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## **TRANSFORMING HEALTH CARE THROUGH ACCOUNTABLE CARE ORGANIZATIONS: A CRITICAL ASSESSMENT**

### **Executive Summary of a White Paper Published by Foley & Lardner LLP, October 1, 2010**

The health care industry is abuzz about accountable care organizations (ACOs). They are trumpeted as an answer to much of what ails our health care system and hold great promise as the vehicle that, short of rationing, may provide many of the answers both government and industry have been seeking in order to address the cost and variability of care issues in health care. According to proponents of ACOs, ACOs will transform our health care delivery and payment systems and will restrain health care cost increases while producing better health care outcomes.

ACOs are viewed as a way to address the perverse incentives created by our fee-for-service physician payment system that generally rewards the provision of more services, and not better or more efficient care. Properly structured, ACOs may be effective in reducing unnecessary diagnostic tests and procedures, dangerous drug interactions, and unnecessary drug treatments; facilitating access to needed care; and ensuring effective communication among all members of the patient's clinical team. This model is designed to result in not only cost savings to the system, but increased quality and patient satisfaction.

If successful, ACOs may achieve the "Triple Aim" of health care, as articulated by the Institute for Healthcare Improvement, the organization formerly led by Dr. Don Berwick, the new administrator of the Centers for Medicare & Medicaid Services (CMS):

- Improvement to the health of the population
- Enhancement to the patient experience of care (including quality, access, and reliability)
- Reduction, or at least control of, the per capita cost of care

While ACOs hold promise for each of these objectives, and while it seems axiomatic that better coordination of care through models such as ACOs would be a substantial improvement over our current fragmented care delivery arrangements, the jury is out on whether ACOs will achieve their potential. Our health care delivery system is not yet structured to promote ACOs or reward ACO participants for their efforts in providing more coordinated and cost-effective care.

If they are to be successful, ACOs will need to address effectively numerous business, financial, operational, technological, and legal challenges. These challenges are discussed in our White Paper. Conversion to an ACO-based system would constitute a sea change in how care is currently delivered and reimbursed. The vast majority of providers would need to change significantly how they organize



themselves and practice for ACOs to succeed. ACOs also need to understand how payors are approaching accountable care and what they intend to do, or not do, to support it, in order to assess the economic risks involved in the venture. But, with a commitment from the government, payors, and providers, and with careful and thoughtful ACO planning and structuring, it may be possible to overcome all these hurdles and transform our health system for the better in the process.

It is perhaps because of uncertainties about ACOs that the recently enacted Patient Protection and Affordable Care Act, as amended by the Health Care Education and Reconciliation Act of 2010 (collectively PPACA), does not mandate utilization of ACOs. Rather, PPACA predominantly calls for introducing accountable/coordinated care models on a voluntary basis and through pilot programs, demonstration projects, and other private initiatives that will provide an opportunity to study and assess the models. Those pilot programs and demonstration projects contemplate studying incremental changes in payment methodologies — principally shared savings and partial capitation arrangements, together with bundled and episodes-of-care payments for a limited number of specific medical conditions. This stepwise approach to payment reform is a practical necessity, since much of the health care system is not ready to accept and administer risk-based payments for a continuum of care across a variety of provider types. Certain proactive providers and health care systems, however, are ahead of the curve and are already fairly far down the path toward being prepared to provide and be paid for accountable care.

While we believe that payment reform activities on the state, regional, and national levels are moving in the direction of ACOs, one real question is whether they will move fast enough to reward (or at least cover the cost of) ACO innovations by providers. Innovation carries the potential both for success and failure. Providers that get too far down the track too early may find themselves out in front of any return on investment, while providers that wait too long on the sidelines may give proactive providers a first-mover advantage to solving the many obstacles addressed in our White Paper. The challenges for ACO development are very real and will vary by market — since all health care is, indeed, local. Providers that seek to implement ACOs will need to find solutions that work in their particular markets. As described in greater detail in our White Paper, a number of knotty issues can be readily solved by proper structuring of the ACO from the outset. Indeed, the far greater risk to providers is that they seek to implement an ACO without being fully aware of these potential pitfalls and the ways to avoid them.

Our White Paper takes a critical but constructive look at ACOs and their role in national health reform and the health care marketplace.

The White Paper covers the following topics:

- How ACOs are addressed in PPACA.
- Organizational and structural options for ACOs.



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- Significant financial, payment, technological, and practical issues that providers will confront in moving toward ACO arrangements and away from fee-for-service payment models.
  - Principal legal issues that ACOs face and that must be addressed for ACOs to accomplish their intended goals.
  - Recommended actions that organizations should take now, proactively, to prepare to take advantage of ACO opportunities.

### **Conclusion**

Proponents hold much hope that ACOs will change our health care system in a manner that will result in better-quality care while reducing health care costs. But, there are numerous challenges to be confronted, engaged in, and overcome for ACOs to fulfill that promise. Successfully achieving the goals for which ACOs are designed will take an intensive and probably long-term commitment from providers of all types, together with the government and private payors. ACOs may ultimately transform health care delivery and payment systems. But the industry is at the very threshold of this change. Courageous pioneering efforts will be needed to prove out the ACO proposition and guide the way to best ACO models and practices. Health care participants that are interested in joining this trailblazing effort should inform themselves of the challenges ahead and begin taking steps now to prepare for this perilous journey through uncharted territory. Getting to the destination may well be worth it, if at the end of the trail we find an economically sustainable health care delivery system to which all have access and that consistently delivers the best in evidence-based, cost-effective care.