

OUR PRACTICE

Clinical Integration, Accountable Care Organizations and Value-Based Payments

With health care consuming an ever-increasing share of the U.S. economy – nearly 18 percent of Gross Domestic Product in 2012, and growing – economists, policy experts and politicians have struggled to restructure the health care system in order to control costs. The latest iteration, courtesy of the Affordable Care Act (ACA), is the Accountable Care Organization (ACO) – a voluntary alliance of health care and service providers who offer comprehensive care to a group of patients and are held accountable for the results.

At root, the idea is simple. Providers agree to accept a measure of financial risk for their patients' care. And if they meet certain goals – typically, cost savings or care-related targets – they receive a financial reward. By giving doctors and other providers a financial stake in cost control and patients' health, the ACO, it is hoped, will both improve care and increase efficiency.

In practice, however, establishing an ACO or another type of integrated care organization is far from simple. It involves delicate negotiations among individuals and organizations, health care-specific laws such as the Stark law on self-referrals and federal anti-kickback laws, and complicated issues of contract and antitrust law, among others.

In just the few years since the Centers for Medicare and Medicaid Services first drafted its rules governing ACOs, the attorneys in Baker Donelson's Health Law Department have helped numerous providers and organizations assess, plan for and establish ACOs, including hospitals, health systems and health plans; insurance companies developing state-based ACOs; specialty care providers; a 100-physician Independent Practice Association establishing its own ACO; and Medicare providers that wanted to form an ACO in order to participate in Medicare's Shared Savings Program.

More broadly, our attorneys have helped many clients develop other types of integrated delivery systems, including IPAs, Physician Hospital Organizations (PHOs) and Management Service Organization (MSOs). We have likewise helped health care systems implement pay-for-performance agreements with physician-providers that incorporate some of the same incentives as ACOs.

No one knows whether ACOs will even exist a decade from now, or if they do exist, in what form, but it seems likely that the core principles – holding providers accountable for quality and sharing risks and rewards – will be a permanent fixture of the American health care system. Venture capital firms and entrepreneurial organizations have embraced the concept. Employers and the federal government, which pay the bulk of health care costs, are driving demand. And the U.S. has an urgent need to develop a more cost-efficient way of providing health care to an aging population.

No matter what the future holds for ACOs, the attorneys in Baker Donelson's Health Law Department have skills, experience and legal knowledge to help health care providers adapt.