

Accountable Care Organizations: Have They Already Come and Gone?

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With the adoption of the 2009 Patient Protection and Affordable Care Act, Public Law 111-148 (affectionately known as “Obamacare”), hundreds of new acronyms came for health care lawyers to study. While it only took up seven of the 2,400-page law, one of the most talked about provisions related to “Accountable Care Organizations,” or ACOs. ACOs were created to empower health care providers to work in a more organized fashion under one umbrella. This would allow them to provide coordinated, quality care in exchange for receiving financial incentives from Medicare (and private insurance payors and other third parties) for keeping costs down. At the time of adoption, ACOs were applauded as the pathway for easing the burden on the Medicare program and refocusing the dialogue on care quality as opposed to quantity. Implementing these organizations, however, required careful analysis and a full appreciation of sometimes competing clinical, business, and legal objectives. The criteria surrounding ACO development included specific standards related to quality, reporting, and governing structure. In addition to complying with CMS guidelines for ACO formation, potential participants had to navigate sticky legal issues such as fraud and abuse, antitrust, tax-exempt considerations, corporate practice of medicine, and state insurance regulations. As a result, many prospective participants postponed entering into ACO models, waiting for others to pave the way so that those on the sidelines could quantify the value in building a high-cost ACO infrastructure. The most sophisticated entities had the option of joining the ACO Pioneer Program. The program, which began in 2012, involved the government’s recruitment of those hospitals and medical groups the government believed were best able to succeed under a shared savings model. The initiative started out small, with 32 accountable care organizations initially being invited to join. As of April 2015, however, that number had dwindled to 19 due to participants electing to withdraw from the program. Since then, an additional 10 ACOs have dropped out leaving only nine remaining participants. Pioneer ACOs participate in higher levels of savings and risk than in the traditional ACO model, and those who have left the program have cited the primary reason for their departure being the program’s “unsustainability.” Despite the fact that Pioneer participants have saved the government more than \$300 million in three years, only 55 percent of participants have managed to

reduce costs enough to qualify for bonus payments because of ongoing rule changes that reduced ACO budgets. As of January 2016, Medicare reported that there were 477 ACOs participating in the Medicare program, covering 8.9 million assigned beneficiaries in 49 states, plus Washington, DC, and Puerto Rico. Approximately 180,000 physicians and practitioners are now involved in Medicare ACOs. There are 36 ACOs operating in Florida, the majority of which began operations in 2012 and 2013. These Florida ACOs cover approximately three million lives. So while the Pioneer ACO Program as first conceived by CMS may be on its last leg, the future of ACOs nationally and here in Florida generally seems bright. Stay tuned as we enter the “next generation” of value-based healthcare in America. *This article was originally published in the May-June issue of Lawyer, a publication of the Hillsborough County Bar Association (Vol. 26, No. 5).*

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