

## Obamacare Threatens to Overwhelm CEOs

Posted by: C.J. Prince, September 17, 2014



As if struggling to adapt to the new healthcare landscape wasn't hard enough for SMEs, now the new ground is shifting underfoot.

The July bombshell of the U.S. Court of Appeals for the District of Columbia in *Halbig v. Sebelius* is the latest in a history fraught with challenges and confusion for the Patient Protection and Affordable Care Act, also known as Obamacare. The conflicting decision from the Fourth Circuit Court of Appeals in *King v. Burwell* also created a potentially game-changing quagmire for the healthcare law. It is now unclear whether more than 5 million Americans in 36 states that chose not to set up healthcare exchanges will be eligible to receive federal tax subsidies for healthcare purchased on the federal exchange—a key lynchpin in the new system.

If individuals in those three dozen states ultimately are ruled ineligible for the subsidies, they would no longer have to fear a penalty for not purchasing healthcare on the federal exchange, since that healthcare would no longer be affordable. Employers in those states would not be subject to the \$3,000 penalty if an employee receives a subsidy for coverage on the exchange, since such a subsidy will be unavailable. Together, those consequences could—at least, in theory—topple a system that relies on a critical mass of individuals signing up for healthcare.

“We’ve calculated it will be some millions of dollars across our system. So what does that say? That says we won’t build more restaurants. We won’t hire more people.”

But some say the reaction from both the right and the left has been exaggerated. “Far from all the media hype about these decisions, this is only a speed bump for Obamacare,” says Avik Roy, senior fellow at the Manhattan Institute. No state will want to pass on federal subsidies and all will ultimately do what they have to do to comply with the law. “Even if you’re Alabama, are you really going to turn down hundreds of billions of federal funds that go directly to your state with no outlays by you? I think that’s extremely unlikely.” Roy also points out that the ruling on subsidies would only appeal to those companies employing lower wage workers who qualify for the subsidies.

### **Back to the Courtroom**

In any case, the Obama administration is expected to appeal on multiple fronts and, if it comes to that, the Supreme Court could decide to hear the case as early as October, with a decision in May. In the meantime, with full rollout for businesses with more than 100 employees set for Jan. 1, 2015, and a year later for those with between 50-99 employees, companies will proceed as they have been and the recent challenges will not impact companies’ larger healthcare strategies. “It does create more uncertainty for the Affordable Care Act, but until a decision is made it’s business as usual” with the next open enrollment starting in November, says Brian Marcotte, CEO of the National Business Group on Health. Adds Jim Winkler, senior vice president for Aon Hewitt, “For the vast majority of employers, the lack of clarity regarding subsidies in the public exchange will have little to no impact on their health strategies for active full-time employees. Employers have more pressing concerns about volatile health costs and worsening population health.”

Not all employers agree on how to deal with those challenges, of course, and Obamacare has had plenty of dissenters. From the beginning, employers subject to the mandate bemoaned the law’s complexity, onerous requirements and expense. As the numbers were crunched over the past few years, CEOs began warning of the dire consequences to the country’s economic growth should the new healthcare system proceed.

In November of 2012, Zane Tankel, the CEO of Applebee’s New York Franchise, Apple-Metro, told Fox Business, “We’ve calculated it will be some millions of dollars across our system. So what does that say? That says we won’t build more restaurants. We won’t hire more people—exactly the opposite of what the President says...if it’s possible to [implement ACA] without cutting people back, I’m delighted to do it. But that also rolls back expansion, it rolls back hiring more people and, in a best-case scenario, we only shrink the labor force minimally.”

### **Promises, Promises**

Some who agreed with the premise behind Obamacare’s mission don’t believe it delivered on its promises. “If you read the bill, they call it the Affordable Care Act. It’s not about affordable care, it’s about outcomes,” says Tom Harrison, chairman emeritus of Diversified Agency Services, a division of Omnicom, the global advertising and PR giant. For example, incentives were built in for hospitals to keep patients from being readmitted for the same health issue within a period of time, and for companies to create healthy lifestyles programs at work that keep covered employees healthier for longer.

Those are noble goals, Harrison says, and companies should be focusing on ways to keep their employees healthy and therefore using less healthcare. But, he argues, that's not necessarily the purview of the federal government. "There is a lot in the bill that goes beyond affordable care and one could say, why is the government getting into something they probably shouldn't control only to insure the 35 million who didn't have healthcare? They probably overstepped their bounds. I think affordable care has nothing to do with affordable care because it's actually more unaffordable today. It's just gone the wrong way."

"Why is the government getting into something they probably shouldn't control only to insure the 35 million who didn't have healthcare."

Given how highly politicized Obamacare has been, and continues to be, it's difficult to get a clear picture of how the healthcare changes are actually impacting employer decision-making and strategy. "Economists on each side offer wildly disparate versions of how the next several years will play out," says Winkler. "Both sides of the political arena have economists running models that tell two different stories so it's hard to sort through the rhetoric vs. fact."

### **The Cost Quagmire**

That said, expenses for HealthCare.gov have been much higher than anticipated, with the July report from the Government Accountability Office estimating the tab at \$840 million thus far, due to a variety of overages. Insurance providers are reporting smaller margins; Aetna CEO and chairman Mark Bertolini told CNBC in July that the numbers on new enrollees "were worse than we expected." Those enrollees tend to be older, less healthy and expected to use more healthcare.

In part owing to that, premium costs for employer-sponsored plans have gone up, by virtually all accounts, although the numbers vary widely depending on the source. For example, a National Small Business Association survey of 780 small business owners conducted late last year found more than 90 percent reporting higher premiums for their health plans during their most recent renewal. One in four reported that premiums jumped by more than 20 percent. An annual 2013 survey by the Kaiser Family Foundation, however, found premiums had increased just 4 percent.

But as far as how the new law is impacting hiring and other benefits-related decision-making, surveys again tell conflicting stories. For example, according to a May survey of accountants working with privately-held businesses, 54 percent said the ACA would adversely impact hiring in the year ahead, compared with fully two-thirds of respondents polled the previous year, according to Sageworks, a financial information company that conducted the surveys. The 2014 survey also found a slightly larger percentage this year predicting the ACA would have no impact on hiring in the next year.

On the other hand, the National Small Business Association survey found that one-third of small businesses had held off on hiring and more than half said they'd held off on salary increases for employees due to the added expenses of the ACA. But in early 2014, a nationwide survey of 3,500 smaller firms with 300 or fewer employees found 26 percent were adding to payrolls, while 20 percent were cutting, and about half holding steady. Overall, hiring in that group was up 1 percent over the previous month, according to Roanoke, Virginia-based CBIZ Payroll Services.

Whichever numbers one looks at, it's clear that businesses have spent the past several years struggling to get their arms around the increased costs and compute the likely impact on their bottom lines. "The ACA has been a big distraction over the past few years as we've all tried to figure out the implications," says Marcotte, of National Business Group on Health, which represents large employers, including approximately two-thirds of the Fortune 100. Those employers are looking at how to cope with the ramifications of the so-called "Cadillac tax," which will assess a 40 percent excise tax on companies whose health insurance benefits exceed a \$10,200 threshold for individual coverage and \$27,500 for family coverage beginning in 2018.

**"Even if you prorate the taxes on an SME employing fewer than 100 people, it still makes more economic sense to make new hires in British Columbia versus Washington state."**

Employers are also trying to manage healthcare costs rising at a 6-7 percent clip, says Marcotte. "For any CEO or CFO, when you're faced with 7 percent trends year-in, year-out, that's incredible headwind." Some large employers, like Target and Walgreen, are making major changes to employee benefits, with Target dropping coverage for part-time workers and Walgreen moving employees onto a private exchange.

### **Hampering Hiring**

Anecdotally, among smaller "large" employers—or those with 50 or more employees—the ACA will be a major challenge to future growth and will significantly impact key strategy and hiring decisions in the near- and long-term. Take Bongarde, a web-centered information and training tools company focused on the compliance and education needs of safety, environmental and human resource professionals. The company, which has offices in both the U.S. and Canada, recently decided to add new hires in British Columbia, where healthcare costs are lower in part because of its national system.

"Obamacare has made it more expensive to hire new people in the U.S.," says Wayne Cooper, CEO of Bongarde Media. "Even if you prorate the taxes on an SME employing fewer than 100 people, it still makes more economic sense to make new hires in British Columbia versus Washington state." He adds that the decision is also partly due to Washington state's high corporate taxes.

For Kenneth Jennings, CEO of Mr. Rekey Locksmith, a company that employs 70 in more than 20 markets in the U.S., the consequences may be even more dire. Jennings competes with dozens of independents who don't have to comply with ACA regulation. "We do a great volume, which is fantastic, but our profit per job is pretty small," he notes, adding that with margins as thin as they are, he can't afford to lose any more per job by adding more cost to his employees. "When we go up on our prices, we lose customers. With this ACA we're going to have to either raise our prices substantially or we're going to just not make a profit."

Jennings is still in the process of finalizing premium costs with two insurance companies bidding for the business. "We don't have a final number yet and the numbers keep going up. And what can I do to stop them from going up in the future? I'm scared to go back to our customers in six months and say, 'We're going up another \$10 a job,'" says Jennings, noting that this variable cost is one more straw on the camel's back—and could be the final one. "I can't control the price of fuel, electricity or materials going up—and now health insurance. It just feels like it's so much at one time it swamps the boat."

Because they now have to cover both healthy and less healthy individuals, insurance providers have raised premiums to cover risk for their whole book of business, which has changed. But the fluctuations in premium prices should be leveling out now, says Mark Lutes, a senior member of Epstein Becker Green's healthcare and life sciences practice and the firm's chairman. "Carriers have been baking in the increased costs of some of the coverage parameter changes that the ACA has caused, so while there are adjustments to price being made to accommodate the changes, there should be a decent estimate of those already." As insurers get more comfortable with the new landscape, he says, the market will likely become more competitive and prices could potentially come down.

"I can't control the price of fuel, electricity or materials going up—and now health insurance. It just feels like it's so much at one time it swamps the boat."

That would be good news to Bijan Golkar, principal and co-owner, FPC Investment Advisory in San Francisco. With only five employees, FPC is not required to offer insurance under the new mandate, but Golkar says it's a must to remain competitive as an employer. "The rate for the insurance plan we were offering nearly tripled," he says. "We just couldn't afford it." As many other companies are doing, FPC moved over to a high-deductible, health savings account plan and set up a pre-tax company contribution to the HSA, putting in the maximum allowed. As a company with fewer than 25 employees, FPC can deduct the premiums—but Golkar is still dissatisfied both with the cost of the plan and the quality. "Because of Obamacare, our company is forced to pay for dental insurance for the kids on the plan. We're paying dental for my infant daughter and she doesn't even have teeth yet. That's just criminal," he says.

For companies with significantly more employees, the other major concern, outside of higher premiums or deductibles, is the prospect of penalties for plans that do not meet the twin tests of affordability and minimum essential coverage. "[Clients] are worried about the penalties," says Pamela Tehim, senior associate, Tredway Lumsdaine & Doyle. "If any employee is getting a tax credit for purchasing insurance outside of the plan, they'll get hit with the \$3,000 penalty per employee."

Attorney Kaya Bromley, founder and CEO of Your Obamacare Advisors (YOA) and author of *The Employer's Guide To Obamacare* and *The Obamacare Roadmap*, understands her clients' fears. "It's the most complicated law employers have had to deal with since Social Security. Lots of red tape, pitfalls, lots of places employers will end up paying penalties they didn't even know existed or that they were incurring for two years," she says. "But on another level it's really not that complicated, if you have the right resources. That doesn't mean you have to spend \$10,000 on a consultant. It means you have to learn the basics."

Once the company's leadership understands the basics, they can make better decisions on healthcare strategy to avoid penalties and fees, pay lower premiums and even create profit centers within the company. "An unintended consequence of Obamacare has been that more business owners are finding ways to self insure," says Bromley, who sees self-insurance as a viable option for companies with as few as 100 employees. "If it's set up with proper facilities and a proper administrator and structure, it can have tax benefits and can actually be profitable for the company."

She cautions CEOs not to delegate the company's healthcare strategy to any one internal or external advisor or broker, but to get actively involved in the decisions themselves. "Yes, you have to have a team of experts because it's too much to do yourself. But they all have a stake in the outcome. As the CEO, you have to take all these different points of view into account and make the decision about what's right for your own business."

Jennings, who has been taking a very active role in the process for his business, hasn't quite found the light at the end of the tunnel just yet. But even he admits Obamacare has succeeded in at least one goal: "This is giving our country a rude awakening that you have got to pay attention to these things. Your company pays a lot more than you can imagine for you to have health insurance. Now people are starting to have to take responsibility," says Jennings. "There really is no free lunch."

That goes for employees and employers. While it isn't yet clear just how the conflicting appeals court rulings will be resolved, Obamacare isn't going away, even if the Senate changes hands in the midterm elections, says Manhattan Institute's Roy. "There may be some incremental changes, but frankly, I don't think repeal will ever happen. That ship sailed when Mitt Romney lost in 2012." Right now, businesses have to continue on as they have been and figure out whether to provide affordable healthcare for all employees; provide affordable care to some, but not to others (e.g., hourly workers), and take the \$3,000-per-employee hit for those individuals; or not offer coverage and pay the \$2,000-per-employee penalty.

Small and midsize businesses can also talk to their legislators about ways, other than repeal, Congress might be able to soften the blow for them, says Roy. "If they're in a state with competitive Senate election, they can make sure they're involved in the race and that both candidates have sufficiently pledged to address those things that are important to them. They can make sure their voices are heard."

**"Your company pays a lot more than you can imagine for you to have health insurance. Now people are starting to have to take responsibility. There really is no free lunch."**