

## Preparing for Health Care Reform: What Matters for Providers

*By Amy K. Fehn, Esq. and Alicia B. Chandler, Esq., Wachler & Associates, P.C.*

After months of debate and deliberations, politicians and pundits, committees and conferences, the era of health care reform is here. Whether you supported or opposed health care reform, now all health care providers will be impacted by the Patient Protection and Affordable Care Act (PPACA), as amended by the Health Care Education Reconciliation Act, as well as the numerous regulations that will be drafted by Health and Human Services (HHS) and other agencies over the coming years. PPACA touches upon every aspect of health care – how people get insured, what delivery systems are in place, how care is paid for – and will have massive ramifications for providers. As with any legislation of this scope, the consequences of the bill are uncertain and the possibility of unintended impacts loom large. There are two questions that providers should ask themselves: “What provisions do I have to comply with now?” and “What business planning and strategy do I need to do to comply with provisions in the future and thrive in this changing environment?” This article is intended to highlight the larger themes of health care reform to help providers plan for their future.

### *Innovation Matters*

Congress placed a large focus on innovation through both the establishment of the Center for Medicare and Medicaid Innovation and through provisions creating many pilot and demonstration programs to test “innovative payment and service delivery models” with the goal of reducing payments while preserving or enhancing quality. PPACA did not limit itself to one idea, but incorporated many ideas to determine the best methods of innovation. Some examples: the Medicaid Global Payment System Demonstration, a global capitated payment model for

certain hospitals; the National Pilot Program on Payment Bundling, a voluntary program integrating hospitals, physicians and post-acute care providers and bundling payments for each “episode of care”; and accountable care organizations, a shared-savings programs for both Medicare beneficiaries and Medicaid pediatric beneficiaries. Providers should look into these programs to determine which they are eligible for, which would benefit them and what trends will impact practices in the future.

### *Quality Matters*

Several of the new programs are quality-related payment initiatives. These are not just windfalls for providers that can demonstrate high quality; these programs also contain payment reductions for providers with quality issues. One example is the continuation of the Physician Quality Reporting Initiative (PQRI). PPACA extends PQRI bonus payments for participating physicians through 2014; however, it institutes penalties starting in 2015 resulting in reduced reimbursement rates for eligible providers who do not participate. Another example is the “Hospital Value-Based Purchasing Program”, which distributes incentive payments among hospitals based on quality-related criteria established by HHS. While these payments are a short-term windfall for hospitals, in 2013 base payments will be reduced to account for the incentive payments. In other words, high-performing hospitals will be paid more, but under-performing hospitals will be paid less. Looking at PPACA as a whole, Congress has set up this system with winners and losers. Therefore, it is important for providers to look into these (and other) programs that will impact payments based on quality to ensure that they are “winners” when the programs become effective.

### *Technology Matters*

Congress has focused on medical technology in recent years, including the recent push towards electronic medical records, and PPACA is no exception. While PPACA does not overtly focus on technology, some of the regulatory requirements and new programs will require attention to technology. As one example, some new programs rely on demonstrable quality measures. Providers will have to both keep and share certain data, requiring the internal technology to track this information. Many of these quality measures will subsequently be posted on websites such as “Hospital Compare” and “Physician Compare” which will be developed by HHS. Therefore, these quality measures will be readily available to internet-savvy patients as a method of comparing providers. In addition, certain integrated programs, such as ACOs, require providers to share information electronically to coordinate patient care. In order to be eligible to participate in these programs (or to not receive reduced reimbursement rates when programs such as PQRI become mandatory), providers must make sure to have the necessary technology and staffing in place.

#### *Will Politics and the Supreme Court Matter?*

Before many of PPACA’s new regulations become effective, there will be congressional elections and presidential elections. Additionally, there are multiple challenges to health care reform pending in federal court. Thus, there remains a possibility that either Congress or the Supreme Court will intervene and some or all of the PPACA could be repealed or declared unconstitutional. However, it is unadvisable for providers to take the proverbial “head in the sand” approach because of the possibility that the law might change in the future. Many of PPACA’s regulations go into effect immediately or within the next year or two, requiring providers to prepare now. Equally as important, many of PPACA’s regulations require planning in order for providers to succeed in the new health care environment which it creates. So while

the advice of “cautious waiting” may be appropriate on individual provisions of PPACA where HHS will be issuing guidance, it is not a wise course for providers to wait and see with health care reform as a whole. To do so is a gamble that risks the potential for regulatory violations and poor business planning.

*Planning Ahead Matters*

There are questions that all health care providers need to ask themselves: How is my business model impacted by PPACA? Will I be subjected to payment penalties if I fail to take certain actions? Do I have the technology to comply with the reporting requirements? Am I integrated with other providers and can I take advantage of this integration because of health care reform? Does my quality measure up? Am I prepared to innovate? These questions may be overwhelming, but addressing these issues is necessary to be a winner in the new post-reform environment.



**Amy K. Fehn** is a partner at Wachler & Associates, P.C. Ms. Fehn graduated Summa Cum Laude from Kent State University and Summa Cum Laude from the University of Akron School of Law.

Ms. Fehn is a former registered nurse who has been counseling healthcare providers for the past eleven years on regulatory and compliance matters. Ms. Fehn is a member of the American Health Lawyers Association, as well as the State Bar of Michigan, Health Care Law Section, where she served as a member of the HIPAA Task Force. She also co-authored workbooks on both HIPAA Privacy and Security and has presented on HIPAA issues to local and national organizations.

She can be reached at 248-544-0888 or [afehn@wachler.com](mailto:afehn@wachler.com).



**Alicia B. Chandler** is an associate at Wachler & Associates, P.C. Ms. Chandler's health care practice focuses on Stark, fraud and abuse, and Medical Staff Privileges issues. She also has experience in alternative dispute resolution, negotiation and investigations as well as corporate and transactional matters.

She can be reached at 248- 544-0888 or [achandler@wachler.com](mailto:achandler@wachler.com).