

PROTECT HEALTH-CARE CLIENTS AS REFORM TAKES SHAPE

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The Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (commonly known as federal health-care reform) significantly will impact Texas lawyers endeavoring to keep their clients informed about key issues and the reform's effect on their health-care practices and businesses. From compliance to quality improvement to reimbursement, the changes are far-reaching.

Certain aspects of federal health-care reform will lead to additional litigation and administrative hearings for Medicare/Medicaid providers. The health-care overhaul imposes more scrutiny on their practices and their regulatory compliance. The penalties for failure to comply will increase, with new penalty structures developed and existing penalty structures enhanced and increased. Texas lawyers must inform their health-care clients on compliance requirements and be prepared to defend them in compliance hearings and litigation.

Certain segments of reform will impact health-care clients' practice guidelines, patient load, reimbursement structure, and exposure to litigation and

administrative proceedings.

Federal health-care reform mandates a strong quality improvement initiative with compliance incentives for those providers accepting Medicare and Medicaid patients. According to the U.S. Department of Health and Human Services website, the goal is for the Centers for Medicare and Medicaid Services (CMS) to restructure payment systems to encourage providers to offer the highest, most efficient level of care while curtailing costs.

By 2014, federal health-care reform will expand incentive payment categories to health-care providers to include efficiency measures in addition to quality measures. Further, a CMS "Innovation Center," receiving \$10 billion in funding over 10 years, shall be established to develop and evaluate new patient-care models aimed at lowering costs while maintaining or improving quality.

The government will reward health-care providers that are successful in coordinating care and effectuating stringent quality measures with a bigger portion of the reimbursement pie and penalize those that are not with lower reimbursement rates.

For example, poorly performing

hospitals that rank in the top quartile of hospital-acquired illnesses will receive reduced payments for Medicare patients. Physicians in the bottom 10 percentile of adjusted use of resources — those physicians who are least efficient in using supplies, lab studies, procedures, etc. — will receive a 5 percent payment reduction. Much of this quality push harkens to the 1990s during the reign of the health maintenance organization. Lawyers will have to guide their clients

through these compliance issues, assist them with maximizing reimbursement and potentially litigate reimbursement reductions.

Lawyers for health-care providers are not the only ones affected by this movement. Insurance companies must report to the federal government and to their enrollees their implementation of programs to: improve health outcomes through quality reporting; prevent hospital readmissions; improve patient safety; and foster wellness and health promotion activities. Reporting must begin in March 2012 with the imposition of penalties on those insurance companies failing to report. Lawyers for insurance companies will need to help insurers navigate these changes.




Additionally, under the reform, the government must develop bundled payment and value-based purchasing programs as an incentive to coordinate care among various health-care providers treating Medicare/Medicaid patients. According to a RAND Corp. general overview of policy options, “Bundled payment systems (also known as ‘case rates’ or ‘episode-based payment’) would make a single payment for all services related to a treatment or condition, possibly spanning multiple providers in multiple

suits as the scrutiny of their care magnifies. Health-care providers will need legal advice as to how to practice while meeting the requisite standards yet defending against potential malpractice suits.

The implementation of these quality initiatives and reimbursement models will prompt Texas health-care providers to decide whether they want to continue to care for Medicare/Medicaid patients. If they do, they will need legal advice regarding how to implement such programs properly and ensure that they

quality care for the lowest price possible — with reimbursement ramifications — undoubtedly will result in a closer eye on compliance. Specifically, all health-care providers accepting government-funded patients must implement compliance programs to ensure complete reporting on all Medicare/Medicaid patients.

Texas lawyers must stay updated on the significant changes wrought by federal health-care reform, many of which the government has yet to implement. Clients will need legal advice about the known pitfalls, issues that may impact their practice and the importance of compliance. 

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settings.” Similarly, value-based purchasing, also known as pay for performance, encompasses the concept of providing efficient, quality, evidence-based care in the most cost-effective manner.

The concern becomes whether these initiatives actually will incentivize providers to under-treat to maximize profit or simply to break even. With this concern in mind, health-care providers may become more vulnerable to medical-malpractice

report outcomes as the government requires to maximize reimbursement while minimizing litigation exposure.

Finally, under the reform, anti-fraud and abuse funding will increase by \$250 million over the next 10 years for enforcement of government regulations, the violation of which will result in steeper penalties and sanctions. More funding, along with health-care reform’s drive toward the highest standards of

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