A Risk Management Bulletin

Resort to Safety

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U.S. Supreme Court rules on Patient Protection and Affordable Care Act

In a landmark ruling handed down on June 28, the United States Supreme Court upheld most of the provisions of the Patient Protection and Affordable Care Act (“ACA”), the centerpiece of President Obama’s healthcare reform efforts.

In a sharply divided 5-4 ruling, the Supreme Court upheld that the “individual mandate” portion of the ACA—which requires all citizens to obtain health insurance or face a penalty—ruling that the individual mandate was a valid exercise of the Congress’s taxing power under the U.S. Constitution.

The Supreme Court also upheld Congress’s efforts to expand Medicaid to cover millions of uninsured individuals, but also ruled that Congress could not withhold all Medicaid matching federal funds from those states that choose not to expand Medicaid eligibility for the uninsured.

Politically, Republicans re-emphasized their intention of completely repealing the ACA. While the GOP currently controls the House of Representatives, Democrats still control the U.S. Senate, and the Democrats will be able to effectively prevent any attempt to repeal the ACA before the November elections.

However, if the Republicans can win back the Presidency and retake the Senate, there will be a significant repeal effort by the GOP. However, Democrats will strenuously threaten to filibuster repeal even if the Republicans control the House, the Senate, and the Presidency after November. Notably, public support for healthcare reform actually increased after the Supreme Court’s ruling, and there are some very popular provisions within the law that will be hard for Republicans to throw out (bars on pre-existing conditions, allowing young adults to remain on parents’ health plans, etc.). Although it is early, it seems unlikely that Republicans will be able to repeal the ACA.

While the Supreme Court’s decision focused on the “individual mandate” portion of the ACA, the ruling has huge implications for employers, who will be required under the ACA to provide healthcare insurance to full-time employees (employees working 30 hours or more per week) beginning on January 1, 2014. Accordingly, ski areas should be adopting strategies now with the strong assumption that the ACA is here to stay. For ski areas—many of which have benefit plans that begin in October and straddle two calendar years—critical staffing and coverage decisions need to be made well before the employer mandate kicks in on January 1, 2014.

There are two excellent tools that ski areas can use to help develop strategies. NSAA partnered with Wells Fargo Insurance to develop a “white paper” study using actual ski area employee wage and personnel data, including part-time versus full-time employees at a small, medium, and large ski area, to analyze the financial impact of the ACA. The study, Federal Health Care Reform: Case Studies and Financial Implications for Ski Areas, can be obtained by logging into the NSAA website (https://www.nsaa.org/issa/members/govt/health_care/index.asp), to print off the study.

Second, for a detailed analysis specifically geared toward the law’s impact on your seasonal workforce, Wells Fargo also developed an in-depth modeling program (used in the NSAA health care study) that analyzes your employee data, wages, and existing benefits plans to determine suggestions on how to minimize the financial impact to your budget. There is a cost to this analysis, but it’s an extremely helpful tool that will provide enormous insights into how the ACA will impact your ski area. Visit https://www.nsaa.org/issa/members/govt/health_care/HCR-NSAA.pdf to learn more.

Furthermore, there are a number of provisions under the ACA that employers will need to comply with in the upcoming months:

- August 1, 2012: Certain insurance carriers may have to provide employers medical loss ratio rebates if 80 percent (for employers with less than 50 employees) or 85 percent (for employers with 51 or more employees) of the premiums charged were not used to pay health claims.
- January 1, 2013: Health Flexible Spending accounts with plan years beginning on or after January 1, 2013 will limit employee contributions to $2,500 per year.
- W-2s issued in January 2013: employers will have to list the aggregate costs of employer-sponsored health benefits on employees’ W-2 forms for the 2012 calendar year.

Lastly, many regulations from the IRS, the Department of Labor, and other agencies will be unveiled over the next year or two. For ski areas, one critical—albeit complicated—regulation coming out soon will be what is known as the “look back” period, where employers can look back to the previous year to help determine who is, or is not, a full-time employee (under the ACA, employers are required to provide health insurance for all full-time employees, defined as anyone who works 30 hours or more on an average). This “look back” regulation, which is still being analyzed by federal agencies, may be critical for how you structure your staffing for the 2012/2013 ski season.

NSAA is working with federal agencies to better define this provision, and hopefully, to get better regulations expanding the seasonal-worker exemption. Visit the NSAA website for ongoing updates on these critical provisions.

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