Prognosis Uncertain

Retailers reposition for health-care reform; shifting rules pose biggest challenge

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While greater access to health care may be the result of a sweeping reform bill signed into law last year, the near-term effect on convenience retailers could be fiscal paralysis.

By 2014, when implementation hits its final phase, health-care reform will drastically alter the bottom line for low-wage, high-turnover businesses, with c-stores falling squarely into that category.

At least the way the law reads today.

And that’s the point. The health-care law in its current form may not stand. Real-world adjustments and questions over its constitutionality may hobble, if not sideline, reform altogether. About 20% of those surveyed in a CSP Daily News poll taken late last year believe this will be the case, with the law either undergoing a significant change or being overturned altogether. (See sidebar on p. 70.)

“This bill … in my opinion will actually hurt those who need it most, in the long run,” says Mike Triantafilou, president and CEO of Handee Marts Inc., Gibsonia, Pa. “If it’s not changed, it will be extremely damaging to small business.”

Proponents of the law believe otherwise, with many saying reform will actually lower costs for small businesses and help make health care accessible for 32 million more
people via competitive insurance “exchanges,” tax credits and cost-sharing assistance.

Whatever the viewpoint, health-care reform law will affect an estimated 40% of c-stores, according to NACS, with key provisions forcing chains such as Triantafellou’s 62-store, 7-Eleven-branded operation to review current coverage and make critical choices down the road. These requirements include:

► Pay or play. While businesses will have the option of grandfathering in their current plans, those that do not must either come up with a plan that meets government mandates or pay a $2,000 penalty per year per qualified employee. Paying the penalty will move that employee into state-run health-care plans called “exchanges.”

► Minimum qualification. The law would set the eligibility requirement to a minimum of 90 days. Many chains now set minimums at six months to a year.

► Nondiscriminatory oversight widened. Reform expands compliance to discrimination laws for all companies, not just those with self-insured plans. To add to the confusion, the government has yet to define the exact implications.

► Additional paperwork. Written into the new law is an effort to recover uncollected income, one that will require businesses to file 1099 forms for employees or vendors making $600 or more. Operators believe this stipulation will cost them thousands in administrative expenses.

While the majority of retailers polled by CSP late last year believe change is inevitable, the specifics are definitely in play. For most, that means staying flexible.

“Our primary and immediate concern … is to monitor [the law’s] evolution during both the political and rule-making process,” says Todd Wright, president of BFG Risk and Benefits Management LLC, San Antonio, who oversees insurance matters for Tetro Inc., also based in San Antonio. “Hopefully, future changes to the reform will … make [it] more supportive of our free-market economy.”

ACCESS VS. COST CONTROL

Part of the reason reform is so vague lies in its underlying goals, says John Owens, vice president of special markets for The Lewer Agency, Kansas City, Mo., an insurance provider and employee-benefits consultancy. When President Obama signed the Patient Protection and Affordable Care Act in March of last year and a subsequent amendment called the Health Care and Education Reconciliation Act of 2010 a week later, the goal was to expand access.

Health care did need reform, Owens says, but not just with the ability for many Americans to access affordable health care. The country faces the larger issue of skyrocketing medical costs, especially with the bulk of the nation’s population crossing the age threshold of 65, when Medicare takes over, and the government has to shoulder those spiraling expenses. “The old system was non-functioning,” he says. “But the [law] is geared for access. It didn’t do much in the way of cost containment.”

Many provisions are also impractical. Communications giant AT&T,
Dallas, conducted a study last year and found that it would save $1.8 billion if it moved its 262,000 employees over to state-run exchanges, Owens says. And instead of having the estimated 5 million to 6 million Americans in the exchanges, new estimates in the wake of various studies were putting the number closer to 40 million to 50 million, a “staggering figure.”

Estimates on subsidy costs were originally $300 billion. But forecasts with the new figures are hitting $2.5 trillion to $3 trillion. “The exchanges are not set up to handle the migration of tens of millions of people,” he says.

As a result, key factors in the plan, such as the $2,000 penalty amount—which may ultimately increase—are expected to change. Owens says signs of this include a number of government-issued waivers exempting businesses from many of the law’s current mandates.

“Will [the feds] tackle cost?” Owens says. “That’s the part they’ll have to think through.”

And while change can come from those charged with implementing the legislation, the courts also may have a say. At press time, numerous challenges were weaving through the judicial system. One of the most recent involved a federal judge in Virginia, who ruled that forcing individuals to get insurance or pay a fine goes beyond the power of Congress to regulate interstate trade.

“How much will pass constitutional muster?” Owens says. “That won’t be known for another year or so.”

On the legislative front, Democrats concerned over any new push by Republicans to repeal health-care reform created and released a document late last year. In it, they cited data from the non-profit Kaiser Family Foundation showing that due to expanded tax credits, employers with three to nine workers offering insurance increased to 59% from 46%.

In statements to the media earlier this year, U.S. Health and Human Services Secretary Kathleen Sebelius warned that repeal of the health-care reform would add to the federal deficit and bring back the “worst abuses of the insurance industry.”

Citing a Congressional Budget Office study, Sebelius said the law would save $1 trillion, and that number refutes GOP arguments that the law would add to the deficit. “There is no question that repeal would be a huge step backward that we can’t afford,” she said.

**THE GRANDFATHER CHOICE**

In the end, Owens, who has spoken before groups such as SIGMA and the BP Amoco Marketers Associa-
tion, believes retailers should prepare for change. Even if the newly elected slate of lawmakers can repeal the law, he says the earliest it could happen is 2013, and he believes such chances are slim.

Owens encourages retailers to assess the situation and develop a strategy, with the most important choice whether to keep current plans. Due to a political promise of allowing Americans to keep the plans they currently have, the bill contains a grandfathering provision for anything in place as of March 23, 2010. With the exception of certain additions, those plans can stay the same. Those addendums include the following:

- Extend coverage to participant children up to age 26 starting in 2011.

- Remove lifetime limits on essential benefits.

- Remove limits on pre-existing conditions.

- Set minimum annual caps that will start at about $750,000 next year and phase to higher levels until January 2014, when they’ll be unlimited.

In addition, premiums or contribution amounts must not change for the plans to qualify for the grandfathering provision. That will be a tough hurdle, say NACS officials. (See sidebar on p. 72.)

“Employers can’t keep their plans from changing,” says Julie Fields, director of government relations for Alexandria, Va.-based NACS. “If costs go up and a company decides it’s only able to cover 60% vs. 75% of the plan, then it would lose grandfather status.”

The same would apply for changes in deductibles, she says, citing that “any small change in cost would automatically lose [grandfather] status and become subject to more expensive requirements that new plans have to have.”

Spending time with an insurance provider, accountant or lawyer is already going to be a cost for operators outside of the actual policies themselves. “It really comes down to a lot of burden to try and keep [original plans] … but at some point, everyone is going to lose that status,” she says.

**OTHER KEY PROVISIONS**

Owens and Fields say a number of additional stipulations in the law
will affect retailers both in terms of the nature of coverage as well as the time and expense needed to manage the plans.

The first, according to Owens, is a new mandate for eligibility. Waiting periods for entry into the plan cannot exceed 90 days starting this year. This is important especially for retailers with high turnover rates, he says, pointing out that it’s common to see six- to 12-month waiting periods for that level of employee.

“This is unfortunate, because it will generate additional cost for you as a business operation,” he says. “Insurance carriers also will have additional costs, constantly processing [those] terminated employees.”

A second item says nondiscriminatory rules will now apply to all fully insured plans. Previously, only self-insured plans were required to meet discrimination provisions, but now penalties apply for all plans—potentially $100 per day per employee for the period that discrimination occurs.

Un fortunately, Owens says, the Department of Health and Human Services has yet to formulate exactly what the discrimination elements are. “Health-care reform was passed legislatively, yet significant portions of the law have yet to be regulated,” he says. “Again, it’s the regulators who are … now backfilling and defining how this all works.”

A third provision—the new 1099 requirements—has been a focus for NACS. Fields says retailers will now have to file a 1099 IRS tax form for every vendor with whom they spend more than $600 a year. A chain with 500 stores is looking at 10,000 forms based on purchases they make, everything from fuel to foods service products.

“They have to get information from the vendor, do the tax I.D. forms— they have to do [all] the leg-work and file forms officially with the IRS,” she says, calling it a “contentious provision” that has “nothing
to do with health care but is a revenue generator for the government.”

Lobbyists, lawmakers and even President Obama himself oppose the provision. But while three unsuccessful attempts at repeal have been made, the toughest challenge has been replacing the projected income, Fields says.

“I’m hopeful that provision will be scaled back or, best case, eliminated,” she says. “But the next Congress will have to figure out how to pay for it.”

WHO HAS TO PAY
For many businesses, the magic number will be 51. The “play or pay” aspect of the law forces companies with more than 50 employees to either provide coverage or pay penalties.

That’s not to say companies with 50 or fewer employees are totally exempt, Owens clarifies. An employer could have 45 full-time employees and 20 part-time. But if the number of hours worked equals that of 51 full-time employees, then that company is subject to the law’s mandates. According to Owens, companies should up the total number of hours that all employees worked for the year. If it’s 106,080 or more (51 employees multiplied by 2,080, or 40 hours a week times 52 weeks), then the chain is over the threshold.

For many companies, the cost of compliance can be devastating, Owens says. Many in the c-store industry have adopted plans more commonly known as “mini med” approaches, designed primarily to cover emergency-room or doctor visits. According to Owens, companies should up the total number of hours that all employees worked for the year. If it’s 106,080 or more (51 employees multiplied by 2,080, or 40 hours a week times 52 weeks), then the chain is over the threshold.

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Sources: The Lewer Agency, NACS, various sources

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Health-Care Numbers
For the c-store channel, many health-care-reform measures put low-wage, high-turnover businesses under pressure. Here are a few of those figures.

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<th>40%</th>
<th>How many c-stores will be affected by the new law, according to NACS</th>
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<td>$800-$1,200 PER YEAR</td>
<td>How much more many retailers may have to spend per employee</td>
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<td>$1.8 BILLION</td>
<td>What AT&amp;T says it can save by moving its 262,000 employees to state-run exchanges</td>
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Sources: The Lewer Agency, NACS, various sources
visits and not critical illness or catastrophic injury. (Most have caps ranging from $5,000 to $100,000.)

The way the law stands now, Owens says, costs per employee could jump by $800 to $1,200 annually.

There is a break for some. The smallest of the small will receive assistance. For companies with one to 10 employees, the government beginning last year allowed tax credits of up to 100% for companies that paid at least 50% of an employee’s premium. For companies with 11 to 25, the government offered a possible 35% credit. Employers with 26 to 50 did not receive tax credits; however, in 2014, those companies would be exempt from the “play or pay” requirement.

Fortunately, even if a company does qualify for the 51-employee threshold, they do not have to pay the $2,000 penalty on part-time or full-time seasonal employees (those working less than 120 days out of the year).

“Health-care reform is really health-insurance reform,” Owens says. “But access doesn’t matter if [businesses and individuals] can’t afford it. That’s the challenge.”

FORWARD THINKING
For Wright, who oversees such matters for the 759-store Tetco chain, it’s a wait-and-see scenario. The chain already offers a comprehensive benefit plan to every full-time employee, with the bulk of eligibility requirements already consistent with those mandated by the reform.

His concerns lie in how different mandates, such as what he calls “preset loss ratios,” will influence his insurance providers and the eventual cost of the policies. Other media reports suggest that providers may be boosting premiums today as a hedge on the uncertainty of the law’s full impact in 2014.

All that said, Wright’s strategy focuses first and foremost on personal wellness. “Regardless of reform, all stakeholders benefit from an engaged approach to wellness,” he says. “Our greatest challenge is to ensure that we stay abreast of the … process. This allows us the opportunity to anticipate and plan for required change.”

Owens suggests a similar strategy, advising retailers to “stay engaged.”