ACO Business News

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New Laws in Texas Could Make It 'Less Cumbersome' to Form ACOs

The Texas legislature's recent activity on a number of fronts may have positive implications for the development of ACOs in the Lone Star state.

In May Texas Gov. Rick Perry (R) signed into law a bill (S.B. 894) that permits various categories of rural hospitals to employ physicians directly, which sources tell *ABN* could make it easier to set up ACOs throughout the heavily rural state.

Moreover, although Texas remains one of only a handful of states that continue to impose a general ban on the corporate practice of medicine, state lawmakers recently passed bills carving out exceptions for some urban hospitals on a case-by case basis. Also, lawmakers began a special session in June and are debating an omnibus health bill (S.B. 7) that, among other things, would set the rules to allow ACO-like entities called "health care collaboratives" to operate in Texas.

Spokesperson Amanda Engler of the Texas Hospital Association explains that many of the provisions in the omnibus health bill deal with antitrust issues and how ACOs would be regulated by the state Department of Insurance. "And physician employment is a small piece of that as well," she says, "because it might make it less cumbersome to start up an ACO."

Don McBeath, director of advocacy for the Texas Organization of Rural & Community Hospitals, tells *ABN* that the new physician-employment law will affect virtually all of the state's 170-odd rural hospitals, "and will be a boon to them." As the rural hospital group's chief lobbyist, he says physician employment has been his "big project" for the past four years.

McBeath says the general consensus is that ACOs will develop in more urban health care settings, so formalized ACOs won't be found in more rural parts of the U.S. at least for a number of years — unless the rural hospital is affiliated with an urban health center. "But I think this [Texas] law will allow the community to form an 'ad hoc' or informal ACO and have a more complete integration…from employing doctors," he says. If a rural town has only one physician and one pharmacy, for example, then no formal ACO would be formed, he says, "but integrating pieces opens the door to an ACO-type environment."

Law Will Improve MD Recruitment

Attorney Jed Morrison, a partner with the Texas-based law firm Jackson Walker LLP, says the major thrust of the new law is to try to improve physician recruitment in Texas' many rural counties. "For the most part, these are hospitals that are pretty desperate to have coverage," he says. He explains that most of the hospitals affected by the new law in Texas — Medicare-designated critical access and "sole community" hospitals, and hospitals in counties with 50,000 or fewer residents — have 15 or 20 beds, or perhaps 30 or 40 beds, in a very rural setting. "So these are not hospitals by and large worried about competition and trying to create an ACO to be a big player in the market," he says. "They're just trying to survive."

Morrison agrees that rural health care organizations are trying to implement different pieces of reformed delivery, such as electronic health records and clinical integration strategies. "So they're trying to build some of the individual legs of the ACO table," he says.

In general, Morrison says that the aim of creating a private-sector ACO is to try to improve care — and also to distinguish the organization in a competitive market as the strongest clinically integrated system. He says his only clients expressing any real interest in ACOs thus far are urban or very large rural referral systems, "and none of them at this point plan to go along with [the Medicare Shared Savings Program]…because you would incur a lot of costs in the first few years before you see the first penny," and because of regulatory hurdles.

Thus, Morrison says he is skeptical about whether ACOs will be prevalent in rural areas, "other than at the tail of the dog" — i.e., when urban health systems reach out into rural areas with their ACOs. In the latter case, he says, "this law [allowing rural hospitals to employ physicians directly] will certainly facilitate that."

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Rural hospitals in Texas seeking to participate in an ACO "will be better able to come to the table and participate in that system by having employed physicians," he says. Yet Morrison, who says he represents physicians and hospitals and is not picking sides, says the corporate practice of medicine in Texas "has been around so long and is so deeply engrained" that the legislature wanted to ensure the clinical independence of physicians is not compromised under the law.

Thus, Morrison sees a potential glitch: If a physician is not a team player and the rural hospital forms an ACO network and asks physicians to be more cooperative in terms of coordinating patients' care, he says he "wouldn't be surprised at all if the hospital terminates the doctor that the doctor might use this law as a shield and say, 'You're compromising my medical judgment.'"

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