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## What the Affordable Care Act ruling means to Maine business

James McCarthy | July 23, 2012

Rick Dacri, owner of a Kennebunkport-based consulting firm that advises businesses on work force issues, says his client list ranges from Fortune 500 companies to nonprofits employing fewer than 10 people. Whatever their size, he says, health care benefits and their costs have long been a front-burner issue for Maine employers.

Yet, when asked about the 5-4 Supreme Court decision upholding the Affordable Care Act, Dacri carefully sidesteps the political controversy that preceded the June 28 ruling and continues in its aftermath. He prefers to focus more on the practical steps employers need to take now that the law has been ruled constitutional.

"I don't think it's as big a deal as is being portrayed," Dacri says, noting that most of his Maine clients, even the smaller companies, already provide health insurance to their employees. For them, he says, it's an essential way to attract and keep quality employees.

Dacri has a unique basis for his perspective: Some of his clients are in Massachusetts and have implemented the 2006 law signed by then-Gov. Mitt Romney, which became the model for the federal Affordable Care Act. Initially, he says, many of those clients found it to be "a difficult and arduous process to comply with its requirements."

But "it is pretty much working fine now," Dacri says of the law six years later. "We know what the pains are and what the problems are going to be. We know now that [the ACA] is going to be the law. I think, generally, it's time for everyone to take a deep breath and do the homework. If they begin working with their insurance brokers, their finance and accounting people, they will do fine in figuring out how to run their businesses with this law in place."

Signed into law by President Obama on March 23, 2010, the ACA seeks to improve access to affordable health coverage for more than 30 million Americans who are uninsured. By 2014, businesses with 50 or more full-time employees will be required to provide health insurance for all workers or face penalties. Businesses with fewer than 50 employees — the vast majority of businesses in Maine — are exempt from the penalty fees. Individuals who are not covered by company or group policies will be required to purchase health insurance beginning in 2014, with health insurance exchanges to be created in each state enabling them to purchase affordable policies.

The law contains a host of other reforms — ranging from removing lifetime limits on health benefits to increasing support for community health centers — that collectively are expected to reduce the federal deficit by as much as \$230 billion over the 2010-2019 period.

## **Assessing the impact**

Steve Gerlach, an executive compensation and employee benefits attorney with Bernstein Shur, agrees with Dacri that it's important for Maine employers to figure out how the law might impact them and what they should do next. He says although news headlines have tended to focus on the individual mandate and Medicaid expansion aspects of the ACA, the most far-reaching effects on employers will come from the act's "pay-or-play" provision. Under that provision, employers with 50 or more full-time equivalent employees will be required (starting Jan. 1, 2014) to provide affordable health coverage for their employees and pay 60% of the cost, or pay an excise tax to the Internal Revenue Service.

Gerlach encourages employers affected by the ACA's pay-or-play provision to carefully research its requirements to ensure that they comply. He also expects some red flags around other issues, such as implications for hiring and staffing. For some employers, pay or play might significantly increase the cost of hiring a 50th employee. He also expects some employers will weigh whether to reduce other benefits to compensate for the increased cost of health coverage, and notes that new guidelines might require employers to ask about their employees' household income to determine affordability of coverage guidelines. Open lines of communication, therefore, will be important.

Other provisions will have significant effects on employers as well. For example, Gerlach cites a Congressional Budget Office estimate that small businesses might save 25% of insurance coverage costs by linking their coverage plans to a state exchange due to the increased bargaining power of the exchange. He notes, too, that small-employer tax credits (already in effect) might provide some relief to employers with 25 or fewer employees whose average wage is \$50,000 per year or less.

With these provisions in mind, Gerlach says employers can take general steps now to prepare for the new rules:

- Appoint a committee to be responsible for developing health plan strategies.
- Engage affected departments such as finance, legal, tax and HR.
- Identify strategies to address cost, compliance, tax and compensation issues.
- Compare the relative costs and benefits (including non-financial factors) of paying, playing and combination scenarios.

"With so much change imminent, smart employers will start planning now for 2014," he says.

## **Impact on insurance companies**

The ACA mandates the sharing of information previously not available to health insurance customers. A component of that mandate is assessing the split between the percentage of premiums that go toward medical care versus administration. If an insurance company spends less than 80% of premiums on medical care, it must rebate the excess. For large-group plans — those provided by companies employing 50 people or more — health insurance companies must spend at least 85% of the premiums on medical care.

The result of that mandate will be felt this summer by about 5,600 Maine families with private health insurance, who will receive \$2,579,922 in rebates, with an average rebate of \$463, according to the U.S. Health and Human Services Department. Those rebates are coming from Cigna, which insures Bath Iron Works and the University of Maine System.

Rebates for group plans will go to the employers. Some of that money is expected to be passed along to employees or used to lower premiums in the future.

The 80/20 rule also requires health insurance companies to tell customers whether the companies missed the goal and by how much — transparency that, in theory, enables consumers to know whether their health insurance spending is actually being used to cover health care expenses.

### **Help for small business**

Dacri says owners of businesses with 25 or fewer FTE employees and average wages of \$50,000 or less should explore the new small business tax credit. The credit is intended to mitigate the 18% higher premiums small business owners pay for health coverage compared with larger businesses.

The IRS, which estimates 25,800 small businesses in Maine could be helped by the small business tax credit, illustrates how the credit works by using a hypothetical auto repair shop with 20 employees and a yearly payroll of \$250,000, or \$25,000 per worker. Its employee health care costs are \$70,000. Under the ACA's 35% tax credit, the repair shop would get a credit of \$24,500; in 2014, when the credit goes up to 50%, it would get a \$35,000 credit.

"The tax credit exists, take advantage of it," Dacri says.

Likewise, for the first time, Maine's small businesses will have one-stop access to a new online resource ([www.healthcare.gov](http://www.healthcare.gov)) to help them compare health insurance options available in the state. By entering basic information about the business, employers will be able to see all the insurance options, their costs and the coverage offered.

### **In the wings**

Two major elements of the ACA — the requirement to set up a health insurance exchange by 2014 to help individuals and small businesses buy insurance and the expansion of Medicaid — have already been flagged by Gov. Paul LePage as policy decisions that won't be acted on until after the November election. The uncertainty about those elements makes an already complicated fiscal environment even more so for Maine hospitals.

The health insurance exchange is intended to build a more competitive health insurance marketplace and enable individuals or employers without coverage to band together to purchase insurance. By increasing competition, the exchange also is expected to help lower costs and make health insurance affordable to uninsured Maine residents. That, in theory, should benefit Maine hospitals, which in 2011 "provided hundreds of millions in uncompensated care ... [an amount] increasing at an annual rate of more than 7%," according to a commentary in the Bangor Daily News written by Steven Michaud, president of the Maine Hospital Association.

But Michaud, in a reaction statement posted shortly after the Supreme Court decision, cites "significant reductions in Medicare reimbursement" as a challenge that "will reduce hospital

revenues by \$900 million during this decade." If the state chooses not to expand Medicaid – as seems likely given LePage's published comments – that could keep some low-income Maine residents who don't qualify for Medicaid under current requirements from being eligible for federal subsidies in the state health insurance exchange. That could limit how much the exchange will benefit Maine hospitals by reducing their charity care costs.

On the plus side, Michaud says the ACA can improve the health care system through payment reform and Accountable Care Organizations (see, "Hospitals look beyond ACA ruling," below) which seek to lower costs through better care management and coordination.

"While each side has its merits, now that the law has been upheld, Maine Hospital Association hopes that state leaders will work to ensure that the law is implemented in ways that fully benefit Maine citizens," Michaud says. "The challenges posed by the ACA, such as payment reductions to Maine hospitals and the taxes on insurance products will take effect, so we must work together to make sure that the corresponding benefits to Maine citizens are fully realized."

Steve Gerlach is an executive compensation and employee benefits attorney with Bernstein Shur in Portland. He can be reached at 207-228-7128 or [sgerlach@bernsteinshur.com](mailto:sgerlach@bernsteinshur.com).