Tracking the Affordable Care Act:
Top 10 Issues to Watch

BY GARRY CARNEAL, JD, MA

In early July, it wasn't just the fireworks raising eyebrows. The Obama administration also caused a stir when it announced delayed enforcement of the Employer Shared Responsibility requirements (aka the "Employer Mandate") by a full year. This surprising move may have pleased the employer community, since employers with 50 or more employees now have an extra year to prepare their Employer Mandate. However, the delay also reflects the fluid and unpredictable nature of the Patient Protection and Affordable Care Act (PPACA) implementation process, which can make it difficult for case managers to track its progress.

In an effort to narrow the focus, here is a list of the Top 10 PPACA issues for case managers to monitor*:

1 OPERATIONALIZING THE EXCHANGES

The open enrollment period for the Health Insurance Exchanges (HIX) begins October 1, 2013. The Exchanges are operated by the federal government, individual states, or by a federal-state partnership. There are 27 federally facilitated Exchanges, 17 state-based Exchanges, and seven states that will operate Exchanges in partnership with the federal government.

A number of key questions remain:

First, will all of the state-based and federal Exchanges be ready by October 1? For example, the U.S. Department of Health and Human Services (HHS) issued a final rule (www.ofr.gov/OFRUpload/OFRData/2013-13149_PI.pdf) delaying implementation of a significant portion of the Federal Small Business Health Options Program (SHOP) Exchanges. Further, the Exchanges are in various stages of development, with many speculating that some states will not be ready by the open enrollment deadline.

Also, will people enroll in the Exchanges? HHS Secretary Sebelius hopes to enroll 7 million people in the first year and 24 million by 2023. As a result, there is a need to reach out to young and healthy Americans to support insurance pools.

Finally, which insurance companies will participate in the Exchanges? The Obama administration released data in May showing more than 120 insurers have applied to sell plans through federally-run health insurance Exchanges. The number of insurance carriers participating at the state level will vary depending on the state Exchange requirements.

2 IMPLEMENTING THE INDIVIDUAL MANDATE

Beginning January 1, 2014, all individuals are required to have health insurance, with a few exceptions. As reported by the National Federation of Independent Businesses, the Individual Mandate penalties will kick in next year, which consist of:

- Taxes begin in 2014 and rise in years following. In each year, the tax consists of the higher of a dollar amount or a percentage of household income. For a given household, the tax applies to each individual, up to a maximum of three. Following is the schedule of taxes:
  - 2014: The higher of $95 per person (up to 3 people, or $285) OR 1.0% of taxable income.
  - 2015: The higher of $325 per person (up to 3 people, or $975) OR 2.0% of taxable income.
  - 2016: The higher of $695 per person (up to 3 people, or $2,085) OR 2.5% of taxable income.
  - After 2016: The same as 2016, but adjusted annually for cost-of-living increases.

Some Americans might be exempt from the Individual Mandate if they meet certain criteria which include religious observance, financial hardship, and nationality if they are American Indians, among other exceptions.

3 ASSESSING EMPLOYER ATTITUDES

Although the Employer Mandate has been delayed to January 1, 2015, it remains a cornerstone of PPACA and is worth tracking as the federal government revises employer reporting requirements. Under the law, employers with 50 or more employees are required to offer coverage with the option to opt out, or face a $2,000 tax/penalty per employee (in excess of 30 employees if coverage is not offered and if they have at least one employee that receives a premium credit through an Exchange.) Employers with less than the equivalent of 50 full-time employees are not required to offer coverage. It will be

**Note: this list is not exhaustive and top issues are subject to change as the federal government and states continue to hammer out PPACA's details.*

interesting to see how employers deal with this issue, especially small to mid-size employers, and those with part-time and seasonal employees.

4 FUNDING THE MEDICAID EXPANSION

Providing coverage to the underinsured and uninsured is a critical component of the Obama Administration's public policy goals. If states opt to expand their Medicaid programs, the federal government would initially pay 100 percent of the additional costs. After three years, the cost share would start to shift to states and level out at a 90/10 cost share by 2020. Currently, 24 states will expand their Medicaid rolls and 21 states will not, though they can opt in later. Another issue to monitor is how the federal and state governments fund some of the "risk" pools for high-cost populations, which will be costly.

5 SEEKING PROFESSIONAL INSURANCE EXPERTISE

PPACA likely will create disruptions in the traditional broker system as Exchanges and Navigators help place coverage. The legislation underpinning PPACA assumes a much more transparent and automated approach for consumers to purchase and/or select health insurance coverage in the future.

Navigator programs must be established by exchanges. Navigators facilitate enrollment in Exchange plans; provide referrals to customer assistance enrollees who have grievances, complaints or questions; and share information about qualified health plans, premium tax credits, and enrollment. The federal government will award grants to public and private entities to serve as Navigators. There will still be a place for brokers to help employers and individuals choose from coverage options, albeit playing a more limited role than today as health plans cut back on commissions. Concerns have been raised since Navigators will not have the same training or licensure requirements as brokers.

6 TRACKING COURT CHALLENGES

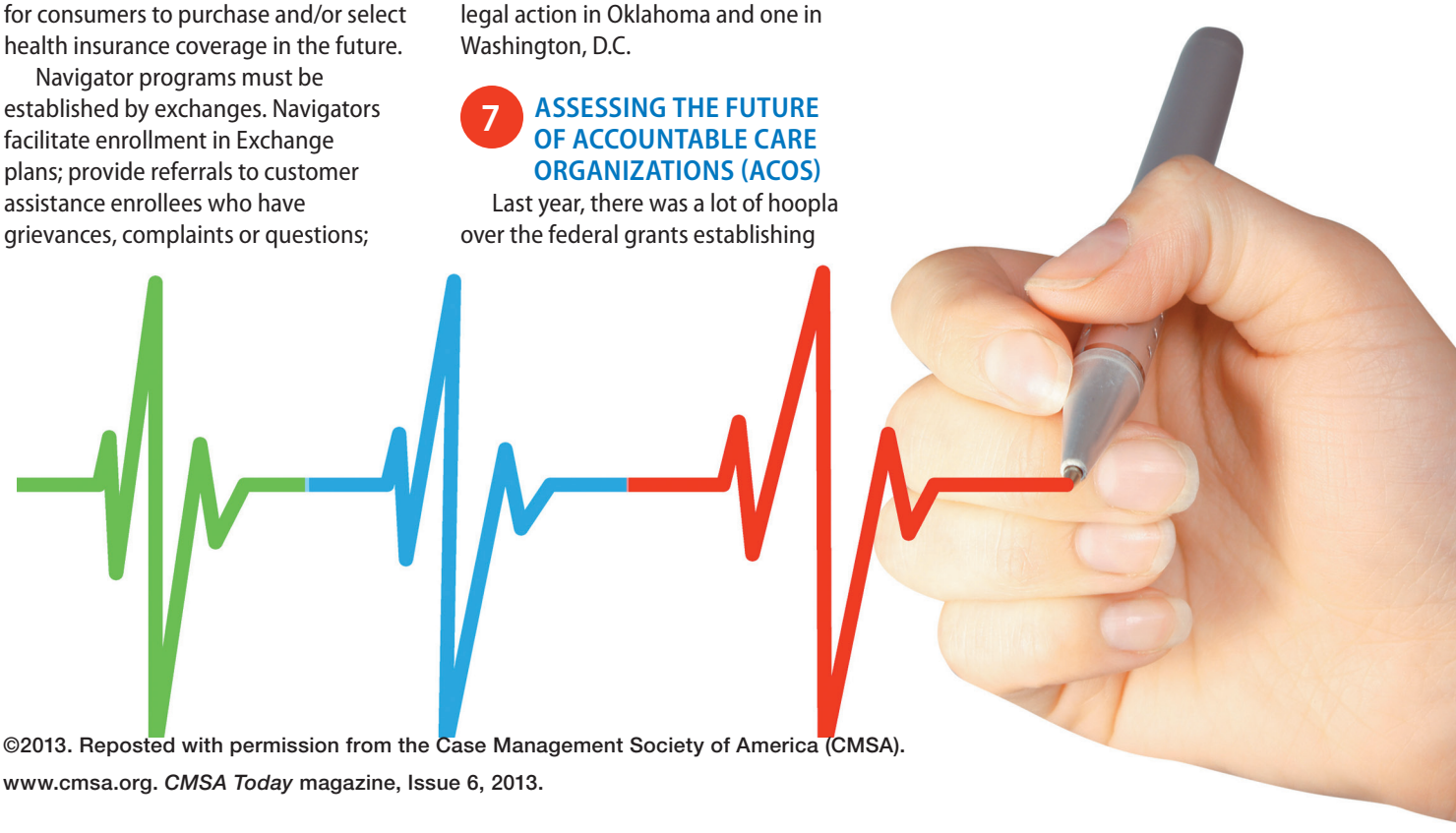
A number of court cases will continue to move forward, challenging the legality of key PPACA elements. One example is whether or not the federally-run Exchanges can subsidize individual premiums. The IRS ruled that people in all states are eligible for premium subsidies in the Exchanges, whether sponsored by a state or the federal government. However, PPACA only authorized subsidies on state-based Exchanges, which would exclude people participating in a federally-run Exchange. As a result, several lawsuits have been filed challenging whether the IRS has the ability to expand the premium subsidies, including one legal action in Oklahoma and one in Washington, D.C.

7 ASSESSING THE FUTURE OF ACCOUNTABLE CARE ORGANIZATIONS (ACOS)

Last year, there was a lot of hoopla over the federal grants establishing accountable care organizations (ACOs). Most experts agree that creating a more integrated delivery system that better coordinates care is a positive. However, some are concerned about whether the participation rules established by CMS will hinder the program's success. The good news is that a number of private sector ACOs will continue to thrive irrespective of how the PPACA-related ACOs fare over time.

8 IMPACT ON EXISTING INSURANCE MARKETPLACE

Many agree the insurance market reforms implemented through PPACA are a positive. This includes limits on pre-existing conditions and other protections to minimize unfair underwriting practices. The authors of PPACA assumed that the Individual and Employer Mandates, along with Medicaid expansion throughout the United States, would level the playing field. However, the complex nature of the PPACA regulations as well as budget limitations likely will create some disruptions in the existing insurance marketplace, including increases in insurance rates for younger Americans and some biased selection inside or outside of some emerging Exchanges.



www.cmsa.org. *CMSA Today* magazine, Issue 6, 2013.

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To alleviate the impact, some protections, such as the grandfathering of many plans, have been implemented.

Another valid question to add is: What will the non-Exchange marketplace look like over time? Many Americans will not opt into the Exchange system.

9 PROMOTING CHRONIC DISEASE MANAGEMENT PROGRAMS

The good news is that case management services will be part of the essential health benefit typology that PPACA is establishing. The question is: How will these programs specifically be created, funded, and operated? Certainly, many qualified health plans and ACOs will promote the use of using case management programs along with wellness programs. In addition, the federal government will support a number of chronic disease management programs through grants and other projects.

10 MONITORING THE POLITICS

Of course, health care reform continues to be largely a partisan affair for both political parties. Political moves by Republicans and Democrats will continue as we head to the 2014 mid-term elections. We also need to monitor how politics at the state level will impact PPACA. Some states are refusing to implement or take funding from the federal government – such as Florida and North Carolina – while other states are moving quickly to implement most of PPACA's essential elements such as California and Maryland. With over half of the states defaulting to the federal Exchange system, it should be an interesting next six months to say the least.

FINAL THOUGHTS

No matter what happens with health care reform at the state and federal levels, case managers will continue to serve patients, providers, and payers. However, it is vital we continue to understand the legislative, regulatory, legal, and political dimensions of PPACA. Stay tuned – I am sure we will see some additional fireworks along the way.

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