

The Affordable Care Act (ACA) continues to be debated and challenged in various courts. Updates this past quarter include:

- On August 12th, the three-judge panel of the 9th Circuit Court of Appeals ruled that a former state lawmaker, Steven Baldwin, and the Pacific Legal Institute do not have legal standing to challenge ACA. The court didn't get to the merits of the case, which challenges the constitutionality of the individual mandate.
- On August 12th, the judges of the 11th Circuit Court of Appeals struck down the individual insurance mandate in ACA, but allowed the rest of the law to stand. Thus, it ruled in favor of 26 states that had joined a lawsuit in Pensacola, Florida, but disallowed throwing out the entire law.
- On September 8th, the 4th Circuit Court of Appeals (Richmond) ruled that the Tax Anti-Injunction Act (AIA) prevented it from reviewing Liberty University's lawsuit challenging the individual and employer mandate before the penalty for buying insurance is effective in 2014. The significance of the AIA challenge is timing: the AIA requires that a case not be brought until actual harm is realized. Thus, plaintiffs challenging the constitutionality of the individual mandate that starts in 2014 would not be eligible to sue until after 2015. The effect—the law with the individual mandate intact would proceed, with the lawsuit about its violation following its implementation.
- On September 13th, Pennsylvania District Court Judge ruled the individual mandate unconstitutional, stating that Congress cannot "...invoke its Commerce Clause power to compel individuals to buy insurance as a condition of lawful citizenship or residency." The ruling follows a ruling by the U.S. Court of Appeals for the Fourth Circuit (Richmond) that found that it lacked jurisdiction to hear challenges to ACA's individual mandate.
- On September 23rd, the D.C. Circuit Court of Appeals heard arguments from consumers about whether the individual mandate violates their religious freedom.
- On September 28th, the Department of Justice (DOJ), the National Federation of Independent Business (NFIB), and 26 states petitioned the U.S. Supreme Court to accelerate hearing their lawsuit seeking the overturn of ACA. The DOJ also asked the court to examine whether application of the Tax Anti-Injunction Act, which requires Americans to pay a tax before they can challenge it in court, might preclude a ruling before 2015 per the 4th Circuit Court of Appeals' conclusion it could not rule on the individual mandate as a result of the Anti-Injunction Act.
- On October 10th, Liberty University asked the U.S. Supreme Court to hear its case challenging the ACA. This is the only case which asks the high court to examine the Anti-Injunction Act (AIA) and individual and the employer mandate.
- On October 20th, the U.S. 8th Circuit Court of Appeals in St. Paul, Minnesota heard arguments from Missouri's Lieutenant Governor Peter Kinder (R) about the ACA's individual mandate and Medicaid coverage expansion.

More than 30 lawsuits have been filed against ACA, with most of them challenging the individual mandate. In June, the 6th U.S. Circuit Court of Appeals (Cincinnati) upheld the constitutionality of the insurance requirement. This ruling is now being appealed to the Supreme Court by the plaintiff, the Thomas More Law Center of Ann Arbor, Michigan. These challenges will most likely end up in the Supreme Court, which did not convene until this month, with a hearing in early 2012.



People and Companies on the Move

- **TriHealth** and **Vantage Oncology** formed a joint venture, effective July 1, 2011, to manage the radiation oncology services of the TriHealth Cancer Institute in addition to Vantage Oncology's Cincinnati outpatient radiation oncology centers. The joint venture will add two additional outpatient radiation oncology centers in Mt. Airy and Eastgate to TriHealth's existing two locations in Clifton and Montgomery. The joint venture operates Vantage Oncology's InterCommunity Cancer Center in Mt. Airy and Eastgate Cancer Center in Eastgate. These two locations double TriHealth's radiation oncology locations for patient convenience. Current TriHealth locations are Good Samaritan Hospital in University Heights and Bethesda North Hospital MediCenter in Montgomery. The TriHealth locations are managed by the joint venture.
- In August, **TriHealth** announced the establishment of a new practice, **Premier Obstetrics and Gynecology**. Premier physicians **Amberly Davidson MD** and **Jessica Fischer DO** are located at 6350 Glenway Avenue in Green Township.
- In September, **The Christ Hospital** announced the opening of **The Christ Hospital Obstetrics & Gynecology Associates**, new physician practice dedicated to women's health and wellness. The practice offers comprehensive women's care provided by physicians **Lana Lange, M.D.**, **Kimberly Nadaud, M.D.**, and **Leanne Olshavsky, M.D.** The practice is now open at The Christ Hospital Outpatient Center in Anderson Township (7545 Beechmont Ave., Suite B). A second location in The Christ Hospital Medical Office Building in Mt. Auburn (2123 Auburn Ave.) will open in fall 2011.
- The thirteen physicians of **Cardiology Associates of Cincinnati, Inc.** joined **TriHealth**, effective October 1st. Cardiology Associates will continue to see patients in its offices in Clifton, Anderson, Montgomery, Western Hills, Mt. Airy, Montfort Heights, Batavia and Sardinia.

Third Quarter Medical Office Transactions

Sale Transactions

- **Adam Harvey** purchased the Milford Professional Building at 741 Milford Hills Drive (10,414 SF) from Betsy J. Hall on 7/21/11 for \$291,500 (\$27.99/SF).

Lease Transactions

- The **National Infectious Disease Program** leased 5,264 SF at the Textile Building (205 – 209 E. Fourth Street).
- **The Christ Foundation and Hospital** leased 5,500 SF at 200 Baldwin Center (625 Eden Park Drive).
- **ESD Pediatric Group** leased 2,984 SF at Cornerstone @ Norwood II (4000 Smith Road). They will be relocating from 2713 Madison Road in January.
- **Catholic Health Partners** leased an additional 20,902 SF at McCauley Place (4600 McCauley Place).
- **Healthcare Regional Marketing** leased 13,500 SF at Ivy Pointe II (4270 Ivy Pointe Boulevard) in Eastgate.
- **Cincinnati Eye Institute** renewed its 4,570 SF lease at 4760 Red Bank Expressway.

- **The Christ Hospital** leased 17,213 SF at Liberty Commons Medical Center (7335 Yankee Road) in Liberty Township. Ohio Hear and Vascular will open for business at this location in January.
- **Midmark Corporation** leased 3,940 SF at Centre Pointe II (9050 Centre Pointe Drive) in West Chester.
- **The Christ Hospital** subleased an additional 36,215 SF from Kroger at 7545 Beechmont Avenue in Anderson. TCH subleased 33,885 SF in the fourth quarter of 2010, and is now subleasing the entire 70,100 SF building.
- **Catholic Health Initiatives** renewed its 75,000 SF lease at Olympic Corporate Center II (3900 Olympic Boulevard) in Erlanger.

Third Quarter Construction Completions

- Duke Realty's **Western Ridge Medical Office Building Two** (6909 Good Samaritan Drive) opened in July. This single-story, 29,700 SF building has 6,280 SF available. **Wellington Orthopaedics & Sports Medicine** has leased 18,920 SF and **Tri-State Centers for Sight** has leased 4,520 SF.

Projects Under Construction

- **TriHealth** broke ground in January on a new 65,000 SF medical office building at Good Samaritan Hospital. The building is being built on the parking lot behind the existing 61,000 SF medical office building. Group Health Associates will occupy the building and relocate from its existing facility at 2915 Clifton Avenue. The anticipated completion date is summer 2012.
- Construction commenced in February on **Mercy Health Partners'** new West Side hospital, Mercy Hospital West. Located near I-74 off the North Bend Road exit, the facility will encompass 550,000 SF and have 250 beds. The \$200 million hospital is scheduled to open in the autumn of 2013. Services will include heart care, a cancer center, an orthopedics center, a women's health center, neurology service, and obstetrics/maternity care.
- **The Christ Hospital** broke ground in March on a three-story, 68,000 SF outpatient center at Harrison Avenue and Filview Circle in Green Township. This building is scheduled for completion in the first quarter of 2012. The outpatient center will offer a wide range of services including cardiovascular, orthopaedic and primary care physician offices; a full-service imaging center; physical and occupational therapy; a wound healing center; and a testing center for diagnostic and pre-surgery lab work. This 11.3 acre site also includes room for future expansion.
- **The Urology Group's** three-story, 55,000 SF building, at Section Road in Norwood will be completed in June 2012. This new building will house administrative offices and an ambulatory surgery center that will include labs, surgical rooms, seven operating rooms, and radiology facilities. The Urology Group will relocate from 38,000 SF at 4700 Smith Road (Central Parke).
- The new 109,000 SF **FBI** campus at Montgomery Road and I-71 in Kenwood is on schedule for a November 2011 completion. The **FBI** will be relocating from the CBD when their four-story building is completed. The FBI signed a twenty year lease on this \$50 million building, where it will house its Special Weapons and Tactics and Hazardous Materials units. Plans for the western part of the site include a 160-room hotel and a nine-story, 266,000 SF office tower. The total size of the entire site is 6.26 acres.

- **Medpace, Inc.** is expanding its Madisonville headquarters by 200,000 SF. Medpace's first building (132,000 SF) was completed last December. Al Neyer is building the two new facilities. One building will be a four-story 140,000 SF facility, and the other will be two stories totaling 60,000 SF. The additional space will allow Medpace to consolidate all of its 575 Cincinnati employees at the former 29 acre NuTone site on Red Bank Road. Construction will begin in the next several months.
- **itelligence, Inc.** is building an 85,000 SF headquarters and data center on an 8.1 acre site at Reed Hartman Highway and Osborne Boulevard in Blue Ash. itelligence will be relocating from 25,000 SF at Kemper Pointe (7870 E. Kemper Road) in Symmes Township.
- The future of **Kenwood Towne Place**, comprising 270,000 SF, remains uncertain.

Planned Construction Projects

- **Phase II of The Banks** will comprise 250,000 SF of Class A office space, but the timing of this project remains uncertain due to its 60% pre-leasing requirement.
- **Neyer Properties** plans to build 40,000 SF of Class A medical office space at 5655 Harrison Avenue. Located at Harrison Avenue and Westwood Northern Boulevard on a 5 acre site, this new building will be built to LEED Silver standards. Planet Fitness has signed a letter-of-intent to lease 20,000 SF adjacent to the new building. The timing of this project will depend upon obtaining the necessary pre-leasing requirements.
- Demolition of **Oakley Station** (a 74 acre mixed use site at Disney and Forrer Streets and Marburg Avenue in Oakley) continues. **Cinemark NextGen** will have a 55,000 SF, 16-screen movie theater. Additional plans include 350,000 SF of retail space, 200 apartments, and 300,000 SF of office space built to LEED standards.
- **St. Elizabeth Healthcare** will construct a single-story, 25,000 SF medical complex at the site of the former Mildred Dean Elementary School in Newport. The school closed in June 2010 and St. Elizabeth purchased the property for \$1.9 million. St. Elizabeth will demolish the building this quarter, with construction of the new facility commencing in the next year.
- **Cincinnati Children's Hospital Medical Center** will build a 60,000 SF facility in Green Township, 1.9 miles south of the I-74/Harrison-Rybolt Road exit. CCHMC purchased 8.3 acres of land and the facility will house pediatric subspecialty clinics, therapies, urgent care, and laboratory and radiology services. Construction will begin by October, and the building will open in early 2013.
- **Mercy Health Partners** announced it will spend as much as \$165 million to build a new patient tower at its Anderson campus, expand Jewish Hospital in Kenwood, and renovate Mercy Fairfield. Construction at Anderson will cost \$50-\$75 million and is likely to begin next year, although the final design for the building is yet to be finalized. At the 209-bed Jewish Hospital in Kenwood, Mercy will invest \$50-\$75 million to add private rooms, expand the emergency department, and possibly combine several intensive care units into one area. Mercy Fairfield will be a \$15 million renovation project to take advantage of unused space.
- **St. Elizabeth's Hospital** in Edgewood announced it will expand its services, becoming a health and wellness institute over the next few years. The new expansion will include two phases. Phase one involves the physical expansion of the space to create a heart hospital in one central location. Phase two will add three additional levels to the hospital,

making room for a clinical research institute, universal patient rooms, additional patient beds, ICU capacity and additional exam rooms. Because St. Elizabeth is a non-profit organization, \$15 million for the first phase of the project will come from hospital earnings, with additional funding coming from a capital campaign.

Interesting Facts

- In **2010, 48.6 million persons of all ages (16 percent) were uninsured**, 60.3 million (19.8 percent) had been uninsured for at least part of the year, and 35.7 million (11.7 percent) had been uninsured for more than a year. *(Source: Centers for Disease Control and Prevention National Health Interview Survey, June 2011)*
- **Hospital operating margins for Medicare: 11 percent in 1997, -5.2 percent in 2009.** *(Source: Medicare Payment Advisory Commission)*
- Per Medicare Modernization Act (MMA) section 1011, from 2005 to 2008 the **federal government set aside \$250 million** annually for the **cost of emergency services provided to undocumented aliens**. Two-thirds of the funds are allocated to states based on their relative percentages of immigrants. **Nineteen states have exhausted their funds** in 2011 to date. *(Source: CMS, American College of Emergency Physicians)*
- Health care executives believe that the **percentage of physicians on active staff at hospitals is expected to increase from 10-25 percent by 2013**. Since 2000 independent physicians' ranks have been declining by two percent annually and that rate is expected to accelerate to five percent every year by 2013. *(Source: Society for Healthcare Strategy and Market Development)*
- In **2008, five percent of the U.S. population accounted for 47.5 percent of all health care spending**, while 50 percent accounted for three percent of all spending. *(Source: National Institute of Health Care Management based on 2008 Medical Expenditure Panel Survey [MEPS], June 2011)*
- **Fifteen percent of companies with 500 or more employees have primary care clinics on site**, up from 11 percent the year before. *(Source: Mercer)*
- The number of private health information exchanges (HIEs) increased from 52 last year to 161 in July, while live public HIEs grew more slowly – from 37 in 2010 to 67. *(Source: KLAS)*
- More than **\$790 million has been obligated to contractors** from various federal departments and agencies **for the implementation of ACA.** *(Government Accountability Office, July 2011)*
- The **average return on investment for nonprofit health care organizations in FY 2010 was 10.9 percent**, down from 18.8 percent in FY 2009 but improved from FY 2008 (-21.2 percent). Operating margins were four percent for organizations with more than 500 beds vs 2.3 percent for those with fewer beds. *(Source: 2011 Commonfund Benchmarks Study Healthcare Organizations Report)*
- Health care workforce: **the health care industry workforce is expected to grow by 24 percent, or four million new jobs from 2008 to 2018**. Home health aides and personal and home care are expected to have the largest increase with 460,900 and 375,800 new jobs. Half of the 20 fastest growing occupations in the U.S. are in the health care industry. *(Source: U.S. Department of Labor [DOL], Bureau of Labor Statistics)*
- In **2011, hospitals will spend between 46.5 percent and 48.3 percent of their total information technology (IT) capital budgets on IT applications such as electronic health records (EHRs) and revenue cycle management (RCM) software**, up two percent from 2009. *(Source: HIMSS Analytics)*

- **U.S. health care spending share of the gross domestic product (GDP) reached an all-time high of 18.2 percent in June 2011**, an increase of 5.1 percent relative to July 2010. *(Source: Altarum Institute, September 2011 Health Sector Economic Indicators Reports)*
- **Military health costs are expected to reach \$52.5 billion in 2012**, up from \$19 billion in 2001. *(Source: Pentagon)*
- **Medical practices decreased operating expenses 2.2 percent in 2010**, since 2001 general operating costs have increased almost 53 percent to \$252,629, exceeding gains in revenue over the decade. *(Source: Medical Group Management Association, "Cost Survey for Multispecialty Practices: 2011 Report Based on 2010 Data" September 2011)*