



Healthcare Law

Accountable Care Organizations in California: Programmatic and Legal Considerations

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The Affordable Care Act (ACA) authorizes the federal government to test new healthcare payment and delivery models through Accountable Care Organizations (ACOs). New federal rules have been proposed for two ambitious ACO programs – the Medicare Shared Savings Program (MSSP) and the Pioneer program. California policymakers will need to consider how the state’s legal framework for regulating healthcare insurers and providers either supports or inhibits the federal goals.

The California HealthCare Foundation – in a new paper authored by the Manatt Health Solutions team of William Bernstein, Jonah Frohlich, Francis LaPallo, Arun Patel and Martin Thompson – provides an overview of the issues, both programmatic and legal, that will need to be assessed by California policymakers in considering the development of ACOs in the state. The success of MSSP and Pioneer ACOs in California will be determined by alignment with a number of state activities, including commercial ACO initiatives, Medi-Cal ACO pilots targeting high-cost populations through its managed care program, and emerging health information exchange and health benefit exchange initiatives.

Key takeaways from the report include:

- The ACA authorizes new healthcare payment and delivery models in the form of ACOs to be rolled out in the Medicare fee-for-service (FFS) market and includes a set of guidelines and processes for granting waivers under federal Stark, Anti-Kickback Law and gainsharing provisions of the Civil Monetary Penalties Law, presenting a bold, new framework for care delivery and payment.
- The federal provisions generally do not preempt state law, and some California rules, including the ban on corporate practice of medicine, may be implicated depending on how ACOs are structured and specifically, care coordination and quality guidelines could be considered directing providers in the provisioning of care.
- If federal, state and private ACO programs are not aligned and harmonized to promote multi-payer initiatives, there is a risk that special-purpose ACO governance vehicles will emerge, greatly complicating the ACO landscape and limiting the potential impact of both public and private initiatives.

The full report is available on the [California HealthCare Foundation Web site](#).

“Accountable Care Organizations in California: Programmatic and Legal Considerations” is the latest addition to Manatt’s library of thought leadership articles addressing the opportunities and challenges that exist for states in implementing federal healthcare reform. Manatt’s healthcare team also recently authored “[Considerations for the Development of Accountable Care Organizations in New York State](#)” (New York State Health Foundation, June 2011).