

There's Something Happening Here

How the Affordable Care Act Will Impact Sole and Small Firm Practices in Texas

BY PHILIP S. DIAL, FSA

AS STEPHEN STILLS WROTE IN THE ICONIC 1967 BUFFALO SPRINGFIELD HIT, "FOR WHAT IT'S WORTH," THERE'S SOMETHING HAPPENING HERE. WHAT IT IS AIN'T EXACTLY CLEAR.

Unless you have been living off the grid since 2010, you no doubt know that the most far-reaching, controversial, contentious, and, depending on your view, best or worst piece of legislation since the 1960s, the Affordable Care Act, was adopted by the U.S. Congress on March 23, 2010, to reform health care in America. Since that time, the ACA has spawned thousands of pages of enabling regulations, enough articles in the print media to level a large forest, an endless string of radio and television commentary, a central element of the presidential campaign, and the U.S. Supreme Court decision that will earn Chief Justice John Roberts an indelible place in American history.

I really don't think Stills was thinking about health care reform in the 21st century when he wrote his famous song, but he certainly captured the mental state of many Americans over the past three years when he wrote, *Paranoia strikes deep, Into your life it will creep*.

While much about the ACA "ain't exactly clear" at this point, it's safe to say that in spite of many changes that lie ahead, there is much that won't change. Once the ACA is fully implemented in 2014, there is likely to be great relief among many for whom paranoia has struck deep and much disappointment among others with great expectations for reform.

In this article, I will attempt to provide a brief overview of what we know and don't know at this time concerning the impact of the ACA on sole and small firm practices in Texas in 2014. Space does not permit a thorough review of all issues or even a complete analysis of the issues discussed herein. There are volumes of information available about the ACA and its implications. I find the summary of the law available at the Kaiser Family Foundation website to be particularly helpful. I encourage the reader to study the law carefully and consult your insurance professional to assist you in making decisions that affect you and your firm directly.



First, let's briefly review what the ACA is and is not about.

- The ACA is first and foremost about access to health insurance. By prohibiting evidence of insurability requirements and pre-existing condition limitations, the ACA makes health insurance accessible to all Americans regardless of health status. Beginning Jan. 1, 2014, no American can be denied coverage due to poor health. In addition, by expanding Medicaid eligibility (subject to state adoption) and providing various forms of premium and cost sharing subsidies, the ACA will help extend health insurance to individuals for whom it is presently unaffordable. Finally, the Act provides for the creation of a health insurance exchange in every state to facili-



While there are initiatives encouraged by the ACA that are intended to bend the cost curve, at best, these programs will slow, but not stop, the increase in health care cost. As a result, the cost of health insurance will continue to increase as well.

tate the purchase of coverage through an online market for qualified health insurance products.

- The ACA is not really about reducing the cost of health insurance. The cost of health insurance is primarily driven by the utilization and cost of health care. Americans use more health care services every year: hospital care, physician services, diagnostic lab, high-tech imaging, prescription drug therapy, etc. The cost of most services grows every year, and the mix of services becomes increasingly expensive with the development of new, sophisticated treatments. The ACA includes a lot of regulation, but it will not regulate the cost of health care. The ACA will benefit consumers by moderating the administrative cost of health insurance through heightened scrutiny of rate increases and the Medical Loss Ratio standard, which requires that 80 percent of the premiums for individual and small group insurance plans be spent

on health care, but it will do little to reduce the portion of the premium attributable to health care; *i.e.*, the 80 percent piece. While there are initiatives encouraged by the ACA that are intended to bend the cost curve, at best, these programs will slow, but not stop, the increase in health care cost. As a result, the cost of health insurance will continue to increase as well.

THERE'S SOMETHING HAPPENING HERE

While various provisions of the ACA have been implemented over the past three years, the most sweeping changes are scheduled for 2014. Those with the most significance to sole and small firm practices include the following.

- **The Individual Mandate**—The primary focus of the Supreme Court's landmark decision in June 2012 is the ACA requirement that most U.S. citizens and

legal residents maintain qualifying health insurance or pay a penalty, commonly referred to as the individual mandate. The annual penalty, which will phase in over three years, will be based on a flat dollar amount (\$95/adult; \$47.50/child in 2014, increasing in two steps to \$695/adult; \$347.50/child in 2016) with a family cap of the greater of (a) three times the adult rate or (b) a percentage of household income (1 percent in 2014 increasing in two steps to 2.5 percent in 2016). The flat dollar amounts will be indexed for years after 2016.

- **Health Insurance Exchanges**—The ACA provides for the creation of state-based HIXs to be administered by a governmental agency or non-profit organization. The state-based HIX will serve as a market clearinghouse for qualifying health insurance coverage for individuals and small businesses with 100 or fewer employees. The ACA authorizes each state to create its own HIX; however, the ACA authorizes the U.S. Department of Health and Human Services to establish a Federally Facilitated Exchange in a state that does not choose to establish its own HIX. At this writing, Texas has not taken steps to establish a HIX, so it appears that an FFE will operate in the state, at least in 2014. Open enrollment for coverage through the exchanges for 2014 will begin Oct. 1, 2013.
- **Health Insurance Premium and Cost Sharing Subsidies**—Sliding-scale premium subsidies will be available to individuals and families with household income from 100 percent to 400 percent of the Federal Poverty Line to purchase individual insurance through the HIX. Sliding-scale cost-sharing subsidies (assistance in paying deductibles, coinsurance, and copayments) will be available to those with household incomes up to 250 percent of FPL. The 2012 FPL was \$11,170 for an individual and \$23,050 for a family of four. The FPL is revised annually.
- **Guaranteed Availability of Health Insurance**—The ACA requires guaranteed issue and renewability of health insurance purchased through the HIX and the individual and small group markets. In addition, rates may vary only by age, geographic area, family composition, and tobacco use. Rates for the oldest age category cannot exceed those for the youngest age category by a ratio greater than 3:1. Rates for tobacco users cannot exceed rates for non-users by more than 50 percent.
- **Employer Requirements**—Employers with 50 or more employees that do not offer health insurance and have at least one full-time employee who receives a premium subsidy for insurance purchased through

a HIX will be subject to an annual penalty of \$2,000 for each FTE in excess of 30. Employers with 50 or more employees who offer health insurance but have at least one FTE who receives a premium subsidy, will be subject to an annual penalty equal to the lesser of (a) \$3,000 for each employee receiving a subsidy or (b) \$2,000 for each FTE in excess of 30. These amounts are prorated based on the number of months that an employee does not have coverage and will be indexed for years after 2014. Employers with fewer than 50 employees will not be subject to penalties for failure to provide health insurance or for employees who receive subsidies through the HIX.

- **Essential Health Benefits**—The ACA requires that health insurance offered to individuals and small businesses cover a comprehensive list of health care services while limiting out-of-pocket cost to the Health Savings Account limits under existing federal law (\$6,250 for an individual and \$12,500 for a family in 2013). The limits are indexed annually. A health insurance plan must fall into one of four “metallic” categories based on the proportion of the full actuarial value of the Essential Health Benefits it covers (bronze equals 60 percent, silver equals 70 percent, gold equals 80 percent, or platinum equals 90 percent). These requirements apply to plans in and out of the HIX.

MANY UNKNOWNNS OF THE AFFORDABLE CARE ACT

While the ACA is clear about *what* happens in 2014, there is little clarity about *how* it will happen. Among the unknowns at this point are the following.

- **Health Insurance Exchange in Texas**—It seems likely at this time that the Texas HIX will be a Federally Facilitated Exchange as discussed above. Only the broadest guidelines for operation of the FFE have been issued at this time. As a result, little is known about how the FFE would operate or the impact that it would have on the health insurance market in Texas. Of course, it’s always possible that the Texas legislative leadership could change course and create a HIX, although that seems highly unlikely for 2014.
- **Pending Litigation**—There are various cases making their way through the courts. Some of these challenge the constitutionality of the ACA’s provisions related to contraception, provider reimbursement, and the Independent Payment Advisory Board. But the most important may be the lawsuit filed by the Oklahoma attorney general arguing that federal subsidies to support the purchase of qualified health insurance through HIXs are only available when the

HIX is created by the state, not the federal, government. Since many states, including Texas, do not plan to create an HIX, this challenge, if successful, could have far-reaching effects.

- **Federal Budget**—The ongoing federal budget debate could impact the speed and extent to which the ACA is implemented since HHS action could be impacted by budgetary limitations.
- **Legislation**—Congress will likely consider a number of bills that would amend the ACA. While it seems unlikely that significant changes will be passed by both houses and signed by the president, it is possible that some changes could occur in time to impact 2014.
- **Health Insurance Industry Response**—Texas health insurers continue to consider their options in light of the changes and uncertainty in the market as Jan. 1, 2014, approaches. There is no requirement that an insurer participate in the HIX, although many of the requirements of the ACA apply outside as well as inside the exchange. None of the companies has announced their plans at this point. Of course, that would be hard to do in light of the ongoing uncertainty.
- **Cost of Coverage**—While there has been much speculation about the cost of health insurance once the ACA is fully implemented, there is no specific information available at this time. Generally speaking, the adverse selection that can be expected to accompany guaranteed issue will lead to cost increases, particularly for individual insurance, since people with health problems are more likely than healthy people to purchase health insurance. In addition, the more extensive coverage required under the ACA as well as new fees to be assessed against insurance companies are also expected to increase cost. Nevertheless, it is unlikely that anything specific will be known about cost until late 2013.

STATE BAR OF TEXAS ACTIVITIES

The State Bar of Texas has undertaken a major effort to educate the membership on the impact of the ACA on health insurance for sole and small firm practices. To this end, the State Bar conducted a free CLE webcast on the subject on Jan. 30, 2013; it will be recast on March 6, 2013. The webinar included a panel discussion among Texas health insurance professionals.

There have been preliminary discussions of the possibility of creating a health insurance plan sponsored by the State Bar and administered through the State Bar of Texas Insurance Trust (State Bar of Texas health plan). For such a plan to be viable and cost-effective, it would be necessary to enroll at least 10,000 primary insured (attorneys

and/or employees, not including dependents), including younger and relatively healthy individuals, in order to maintain the stable risk pool required to avoid volatile claims experience that can drive large premium increases. In order to attract insurance companies to underwrite such a plan, it will be necessary for plan participants to commit to participate for at least two years recognizing that premiums are likely to increase in the second and future years in order to keep pace with the rising cost of health care.

The State Bar of Texas has undertaken a major effort to educate the membership on the impact of the ACA on health insurance for sole and small firm practices. To this end, the State Bar conducted a free CLE webcast on the subject on Jan. 30, 2013; it will be recast on March 6, 2013. The webinar included a panel discussion among Texas health insurance professionals.

To facilitate further discussion of a potential State Bar of Texas health plan, the State Bar is conducting a survey designed to gather information about the prevalence of health insurance among Texas attorneys in small firms. For more information, visit texasbar.com/insurance.

EVERYBODY LOOK WHAT'S GOING DOWN

The coming year will see major changes in the Texas health insurance market as federal and state officials continue to deal with implementation issues, courts adjudicate pending litigation, and the industry charts its course for the future. Developments will be fast and frequent during 2013, so those who are interested in health insurance must pay close attention.

The last line in the refrain from “For What It’s Worth” should prove to be good advice for all Americans interested in health care and health insurance. Much has happened in the past three years, but there will be much more to come as we head toward 2014, so be sure to pay attention to “what’s going down.” **TBJ**



PHILIP S. DIAL, FSA

is a principal and consulting actuary with Rudd and Wisdom Inc. in Austin. He serves as consulting actuary to employers and organizations providing health and welfare benefits and to bar-related insurance companies. His clients include the State Bar of Texas Insurance Trust and the Texas Lawyers Insurance Exchange.