

SECOND OPINION

SMALL DOSES OF HEALTHCARE INSIGHT



Change is the Only Constant

No industry has experienced more change during the past eight years than the US healthcare industry. Federal reimbursement programs, regulations and improved technology/data have had a major impact on the way healthcare organizations transact business. With a new administration in the Oval Office, your healthcare clients will continue to find themselves in the crosshairs of change.

What We've Seen: The Blurring of Lines

The passage of the Affordable Care Act (ACA), with such mandates as Medicare delivery/reimbursement systems and medical loss ratios, has accelerated a blurring of the lines between what had traditionally been two separate silos: **payors** (Medicare/Medicaid, health insurance companies) and **providers** (health systems, physician groups). We have witnessed an accelerated convergence of payors and providers integrating and partnering in the form of Accountable Care Organizations (ACOs), clinically integrated networks and outright M&A.

The Outcome So Far: Mixed Results

The early outcome of this convergence has been mixed.

- **Shared Savings:** The Centers for Medicare & Medicaid Services (CMS) released its newest figures in August 2016 regarding the performance of Medicare ACOs and reported that they generated \$1.29 billion in Medicare savings from 2012 – 2015. However, only 30% of the Medicare ACOs that participated in the Medicare Shared Savings Program (MSSP) actually shared in the savings from the MSSP in 2015 and only half of the Pioneer programs earned shared savings.
- **M&A:** 2015 was a record-breaking year for merger and acquisition activity in the healthcare space, including continued payor-provider consolidations. While acquisitions and affiliations continued into 2016, several divestitures running contrary to this convergence of payor and provider occurred. This suggests the trend isn't immune to the same economic realities found in other sectors of the economy.

- **Convergence Litigation:** We have seen recent examples emerging out of convergence issues including physicians suing their Clinically Integrated Network in regards to the distribution of profits, and health plans facing fraud and breach of contract allegations from members losing their physicians in the narrow network.
- **Additional Litigation Predicted:** As the industry moves deeper into consolidation and value-based payments, experts predict additional payor and provider disputes over certain antitrust issues as well as various contractual performance measures, incentives and per-member-per month fees.

What's Next

With the Trump administration, there is talk that the ACA will be "repealed and replaced." Lawmakers are building consensus that any substantive movements on a replacement plan — at the earliest — would be in March 2017 due to the current Senate schedule. At the time of this writing, confirmation of Rep. Tom Price, R-Ga., to serve as Health and Human Services Secretary is still underway.

No one knows how different the new plan will be from the ACA and when such a plan will take effect. We believe that it will be difficult to enact change overnight. The healthcare industry impacts almost 20% of the US economy; just as it took time to move this giant to where it is now, it will likely take time for it to shift again.

A 2015 healthcare industry survey showed that over 90% of payors indicated that they made or planned to make investments in either payor-provider partnerships, accountable care organizations, joint ventures, managed care organizations or integrated care models.

Millions of dollars have been invested by thousands of US healthcare businesses to align with the ACA and additional private sector changes that spun-off from the law. It will take time for organizations to analyze their structure, figure out what works best and determine how to pivot to a different model.

Additionally, the litigation that came out of the creation of the ACA will most likely also exist in the future, as organizations struggle to implement changes supported by the new administration. This will only create more uncertainty.

This is What We Know

From an underwriting perspective, it is clear that the healthcare industry is unsettled. Risk managers and their insurance brokers need to be cognizant of the professional and management liability issues that confront a market in transition. As a carrier, we have seen a shift from the siloed purchase of individual coverage lines to requests for blended or packaged products that offer a combination of management and specialized professional liability to emerging risks. The upcoming period of uncertainty will not change the risks our Insureds face today.

AUTHOR:

Eric Berens

Vice President

Healthcare Management Liability Division

Allied World Insurance Company

QUESTIONS?

Contact your local Allied World Underwriter.

alliedworldinsurance.com