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Considerations for the Development of Accountable Care Organizations in New York State

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A key element of the Affordable Care Act's health care delivery and payment reform agenda is the Medicare Shared Savings Program (MSSP). The MSSP provides a legal framework and a set of financial incentives for groups of providers – through participation in an Accountable Care Organization (ACO) – to collaborate in delivering higher-quality and more cost-effective care to Medicare beneficiaries. The recent issuance of a Proposed Rule implementing the MSSP by the Centers for Medicare and Medicaid Services is heightening the focus of health care organizations in New York and across the nation on whether ACOs offer a viable framework for changing the way health care is delivered and funded.

The New York State Health Foundation – in a new report authored by Deborah Bachrach, Robert Belfort, William Bernstein, and Susan Ingargiola of Manatt, Phelps & Phillips, LLP – provides a framework for New York State officials and health care stakeholders to consider the policy issues raised by the development of ACOs in New York. “Considerations for the Development of Accountable Care Organizations in New York State” provides a high-level overview of recent Medicare ACO initiatives, discusses New York's health industry landscape, and explores key issues for consideration by the state.

New York policymakers and other industry stakeholders will confront a diverse set of policy issues as they consider the appropriate role of ACOs in controlling health care

costs and improving quality in the state. The following are some of the significant implications identified in the report that will be important for policymakers to consider.

Changes in New York's Regulatory Environment to Support ACO

Development. The MSSP Proposed Rule does not preempt state laws and regulations, and thus ACOs participating in the MSSP or Pioneer program must be organized and operated in a manner that complies with New York's existing statutes and regulations. The key New York regulatory schemes potentially implicated by ACOs include the following:

- Assumption of financial risk,
- Corporate practice of medicine/arranging for medical care,
- Fee splitting,
- Fraud and abuse,
- Antitrust,
- Waiver of state law restrictions, and
- Authority to contract with a broader range of payers.

The Role of ACOs in the Medicaid Program. It is unclear whether or how the Medicaid program in New York will embrace an ACO strategy. New York's Medicaid program has long relied on mandatory managed care programs to improve quality and control costs. Unlike most Medicare beneficiaries, who remain in the largely unmanaged fee-for-service system, most Medicaid beneficiaries have long been subject to the utilization controls and network limitations imposed by managed care plans. ACOs have been positioned in the Medicare program as a politically palatable cost-saving alternative to more tightly controlled managed care plans. The political calculus is different for Medicaid.

Capital Support for ACO Development. ACOs and their participants will require substantial capital to develop the care management, health information technology, and contracting infrastructure needed to manage health services properly across the entire

care continuum. Given the relatively few large physician groups in New York State, it is unlikely that the required capital will come from doctors. There are several financially strong hospital systems that have the necessary resources, but many hospitals in the state are strapped for cash. The capital demands are likely to be particularly daunting for the state's safety net hospitals. Investor capital will potentially be unavailable because of the uncertain profitability of ACOs and the restrictions on investor ownership in the Proposed Rule.

The full report is available on the [New York State Health Foundation Web site](#).

This report is part of Manatt's growing body of work on the opportunities and challenges that exist for states in interpreting and implementing federal health care reform. Manatt recently authored two reports geared to help New York State policymakers address changes under health reform: "[Revisiting Medicaid as Part of New York's Coverage Continuum](#)" (January 2011) and "[Implementing Federal Health Care Reform: A Roadmap for New York State](#)" (August 2010).

[back to top](#)