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PPACA Survives: Impact on Imaging

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By Adrienne Dresevic, Esq., Carey F. Kalmowitz, Esq., and Stephanie P. Ottenwess, Esq.

July 2012—Love it or hate it, the Patient Protection and Affordable Care Act (PPACA) has survived the Supreme Court almost entirely intact. In what was a surprise to some, Chief Justice John Roberts sided with the four justices appointed by Democratic presidents to declare 5-4 that the individual mandate was a Constitutional exercise of Congress’s power to tax. The most controversial provision in PPACA, the individual mandate, requires those Americans deemed financially able to obtain insurance by 2014 or face a penalty (which the Court termed a “tax”) if they do not.

Had the individual mandate not survived, it was widely believed that the entire law would have been

struck down. The decision was unsatisfactory to many, and has ensured that healthcare will remain a highly contentious subject throughout this election cycle.

The lone provision that was struck down, a provision that would have pulled federal Medicaid funding to states that did not adopt the changes to Medicaid under PPACA, will have little effect on the implementation of the remaining portion of the bill. The provision was struck down under “coercion theory.” Basically, Congress is only allowed to attach strings to the money that it gives to states if the strings are only considered to be mild encouragement. Stripping away all Federal Medicaid funding if states did not adopt the new provisions was considered to be going too far. However, the federal government can still withhold funding for the new Medicaid provisions if states do not fully comply. Few, if any, states are expected to reject the new Federal funding with strings attached.

For now, all of the provisions of PPACA that have been coming to the surface over the past couple of years will be fully implemented. This includes the two PPACA provisions affecting radiology reimbursement: the 75 percent equipment utilization assumption rate and the 50 percent multiple procedure payment reduction applied to the technical component of advanced diagnostic imaging services.

Many of these provisions could also result in increased imaging volume. Of course, millions of citizens that currently do not have health care insurance will be signing up for a plan to avoid the penalty. Also, millions more who are deemed unable to afford insurance will be added to the Medicaid program. Individuals with preexisting conditions will also no longer be impeded from signing up for health insurance. In addition, preventative procedures such as mammograms will be provided for free under the Medicare program. However, due to increased provider scrutiny under PPACA, and a focus on quality care over quantity, volume may remain fairly steady.

With PPACA moving forward essentially intact, imaging providers should also prepare for the reality of further consolidation and integration. PPACA has incentivized integration between different health care providers in provisions throughout the law. These provisions are designed to increase the efficiency and effectiveness of health care procedures. Greater consolidation of networks will also mean initiatives by these networks to acquire imaging providers.

One provision moving ahead that pushes integration is the Hospital Value-Based Purchasing Program. This program is designed to decrease quantity and increase quality and efficiency of hospital services. Under the program, Medicare will make payments to hospitals based on performance standards for a given period of time. Hospitals that perform better will receive larger incentive payments. Performance standards are more easily met in a highly integrated business environment, therefore encouraging further integration. Resources continue to be allocated towards strengthening the alignment between hospitals or health systems and their physicians.

Another program under PPACA that will push integration is the Medicare Shared Savings Program. Under this program, Accountable Care Organizations (ACOs) that meet certain quality standards will be

eligible for financial incentives. ACOs will be assigned at least 5,000 Medicare fee-for-service beneficiaries based upon primary care physicians. There is an incentive under this program for physicians to refer patients to other physicians within their own ACO. One of the keys to an effective ACO is the ability to efficiently share information. In order to achieve the coordination necessary, further integration between physicians, hospitals, and other professionals will be necessary.

Although the question of the individual mandate has been resolved, there are still a number of other lawsuits making their way through the judicial system challenging other provisions of PPACA. Moreover, we will have to see who is sitting in the Oval Office and which party will hold the majority in Congress before knowing the real future for PPACA. Imaging providers are well advised to continue to monitor PPACA implementation efforts, as well as subsequent legislative developments that are likely to follow the Supreme Court's ruling.

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