



Strasburger
ATTORNEYS AT LAW

Health Industry Online

HEALTH INDUSTRY ONLINE • FEBRUARY 18, 2009 • [STRASBURGER & PRICE, LLP](#)

PREPARED BY



[William D. Darling](#)

600 Congress Avenue,
Suite 1600
Austin, Texas 78701
512.499.3685
bill.darling@strasburger.com

EDITORS

[David K. Meyercord](#)
[C. Scott Nichols](#)

HEALTH INDUSTRY GROUP

[Tejal P. Banker](#)
[Debra W. Biehle](#)
[Thomas W. Burton](#)
[Merritt M. Clements](#)
[Kathryn Midboe Darling](#)
[William Duane Darling](#)
[Richard D. Fladung](#)
[R. Bradley Fletcher](#)
[Brian G. Hamilton](#)
[James M. Kimbell](#)
[Bryan J. Maedgen](#)
[Cynthia Schafer Marietta](#)

Health Reform—What Should My Physician/Hospital Network Be Doing?

There is a growing understanding in the United States that we have no real health care "system." The lack of a coherent government health policy and a hodge podge of commercial insurance programs have led to wasted resources, problems with quality and lack of access to care for millions of Americans. President Obama's campaign stressed the need for a health reform program. Those campaign promises were centered on development of a universal health program. The intervening global financial crisis is threatening to side track the immediate actions that might have seemed a given 6 months ago. Senators Max Baucus and Ted Kennedy sent a letter to President Obama last week urging him to continue his commitment to institute sweeping health care reforms. The outcome remains unclear.

A recent article in *The New Yorker* magazine by Atul Gawande provides an enlightening discussion of the extremes in the approaches, including those who would scrap the entire system and those who believe that free market forces should be allowed to reform the system. Dr. Gawande's article traces the unique factors that led to the development of universal health care programs in Great Britain, France and Switzerland. He hypothesizes that health care, like the telephone network, cannot be simply shut down to allow implementation of a brand new system. Dr. Gawande's suggestion is to maintain certain aspects of the existing health care model and add new features to reform it.

Regardless of what the ultimate outcome may be, health reform and icebergs have much in common. They are both enormous, potentially dangerous and much of their substance is hidden from sight. There are a bewildering number of movable parts that make up what is being advanced as health care reform. Confronted with the uncertainties of the form that health reform will take and

[David K. Meyercord](#)
[Stuart Miller](#)
[Crawford Moorefield](#)
[Craig H. Myers](#)
[C. Scott Nichols](#)
[Laura Reilly O'Hara](#)
[Jeffrey S. Osgood](#)
[David L. Ovard](#)
[D. Patrick Owens](#)
[Paul W. Sheldon](#)
[John A. Tang](#)
[Joseph A. Turano](#)
[Melissa Webb](#)
[Carol D. Williamson](#)
[Ivan Wood](#)
[Kevin M. Wood](#)



[Printer friendly page](#)



[View as Acrobat PDF](#)



[Subscribe to HIO RSS](#)

when it might occur, many hospitals and physicians have been reluctant to invest time and capital resources to develop a response. While delaying development of an organizational response until more certainty is known may be attractive, it may also put health systems and physicians behind the curve when the changes that must certainly come do occur.

Last week the House and Senate reached an agreement on the economic stimulus bill that includes \$19 billion in funding for health information technology. The bill includes bonus payments for physicians and hospitals that use electronic medical records in addition to providing for Medicare payment penalties, beginning in 2014, for providers that do not adopt such technology. With federal funding available and potential penalties in the future, providers must be prepared to adapt and respond.

Health care groups that ignore this paradigm shift do so at their own peril. Health reform will likely occur in stages. Health care delivery systems, both large and small, should begin preparation for such reform by identifying the system changes that will be the major building blocks of any reform measures. Fortunately, there are some elements of health reform that are easily identified and may be studied by integrated delivery systems that want to begin to clinically integrate. Electronic medical records, quality indicators and coordination of care are but a few of the elements that will be included in any model for health reform. Creation of physician/hospital organizations that are developed to implement a reformed health delivery system is vital. Just last month, a *Modern Healthcare* Special Report described clinically integrated systems that are able to manage cost burdens and maximize efficiencies as more likely to emerge from the ongoing recession as a more dominant presence in health care delivery.

When considering clinical integration of delivery systems, it is crucial that providers account for a variety of elements, including:

- Governance documents and contractual relationships
- Selection of beneficial network partners
- Fostering a common purpose, vision or mission among providers
- Examining the patient population and access to care
- Financial solvency concerns and network viability
- Developing a positive environment among all network providers
- Including hospitals, primary physicians and specialists in decision-making
- Using clinical integration to encourage quality and efficiency
- Adopting health information technology, including electronic medical records
- Developing meaningful quality indicators and measuring methods
- Data collecting, tracking and reporting procedures
- Establishing benchmarks for evaluation and improvement
- Improving price and quality transparency for better decision making
- Increasing communication and reducing administrative delays and costs
- Network billing and administrative procedures
- Increasing collaboration among providers to identify and address priorities
- Compliance with federal and state regulatory agencies
- Adequately addressing patients with chronic conditions
- Creating long-term, mutually beneficial relationships within a

Education and training regarding technology and integration

network

A clear understanding of regulatory concerns is also essential to the process of implementing clinically integrated delivery systems. Health care groups must be mindful of federal and state regulations, including fraud and abuse laws and antitrust issues that may be implicated.

Specifically, clinical integration should be designed to meet regulatory requirements such as Anti-kickback Statute provisions.¹ Any financial relationships that may result between a hospital and a physician as a part of a clinically integrated program must satisfy every element of an appropriate Stark Law exception to avoid potential exposure.² Likewise, incentives from a hospital to a physician designed to increase quality must be examined in light of Civil Money Penalties Act.³ Antitrust concerns, credentialing, tax-exempt status and the possible uses of quality measurements in malpractice litigation must also be carefully considered.

Investments in proper planning and thoughtful integration can improve not only the provision of health care, but also patient outcomes and satisfaction. However, what works for one system may not always be suitable for another. It is important that physicians and hospitals alike examine their current system and look for ways to better serve their patients and build on current operations. Health care is changing and the systems that take time to position themselves strategically to maximize efficiency and increase quality will be better prepared for health reform.

What should providers be doing now? Health care networks should be actively engaged in determining how integration can impact their practice and how it can be achieved. Networks that seek to clinically integrate should consult outside, impartial consultants to act as facilitators of discussions between hospitals and physicians. An impartial consultant who is knowledgeable about the nuts and bolts of clinical integration can eliminate many of the misunderstandings that occur between physicians and hospitals seeking to evaluate a clinically integrated system. Additionally, the use of legal counsel other than the hospital's counsel to represent the network entity can lessen physician concerns about conflicts of interest.

A hospital seeking to develop a clinically integrated network should create a committee made up of primary and specialist physicians, hospital representatives, a knowledgeable consultant and legal counsel to prepare for effective action. There should always be representatives on the committee with strong financial knowledge of how development of a clinically integrated system will impact the future revenue streams and the bottom lines of the participants.

The combination of a variety of perspectives and expertise in a properly assembled planning committee will be instrumental in achieving successful and effective integration of the participants. Gaining physician trust in the process is critical to achieving a successful organization.

¹The federal Anti-kickback Statute prohibits the solicitation of, offering of, or payment of any type of remuneration in exchange for Medicare or Medicaid patient referrals or the arranging for the furnishing of health service opportunities.

²The Physician Self-Referral Law (the "Stark Law") prohibits physicians from referring Medicare or Medicaid patients for certain services (including inpatient and outpatient hospital services) to entities with which the physician (or immediate family member) has a financial relationship.

³The Civil Money Penalties Act prohibits a hospital from knowingly making a payment (directly or indirectly) to physician as an inducement to reduce or limit services to Medicare or Medicaid beneficiaries under the physician's care.

PUBLICATIONS:

- To view past issues of Health Industry Online, please visit [Health Industry Online](#)
- To subscribe to other Strasburger publications, please visit [Strasburger Publications](#)

DISCLAIMER: Articles contained within this newsletter provide information on general legal issues and are not intended to provide advice on any specific legal matter or factual situation. This information is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. Readers should not act upon this information without seeking professional counsel.

ADVERTISEMENT NOTICE: This e-mail may constitute a commercial electronic mail message subject to the CAN-SPAM Act of 2003. If you do not wish to receive further commercial electronic mail messages from the sender, please send an e-mail to Strasburger@Strasburger.com and request that your e-mail address be removed from future mailings. To update your address, please send an email to Strasburger@Strasburger.com including the updated information. Strasburger & Price, LLP, 901 Main Street, Suite 4400, Dallas, TX 75202.

