

efforts.

As we wrap up the first quarter of the year, I want to thank all of you who have submitted your annual Education Foundation contribution. With a higher percentage of members contributing to our own foundation, our commercial partners realize that we have an engaged membership and therefore strengthen their partnership with us, allowing the association to improve member services and keep meeting registrations more affordable. If you have yet to contribute, it's easy: just

click here. For more EF news, check out Maureen Firth's article this month.

Keep thinking outside the box, and to Denys Wynn and all our southern hemisphere members, hope your summer is winding down nicely and that you are ready for fall.

Best,  
Roland

## Regulatory Review

# PPACA One Year Later: Where Have We Been and Where Are We Going?

By Adrienne Dresevic, Esq. and Carey F. Kalmowitz, Esq.

Even before its enactment on March 23, 2010, the Patient Protection and Affordable Care Act (PPACA) has incited great debate and controversy. Immediately after its enactment, the first major action against PPACA began with a joint complaint filed by 13 attorneys' general<sup>1</sup> in the US District Court for the Northern District of Florida within hours of President Obama signing the bill into law (aka "The Florida Challenge"). While the controversy has made headlines on a near-daily basis, many significant challenges have been taken, both by Congress and the judiciary, to prohibit its increasing influence over the healthcare system. Many challenges were taken within the first few months of 2011, leaving many to speculate whether PPACA can survive through its first year intact.

While the battle over PPACA's constitutionality ensues, it is incumbent upon all providers and suppliers to bear in mind that they continue to be responsible for adhering to provisions of the law as they become effective. For example, imaging providers and suppliers of advanced imaging services remain obligated to comply with the Stark disclosure requirement if self-referring for certain services (as described in greater detail in the December 2010 *Link*), as well as preparing to comply with the new Medicare enrollment provisions (as described in greater detail the February 2011 *Link*). Finally, all providers and suppliers should remain attentive to and be prepared for further updates and guidance from the legislature, judiciary, and other governmental administrative bodies.

### Constitutional Challenges to PPACA

On January 31, 2011, Judge Roger Vinson issued his opinion relative to the Florida Challenge and held that, "Congress exceeded the bounds of its authority in passing the Act with the individual mandate . . . Because the individual mandate is unconstitutional and not severable, the entire Act must be declared void." While this appeared to be a tremendous victory for the anti-healthcare reform camp, in reality, this ruling, while significant, is far from meaningful from a legal standpoint. That is, a district court's ruling only influences the district in which the ruling was made. Thus, outside of the Northern

District of Florida, the Florida Challenge may be nothing more than a sensational headline.

On the legislative front, notably, less than two weeks prior to the Florida Challenge ruling, on January 20, 2011, the House of Representatives voted 245-189 to repeal PPACA in its entirety. Largely symbolic, this repeal served to fulfill campaign promises of many newly-elected Republican congressmen who vowed to stand up against their Democratic counterparts. On February 2, 2011, the Senate responded to the House by defeating the repeal by a 51-47 vote, which was straight down party lines.

On February 22, 2011, Judge Gladys Kessler of the Federal District Court for the District of Columbia rejected the constitutional challenge regarding the individual mandate, holding that Congress did not exceed its power as the activities substantially affect interstate commerce. Judge Kessler held that the individual mandate is the "least restrictive means of furthering this compelling interest," which is "safeguarding the public health by regulating the healthcare and insurance markets."

It should be noted that these are just a few examples of some of the more notable PPACA constitutional challenges, as there have been numerous cases filed across the country, many of which have been dismissed on procedural grounds, and one that has made it to the appellate court level.

### Will PPACA Survive?

This struggle between the supporters and dissenters of PPACA is only the beginning. Repealing PPACA would require a vote by both the House and Senate and then, to become effective, would further require the President's signature or, if there is a presidential veto, an override by a two-thirds vote would be required. Congress, consistent with the ever heightened partisanship since the elections, has voted along party lines and in the State of the Union address on January 25, 2011, President Obama acknowledged his willingness to "fix what needs fix-

ing," but refuses to sign any bill repealing PPACA. Without Congress and the President's approval, repealing PPACA rests with the judiciary.

To date, the five judges who have opined on the constitutionality of PPACA have ruled according to the position of their appointing president's party. The Supreme Court, currently, has five Republican appointed justices and four Democratic appointed justices, so how the Supreme Court will rule is still not entirely known; however, with many of the provisions having already been implemented and regulations having already

been issued, it appears unlikely that it will rule PPACA, as a whole, unconstitutional. However, the Supreme Court's determination that PPACA, in its entirety, is constitutional does not preclude it from determining certain provisions are unconstitutional, which may be where the ruling lies.

<sup>1</sup> *The Attorneys' General included in the Florida Challenge representing the following states: Florida, South Carolina, Nebraska, Texas, Utah, Louisiana, Alabama, Michigan, Colorado, Pennsylvania, Washington, Idaho, and South Dakota.*

## Commentary

# What Would You Do?

By AHRA Staff

Every month, a hypothetical industry and management related situation is posted. You are encouraged to share your thoughts (in the comment box below) on how you would resolve the issue. Be sure to check out others' responses and join the discussion.

Here is this month's scenario:

It's no secret that everyone makes mistakes on the job sometimes. What are some successful ways to get staff to report their mistakes—without them feeling they will get in trouble—in order to make process improvements?

## Education Foundation

# AHRA Education Foundation Update

By Maureen R. Firth, MS, CRA

The Weather Channel recently stated that snow was found in every state except Florida for all 31 days of January. Now that is some kind of record. And February wasn't far behind. But just think, in a few short months, we'll be nice and warm just outside of Dallas at the Gaylord Texan in Grapevine, TX, the site of our 2011 Annual Meeting.

Last year's Annual Meeting, in our nation's capitol, was a huge success for the AHRA Education Foundation. To get revved up for Texas, let's review what the EF had to report from DC.

### Our Members

Following up on the success of the 2009 inaugural Get Pinned program, the 2010 Get Pinned Too program was a rousing success. We raised over \$9000 prior to the Annual Meeting from more than 160 members, with an average member gift of \$54. This amount represents an average increase of 26% per gift over the previous year. At year end 2010, we received individual gifts of \$13,103 and pledges of \$435, which brought our Annual Member Drive total to \$13,538.

Way to go, members! Wait until you see what we have cooking for 2011. Hope we "whet your appetite."

### Our Corporate Sponsors

Our corporate sponsors continue to support the EF, our programs, and the annual meeting. At the 2009 Annual Meeting, our corporate gifts totaled \$35,000 and pledges totaled

\$250,000, bringing the total to \$335,000, representing an increase of 44% over the previous year. At year end 2010, we received corporate gifts totaling \$95,000 and corporate pledges totaling \$250,000, for a grand total of \$345,000.

Thank you to all our corporate sponsors. We look forward to our continued partnerships!

### Scholarship Programs

At last year's meeting, 10 people were able to attend through the AHRA Annual Meeting Scholarship program. Three people received Osborn Scholarships (through the EF) to attend. Click here to view AHRA's 2011 calendar for all scholarship deadlines and program details.

### Volunteers

Thank you to all our wonderful EF volunteers who give themselves through their time and resources. AHRA would not be as strong as it is without your support and commitment. We also send out a special thank you to our corporate sponsors for their commitment to the EF and the programs they help partner and fund. Click here for current volunteer opportunities. Who knows, you might not like it—you might love it!

We look forward to a banner year in 2011 through your help and donations. Check out the Education Foundation tab on the AHRA website where you can find all the answers to your questions about the EF! Click here to make a donation.