.S. Healthcare Reform Creates Potential Accounting and Disclosure Changes*.

⁷ *Fees on Health Insurance Policies and Self-Insured Plans for the Patient Centered Outcomes Research Trust Fund*, federalregister.gov on ACA Sections 4375 and 4376.

⁸ *Defining Issues: U.S. Health Care Reform Creates Potential Accounting and Disclosure Changes*, KPMG LLP, April 2010.

⁹ *The Transformation of U.S. Healthcare: Forces, Implications, and Actions*, KPMG LLP, June 2012.

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