

Health Care Ruling Brings Contract, Grant Opportunities

By **Dietrich Knauth**

Law360, New York (June 28, 2012, 1:40 PM ET) -- With the U.S. Supreme Court's decision to uphold the bulk of the Patient Protection and Affordable Care Act, contractors and grantees already working under the law's appropriations can breathe a sigh of relief that their work will continue, while those that hesitated to take advantage of funding will now try to get in the game.

Contractors will look to states with Republican governors that have been holding back and will be more eager to compete for federal contracts and grants now that the constitutional uncertainty has been removed, attorneys say.

"The case itself was a huge distraction for so many providers, and so many folks were sitting and waiting to see what would happen," said Joan Feldman, chair of the health law practice group at Shipman & Goodwin LLP. "Some have missed initial funding opportunities under the act, and for those that were resisting it and wishing it away, they're going to have some catching up to do."

While states may experience a surge in spending as they rush to meet deadlines such as the law's requirement to implement state-run insurance exchanges by 2014, federal spending, centralized in the Centers for Medicare and Medicaid Services, are pretty well set and will continue along the lines established over the past two years, according to Thomas Crane of Mintz Levin Cohn Ferris Glovsky & Popeo PC.

"They've had to do business with the assumption that the law will be upheld, so there will unlikely be a big change there." Crane said.

While government contractors that acted early to take advantage of ACA may have a head start over those that were concerned the law would be ruled unconstitutional, they will likely have to fight off more competitors for ACA-related work in the future, lawyers say.

"Any contractors that were doing a wait-and-see approach are now going to jump in," said Phillip Seckman of McKenna Long & Aldridge LLP. "The folks who took action early to get involved are in a better position relative to their peers, but they're also going to face more competition as more folks enter in."

The law authorized \$100 billion in mandatory funding and \$100 billion in discretionary funding over a 10-year period. As of April 2, nearly \$12.1 billion had been awarded across the states through ACA programs, according to the Kaiser Family Foundation. Of the money spent so far, \$8.1 billion, or two-thirds, went to private entities, while \$4 billion was awarded to state and local governments.

CMS's newly created Center for Medicare and Medicaid Innovation will receive about \$1 billion per year in contracts and competitive grants to health care providers that are exploring ways to reform Medicaid and Medicare payments and cut costs. The CMS Innovation Center recently announced nearly 100 awards under the Health Care Innovation Awards, choosing the first batch of winners May 8 and the second and final batch June 15.

And since the bulk of the insurance exchange work will occur on the state level, CMS awarded roughly \$150 million in contracts in December to support the state exchanges.

First, it signed a \$69 million deal with Quality Software Services Inc to set a federal so-called data hub that will pull information from agencies like the Internal Revenue Service and the Social Security Administration, allowing states to plug in and access the data for their own exchanges.

CMS also awarded \$94 million to CGI Federal Inc. to build federal insurance exchanges that will go into effect in states that do not establish their own qualifying versions by 2014. Those awards followed a \$52.3 million contract in September with Booz Allen Hamilton for implementation support.

Other funds, like the \$15 billion prevention and public health fund, will be shared between states, health care providers, nonprofit organizations and private contractors. The law also established a fund of \$11 billion over five years to support community health centers and the National Health Service. A separate appropriation provides \$1.5 billion for health center construction and renovation.

Going forward, contractors should focus on developing innovative strategies to drive down health care costs, an area of focus in ACA grants and funds, experts say.

“The demand for health care is about to explode as we baby boomers age, so it will be critical for health care providers to reduce costs,” said John F. Cooney of Venable LLP. “That's where the government is going to put all its marbles.”

The White House and the U.S. Department of Health and Human Services surely had rigorously planned for a Supreme Court ruling that would have disrupted the law, and likely analyzed possible options for other funding means and prioritized efforts most worth saving, according to Cooney. He oversaw the Office of Management and Budget's cuts under sequestration in the 1980s.

“The planning process that the White House had to go through in preparation for a possible upset has now turned into an asset,” Cooney said. “Contracts will shift towards the areas they found most promising, areas they would've tried to fund by other means if the law had been thrown out.”

And contractors will likely see opportunity in future health care legislation, as ACA expanded coverage but did very little to reduce costs, Cooney said.

Still, some uncertainty remains. Lower courts are still handling challenges to other portions of the law, including the Independent Payment Advisory Board and its treatment of religious employers, while political opposition and budget crunches could derail some of the law's goals and funding authorizations, Seckman said.

“While the ACA did appropriate certain funds, there's also authorization for continued appropriations,” he said. “Whether those appropriations will be made, for things like setting up the federal exchanges, we'll have to see.”

And although the constitutional question has been answered, a Republican Congress could still try to repeal or defund the law, especially if emboldened by upcoming elections, Feldman said. Time is of the essence for contractors, providers and states that want to take advantage of ACA funds, she added.

“People should do what they need to do now, because its still vulnerable to congressional cancelation depending on what happens with the election,” Feldman said. “The appropriations have been made and short of Congress repealing laws, there's still a lot of money to be tapped into in the areas of wellness, prevention, innovation and community services.”

--Editing by Eydie Cubarrubia.

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