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THE SUPREME COURT UPHOLDS THE ACA

IMPLICATIONS FOR PHYSICIANS, HOSPITALS AND INSURERS

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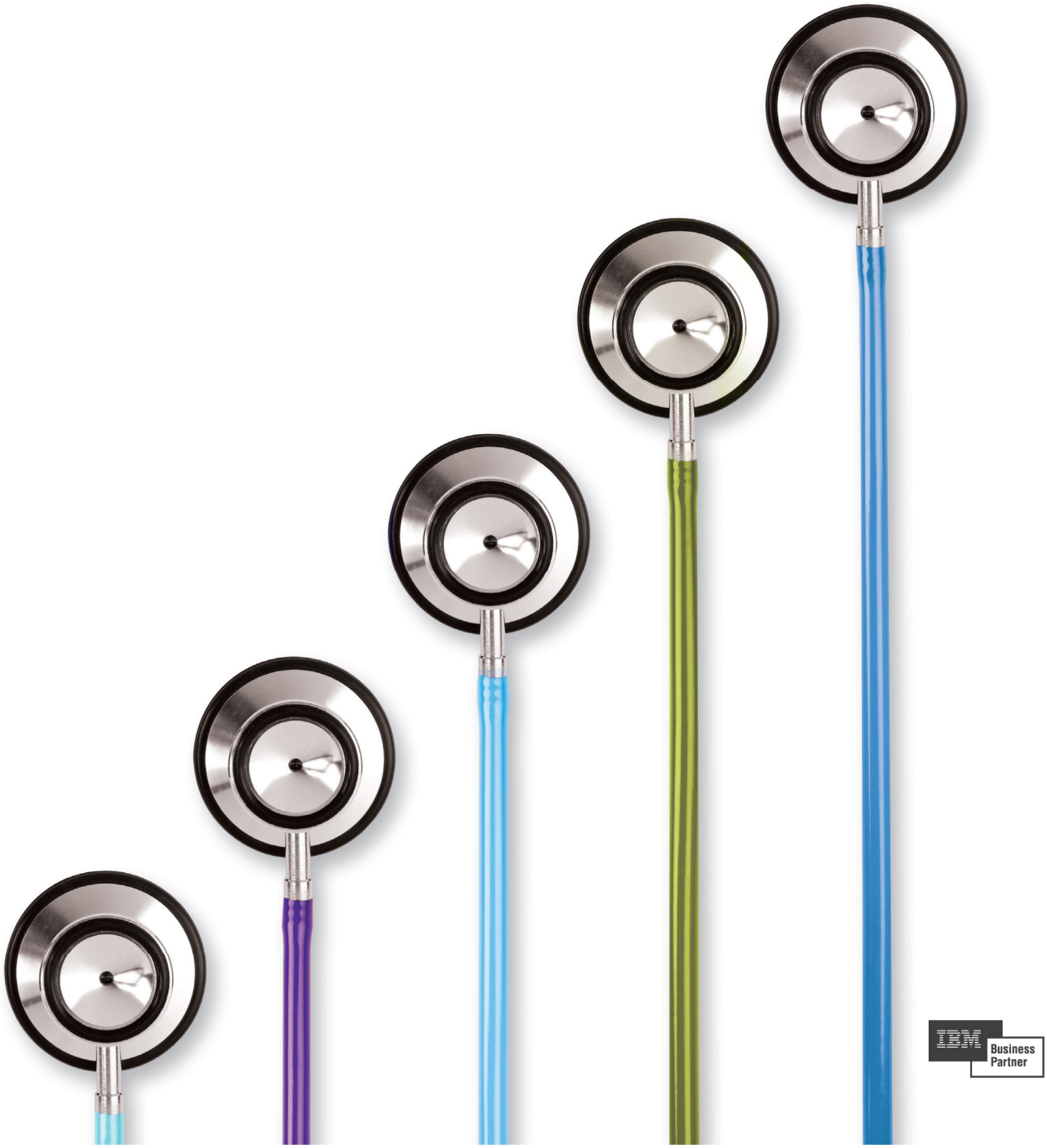

IBM Business Partner

On June 28, the Supreme Court found the Patient Protection and Affordability Act (ACA) constitutional.

In this article, we show the timeline for key provisions and summarize the implications for physicians, hospitals and insurance companies. Despite election-year politics, we assume that most of the important ACA provisions will be implemented[1]. Most industry observers take a similar view, viewing the ruling as providing a clear path forward[2].

SUMMARY

The ACA has benefits and risks for every healthcare stakeholder. With the law in effect, many more Americans will be insured, quality measurement programs will continue to expand and payment reform initiatives will accelerate.

- Physicians will see an increased demand for primary care and the potential for increased reimbursement pressure on specialists. In some areas, physician shortages will be exacerbated.
- The ACA does not address the SGR and its pending 30% cut in Medicare reimbursement for physicians.
- Hospitals may be the largest beneficiary of the ACA with the promise that many currently uninsured patients will now have insurance.
- Insurance companies will have many more patients offset by the elimination of plan limits, particularly on pre-existing conditions. Many are concerned that the ACA penalty for not purchasing insurance is too low.
- Current industry consolidation trends are expected to continue.

[1] Steinhauer, Jennifer, "Politics and Popular Provisions Make Health Care Law Hard to Erase," June 29, 2012, New York Times.
[2] Mathews, Anna Wilde, "For Health Sector, Forward March," June 29, 2012, Wall Street Journal.

GENERAL IMPLICATIONS

More Insured Patients

- Prior to the Court ruling on Medicaid expansion, the Congressional Budget Office projected that 30 million more people will be insured by 2022. About half are in the Medicaid expansion; that will be reduced if some states elect not to participate. However, by any measure, there will be many more insured patients.
- Half or more of the new insureds will be in plans from private insurers through insurance exchanges that take effect for calendar 2014.

Quality Improvement Programs

The law has increased momentum for care coordination and created more pressure to align incentives among providers.

- The law's lesser-mentioned provisions on cost and quality are already having an impact. Providers will increasingly see reimbursement tied to quality.
- Examples include reducing hospital-acquired infections, stemming preventable complications, reducing readmissions and the physician value-based modifier.
- The ACA contains a large set of programs and initiatives to test new systems for care delivery and payment reform while providing access and quality protections for patients. Private insurance companies and many provider organizations have already moved to implement similar programs.

ACA Implementation Schedule

The ACA has a large number of components, phased in over several years.

Here are some of the more important milestones:

In Place

- Preventive services with no out-of-pocket costs for Medicare
- Health plans may not cancel or "rescind" coverage
- Children with pre-existing conditions cannot be denied coverage
- Dependent children covered to age 26
- Small business tax credits for health coverage
- Discount for prescription drugs in Medicare "donut hole"
- No lifetime limits on essential benefits

2012

- Initial Medicare payment reform trial in Medicare "ACOs"
- Penalties for hospitals with high rates of preventable readmissions

GENERAL IMPLICATIONS (continued)

Payment Reform Programs

While the ACA does not mandate a specific path away from fee-for-service reimbursement, it does provide for numerous trials and experiments in value-based purchasing, ACO's, and other shared savings models. This has led to an avalanche of activity by health systems, physician groups and insurance companies, all anticipating a world where payments are linked to patient outcomes.

- The Medicare ACO program is now in effect with 65 organizations participating.
- In addition, more than 160 private ACO-type organizations have been formed.
- All of these programs rely on quality and other outcomes data which, in turn, require measurable results on patient populations. The technology of EHR's, Healthcare Information Exchanges, and other emerging interface standards will continue to expand.
- The trends toward hospital consolidation, health system purchases of physician groups, and physician group consolidation are expected to continue in the near term.

Health care cost pressures.

The pressure to reduce healthcare costs continues, regardless of the ACA. The Congressional Budget Office estimates that private health insurance premiums will increase 5.7 percent per year, from 2012 until 2022. Without the law, the CBO estimates that premiums in the individual insurance market would be a little higher, employer insurance premiums for big companies would be a little lower and employer premiums for small companies would stay about the same.[3]

ACA Implementation Schedule
(continued)

2013

- Single set of rules for eligibility verification and claim status checks
- Medicaid rates for primary care match Medicare rates
- Nationwide bundled payment pilot begins in Medicare
- Medicare physician comparison data available to the public
- Expanded coverage of preventive services by Medicaid
- Reduction in Medicare payments for select hospital readmissions
- Increased Medicare payroll tax by 0.9% on couples making more than $250,000 and individuals making more than $200,000. A new tax of 3.8 percent on unearned/investment income.
- Excise tax on medical device manufacturers and importers

[3] Thomas, Katie, "Consumer Questions on Health Care Act & the Answers," New York Times, June 29, 2012, http://www.nytimes.com/2012/06/30/us/health-care-act-questions-and-answers.html?pagewanted=print

IMPLICATIONS FOR PHYSICIANS

Physicians see both pluses and minuses in the ACA. On the one hand, more insured patients is a positive. But many will be Medicaid patients, which traditionally reimburse medical services at very low rates. Also, some forecast that the influx of patients will exacerbate a shortage of physicians, at least in some areas.

It is important to point out that the ACA **does not address the SGR** and its pending 30% cut to physician Medicare reimbursement in 2013. This is perhaps the biggest criticism of the ACA: it does not directly address the single largest threat to physician reimbursement.

Physician organizations had a mixed reaction to the Supreme Court ruling:

- Leaders of the American Medical Association (AMA) and the American College of Physicians (ACP), said they were pleased with the ruling, deeming it a boon for primary care physicians and believing it will spur the growth of preventive care services while easing the burden on emergency rooms. Although there is currently a shortage of primary care physicians, especially to take on the newly insured, David Bronson, MD, President of the ACP, stated that the ruling, along with government incentive programs and new payment models would inspire more medical trainees to choose primary care as their specialty.
- Many other organizations supported the ruling including the Ambulatory Surgery Center Association, the American Pathology Foundation, and the American Society for Clinical Pathology.
- Reimbursement changes and other shifts that affect how doctors practice have so strained relations within the American Medical Association that a third of its

ACA Implementation Schedule
(continued)

2014

- All citizens and legal residents required to have health insurance or pay a penalty to the IRS.
- Insurers prohibited from denying coverage or renewals to people with pre-existing conditions
- No annual limits on essential benefits
- State insurance exchanges offer a range of plans to individuals and small businesses. States that do not establish exchanges will have one set up by HHS.
- Income-based tax credits for most consumers in the exchanges. Sliding scale credits available for households earning up to approx. $88,000 for a family of four.
- Medicaid expands to cover low-income people under 65 with income up to 133 percent of the federal poverty level: $14,856 for individuals or $30,656 for a family of four.
- Employers with more than 50 workers penalized if any worker gets coverage through a health insurance exchange and receives a tax credit; employers can deduct the first 30 workers. Businesses with fewer than 50 employees are exempt.

members objected to the group's endorsement of the law. A December poll by the Deloitte Center for Health Solutions found that 44 percent of doctors saw the law as "a good start," while the same percentage said it was "a step in the wrong direction."[4]

- Those who oppose the law say some of the pay-for-performance programs promote consolidation of hospitals and physician practices, encouraging physicians to leave independent practice and become salaried employees of hospitals. Specialists are concerned they will face reduced reimbursements, loss of autonomy to hospitals and be able to care for fewer patients.
- The IPAB (Independent Payment Advisory Board) has been particularly controversial. The board consists of fifteen unelected officials appointed by the President. By 2014, it is charged to recommend specific Medicare reductions to keep Medicare spending in line with pre-set spending targets. Many organizations are lobbying to abolish this board.

IMPLICATIONS FOR HOSPITALS

Hospitals are generally seen as the biggest beneficiary of the ACA. The stocks of public hospital chains saw gains of 5% to over 10% on the day of the Supreme Court ruling.

The 32 million patients now expected to have insurance coverage are generally being treated today, often in Emergency Rooms, but without compensation. Of course, the ACA recognizes this shift and reduces hospital reimbursement by $155 billion, according to the American Hospital Association. A new risk in states that opt-out of the Medicaid expansion is that hospitals in those states will face reduced reimbursement without an offsetting increase in the number of insured patients.

- Reducing the use of emergency departments was one of the leading arguments for passage of the law but recent research has raised doubts about this assumption.
- The concern is that low Medicaid physician reimbursement rates may keep many of the newly covered from finding alternatives to hospital emergency rooms.
- After the Massachusetts' healthcare overhaul was implemented, emergency room visits rose by 9 percent from 2004 to 2008. Expanded coverage may have contributed

[4] Wayne, Alex, "Family Doctors Seen as Winners as High Court Upholds Law," June 29, 2012, http://www.businessweek.com/news/2012-06-29/family-doctors-seen-as-winners-as-high-court-upholds-law#p2

as newly insured patients entered the health care system and could not find a primary care doctor or could not get a last-minute appointment with a physician.

- Replenishing primary care physicians and establishing more community health centers may help offset this trend.

The payment reform mechanisms in ACA have led many hospitals to acquire other hospitals, physician groups and outpatient clinics. Their objective is to curb costs and develop more leverage to negotiate with payers. As part of this trend, hospitals make up a substantial number of those organizations participating in Medicare and/or commercial insurance company ACO's.

The ACA is causing hospital economics to evolve from "how many beds are full?" to "how healthy are our patients". While this trend will take years to unfold, it has clearly started. As Stephen K. Jones, FACHE, President and Chief Executive Officer of Robert Wood Johnson University Hospital and Robert Wood Johnson Health System said,

> *"It is clear that the new model of healthcare delivery is driven by value, specifically the quality of services provided, not the quantity of tests completed or patients admitted. In the new environment, hospitals, physicians and all healthcare providers must remain focused on improving patient safety measures, reducing readmission rates and effectively managing our patients care from time of admission through their hospital stay and eventual return home."*[5]

[5] Spoerl, Bob, "25 Healthcare Leaders React to the Supreme Court's Decision to Uphold the PPACA," June 28, 2012, Becker's Hospital Review. http://www.beckershospitalreview.com/news-analysis/16-healthcare-leaders-react-to-the-supreme-courts-decision-to-uphold-ppaca.html

IMPLICATIONS FOR INSURANCE COMPANIES

Insurance companies are expected to benefit from the large increase in insured patients, both through Medicaid (state Medicaid plans generally offer a variety of plans from commercial insurers) and through the Insurance Exchanges.

On the other hand, many feel that the ACA penalty for not buying insurance is too small, which could result in fewer healthy people buying insurance, leading to an "adverse selection" problem for insurance carriers. This could be a serious issue since insurance companies will need a balance of healthy subscribers to offset their less healthy subscribers. By 2014, insurance companies can no longer deny a patient based on their health (or lack of it), nor will there be limits on coverage for essential services. Of course, employer-based plans are generally not impacted by this issue, which limits the impact on many carriers.

The ACA also has provisions that require insurance companies to spend 80% of insurance premiums on health-related costs, 85% for large employer plans. For those insurers providing Medicare Advantage plans, the ACA phases out the extra payments involved. These factors may lead to pressure on insurance company margins.

Of course, the continuing rapid increase in health care costs means that insurance companies will increasingly look for alternatives. For example, some have begun to participate in ACO-type payment models. Others have even purchased hospitals and/or physician groups. We expect to see more initiatives of this sort, particularly ACO and other innovative payment structures.