PODIATRY AND
OBAMACARE

As the ACA Stands After SCOTUS

Here's what the high court's decision means.

BY JAMES D. KRICKETT

The U.S. Supreme Court in King v. Burwell has ruled that the tax subsidies for health insurance provided by the federal government to citizens in the 34 states that have not established the health insurance marketplaces or exchanges were legal. That means some six million people, including the nearly 3.5 million people in small business plans and small business owners, self-employed professionals and early retirees who depend on subsidized health care costs, will continue to receive them.

Unfortunately, despite those subsidies and other tax incentives, healthcare costs continue to skyrocket. According to a report from the Urban Institute, a Washington DC-based think tank, small businesses and professional practices are among those most vulnerable to the steep healthcare cost increases.

The Individual Mandate

The so-called "Individual Mandate" requires all individuals to have health insurance. Self-employed podiatrists, including partners and sole practitioners, two percent S corporation shareholders, and five percent shareholders are not treated as employees under the ACA. In fact, a special rule prevents sole practitioners—and their family members—from receiving Small Employer Healthcare.

Insurance Credit

Self-employed podiatric practice and business owners can, of course, deduct the cost of health insurance for themselves and their spouses and dependents. Thus, if an S corporation pays accident and health insurance premiums (under a plan established by the S corporation) on behalf of a more-than-2 percent shareholder who is also its employee and who must include the value of the premiums in his or her gross income, the shareholder is permitted to deduct the cost of the premiums paid on his or her behalf.

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The Additional Medicare Tax

The Medicare Part A tax is paid by both employees and employers who earn over a certain amount. The ACA's Medicare tax hike is a .9% increase (from 2.9% to 3.8%) on the current total Medicare Part A tax. This tax is split between the employer and employee, meaning that they will both see a .45% increase. Small podiatry practices making under $250,000 are exempt from the tax. Employees, even the practice's principal making less than $200,000 as an individual or ($250,000) as a family, are also exempt.

Employers are responsible for withholding the tax on wages that exceed the $200,000 threshold. An individual podiatrist is liable for the Additional Medicare Tax if his or her wages, compensation, or self-employment income (together with that of his or her spouse if filing a joint return) exceed the threshold amount for the individual's filing status.

The ACA Today

Admittedly, the ACA provides podiatrists and their practices with insurance options, increased buying power via the government sponsored marketplace—and an overwhelming amount

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of confusion and paperwork. What can a podiatrist do to keep healthcare costs manageable while complying with the ACA's updated and ever-changing rules?

First, it should be understood that the ACA's taxes and tax credits are based on the number of full-time equivalent employees (FTE) and their average annual wages, not solely on the number of full-time employees. In simple terms, FTE or "full-time equivalent" equals (the total number of full-time employees) plus (the combined number of part-time employee hours divided by 30). Seasonal employees, contractors, practice principals, and business owners don't count toward the total.

The Downside

Other than the sharply escalating costs, every podiatrist should be aware of many of the law's provisions, particularly the Employer Mandate which requires employers to offer adequate coverage to their employees or be liable for certain tax penalties. Many apply only to so-called "medium" and "large" employers (employers with more than 50 and 100 employees, respectively). There are, however, still quite a few provisions that affect all employers, including small practices and businesses with 50 employees or fewer.

The seemingly negative impact of the looming "Employer Mandate" stemmed from employers reportedly cutting hours. While many of the earlier claims and reports were over-dramatized, the impact of the ACA is all-too-real for many—mostly larger practices and businesses.

However, of those required to comply, only truly large businesses that don't currently offer benefits and employ many low-wage full-time workers, face truly hard decisions. Those businesses offering higher wages typically already provide benefits, while smaller operations (with between 100 and 50 FTE) will benefit greatly from not owing the fee on the first 30 employees. So, a business or practice with 100 FTE and 60 full-time workers may only owe the fee for 30 employees, assuming, of course, they currently insure no full-time employees.

It's safe to say the smaller the practice or business, the better the tax breaks. After all, the ACA provides small podiatry practices and businesses with affordable insurance options, cost assistance, and increased buying power via the Small Business Health Options Program (SHOP). Employers with fewer than 50 FTE employees can use the SHOP to get better deals on employee insurance, but aren't mandated to do so.

The Small Employer Health Insurance Credit

Under the ACA, some small practices, notably those with fewer than 25 full-time equivalent employees, are el-

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igible for a tax credit if they contribute more than half of the cost toward their employees' health insurance. An eligible small employer must pay premiums for each employee enrolled in health insurance coverage offered by the employer in an amount equal to a uniform percentage (not less than 50 percent) of the cost of the premium coverage.

Unlike most tax credits that merely reduce the final tax bill, any small employer who did not owe tax during the year can carry the credit back or forward to other tax years. Also, since the amount of the health insurance premium payments is more than the total credit, those eligible can claim a business expense deduction for any premiums amount in excess of the credit. That's both a credit and a deduction for employee premium payments.

Form 8941, Credit for Small Employer Health Insurance Premiums, must be filed to claim the tax credit—all the way back to 2010 since the credit is retroactive.

More Upside

Consider a few of the ACA's other applicable rules:

• Thanks to the ACA, employers can offer more and better quality benefits. In fact, because small practices and businesses are able to shop for group health plans on their State's Health Insurance Marketplace via the SHOP, many podiatry practices now have the same buying power as larger businesses. Along with tax credits and increased buying power, many podiatry practices may now be able to provide benefits to their employees.

• The self-employed with no employees can get health coverage through the Health Insurance Marketplace for individuals, but not through SHOP. And, everyone can use paper applications in lieu of the Internet.

• Retroactive to January 1, 2014, and through at least 2015, two percent of shareholders in a professional practice or business operating as an S corporation can receive reimbursement for their individual health insurance premiums. Even better, the S corporation will not be subject to the excise tax penalty if it correctly includes the health insurance premiums on the two percent shareholders' W-2. The two percent shareholder must report the income as wages, but will be allowed to take a self-employed health insurance deduction.

• Last year, many small employers were shocked to learn that employee payment plans, plans under which they reimbursed employees for the cost of obtaining individual health insurance, violated the ACA rules; and they risked a $100-per-day-per-affected employee excise tax if they continued using the arrangements. The IRS recently provided guidance that clears up some of the earlier confusion.

• Don't forget that there is an additional cost for some small podiatry practices and businesses—a $63 pre-existing conditions fee. That's right, for some employers purchasing insurance, there is an annual $63 fee. The ACA small business fee decreases each year until 2017 when pre-existing conditions are phased out.

Information Reporting

In March 2014, the IRS issued final regulations to

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enforce the shared responsibility and individual mandate provisions of the ACA, the so-called "play or pay" rules. Employers providing minimum essential coverage to individuals during the calendar year must report health insurance coverage information to the IRS and must also provide a written statement to the covered employee or former employee.

Specifically, the ACA requires employers to report the cost of coverage under an employer-sponsored group health plan. Reporting the cost of healthcare coverage on Form W-2 does not mean that the coverage is taxable and the value of the employer's excludable contribution to health coverage continues to be excludable by the employee. This reporting is for informational purposes only and will provide employees useful and comparable consumer information on the cost of their health care coverage.

A large podiatry practice, clinic, or business—that is, an employer with 50 or more full-time employees or equivalents —must certify that it offers its full-time employees and their dependents the opportunity to enroll in minimum essential coverage on a month-by-month basis. Applicable large employers also must provide a qualifying employee statement to each full-time employee.

Employers offering fully-insured health plans don't have to report on minimum essential coverage for purposes of the individual mandate. Only employer plan sponsors of self-funded group health plans must report on minimum essential coverage—this is true regardless of the employer's size.

Optional Strategies

Instead of shifting to the individual markets, some podiatry practices have opted for a high-deductible group plan and set up a health reimbursement arrangement (HRA) to help offset employees' medical expenses. An employer can dictate the expenses they will reimburse, thus limiting their out-of-pocket exposure.

The advantage of an HRA over a Health Savings Account (HSA) is that the plan can be structured so that if an employee does not use the money in an HRA, the money will still belong to the podiatry practice. An HSA is another option, but it gives employers less control over how the money in an account is spent; the funds are made available to employees whether or not they incur any medical expenses.

Coming Attractions

On the horizon is an excise tax on High-Cost Plans (also known as the "Cadillac Tax") that kicks in for employers starting in 2018. Employers may have to pay up if their group health plans exceed a certain dollar limit. The limit for 2018 is $10,200 for individual coverage and $27,500 for family coverage.

For self-insured plans that exceed these limits, the employer will pay a 40 percent nondeductible excise tax on every dollar above the limit. This penalty can be significant even for a plan that exceeds the limits by only a few hundred dollars per year, making now the time to think about changing an existing plan.

Finally, let's not forget to examine the benefit to the podiatrists and their practices. The number one benefit of the Affordable Care Act for self-employed podiatrists and business owners is that they can now afford their own health insurance. In fact, thanks to the ACA, 83 percent of currently uninsured small business owners became eligible for healthcare coverage. Additionally, many podiatrists and small business owners who currently buy their own individual healthcare coverage in the private market may be eligible to take advantage of new tax savings as well.

Unfortunately, for many podiatry practice employers, insurance is more expensive than ever. In a recent survey, 91 percent of small business owners reported that their insurance costs rose when they renewed their health insurance. One reason for these price increases is the federal healthcare law's annual $8-billion fee on health insurance providers. Not too surprisingly, insurance companies will pass this added expense on to employers—and consequently, their workers. Premiums are expected to increase by as much as $160 per person this year.

The Subsidies

Before the ACA became fully effective in late 2013, small employers were much less likely to offer health insurance plans to workers than their larger brethren. In 2013, more than 93 percent of companies with 100 to 999 workers offered health coverage to employees, compared with just 32.3 percent with fewer than 25 workers.

Self-employed podiatrists and workers in small practices and businesses have, at least since late 2013, been able to buy subsidized individual health insurance plans on government-run exchanges. This has reduced the uninsured rate among non-elderly workers at businesses and practices with fewer than 50 employees from 23.5 percent in June 2013 to 13.2 percent currently. The uninsured rate among self-employed workers fell from 30.4 percent in mid-2013 to 19.6 percent.

The subsidies, available to anyone who earns between 100 and 400 percent of the poverty level, have helped reduce the cost of insurance—at least until recently. Escalating insurance costs have already begun impacting podiatrists and practices that do not qualify for subsidies.

While supporters of the ACA tout its success in providing insurance to millions of Americans, recent rate filings from large insurers reveal that the law may have been built on a shaky foundation. In recent weeks, large insurers selling coverage under the ACA have proposed massive rate increases for 2016—some exceeding 40 percent—because they haven't been able to sign up enough young and healthy customers.

Skyrocketing healthcare costs are not, however, the only reason every podiatrist—and podiatry practice—should seek professional assistance. Keeping abreast of the many benefits and potential pitfalls of the ACA is also extremely important. **PM**

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