

BURR ARTICLE

2013 Healthcare Year in Review

by Howard E. Bogard

Reprinted with Permission from the *Birmingham Medical News*

Bob Dylan's quote from 1964 -- "The Times They Are A-Changin'" -- could equally apply to the healthcare industry in 2013. This was the year that the Affordable Care Act ("ACA") came into full public view with the start of the health insurance exchanges. Hopefully, this nation-wide "social experiment" will work better than the federal exchange website, healthcare.gov. We also witnessed the Alabama Medicaid program begin its journey from fee-for-service to a capitated managed care program controlled by "regional care organizations" or RCOs. These changes and others continue to drive consolidation in the healthcare industry, with several significant hospital and pharmaceutical deals announced this year. And, of course, what would healthcare be without new regulations and increased government investigations. So, without further delay, following are my top ten 2013 healthcare events for Alabama providers.

10. NEW CODING REQUIREMENTS. In order to better evaluate the relationship between patient diagnosis and the resulting treatment, this year BlueCross BlueShield of Alabama tripled diagnosis code requests from four to twelve. In a similar move, effective October 1 of next year healthcare providers will switch from ICD-9 to ICD-10 diagnosis coding, which will increase the number of coding choices from approximately 13,000 to 68,000. Laterality (side of the body affected) has been added to relevant codes and accounts for the majority of the changes. While ICD-10 will not be effective until 2014, healthcare providers should start now to prepare for this significant change.

9. HEALTHCARE REFORM AND EMPLOYERS. Under the ACA, employers with 50 or more full-time employees are required to provide health coverage or pay a penalty. This "employer mandate" was scheduled to begin January 1, 2014, but the Obama Administration delayed its implementation for one year. Under the ACA, a "full-time" employee is an individual who works 30 hours or more per week or 130 hours or more per month. The intention of the employer mandate is to encourage midsize and large companies to provide healthcare insurance for their employees. In response, Walgreens announced that it will move 160,000 of its employees into a private exchange where they can choose an insurance plan, but with company subsidies. Time Warner, Sears and Trader Joe's have announced similar moves.

8. CHANGES TO HEALTHCARE REIMBURSEMENT MODELS. The new mantra in healthcare reimbursement is "pay for value not volume". With that in mind, several payment initiatives continued in 2013, including the Medicare Physician Quality Reporting System (or PQRS), which is a program that uses a combination of incentive payments and payment adjustments to promote reporting of quality information by physicians and other eligible professionals. Beginning 2015, a physician or physician practice that fails to report data under PQRS will incur a 1.5% reduction in Medicare payments. Hospitals continue to face potential cuts under Medicare's Hospital Readmissions Reduction Program, which requires CMS to reduce payments to certain hospitals with excess readmissions. Most recently, CMS reported that over 1,400 hospitals face payment cuts under

its value-based purchasing program, which measures a hospital's performance across two dozen clinical processes, patient satisfaction and outcomes. In a move to control costs and improve quality, health insurer Viva Health and Baptist Health System announced a partnership this year to offer a new Medicare Advantage plan. As reported, the plan limits patients to 400 physicians and four Alabama hospitals in the Baptist network. Finally, accountable care organizations continue to develop around the nation, with over 420 ACOs in operation.

7. TRINITY RELOCATION APPROVED AND FREE-STANDING EMERGENCY DEPARTMENTS MOVE FORWARD. After a long CON battle, Trinity Medical Center won approval to relocate to the so-called "digital hospital" on Highway 280. When it moves from its Montclair Road campus to its new facility in early 2016, Trinity Medical Center will be rebranded as Grandview Medical Center. The cost to "upgrade" the long-vacant Highway 280 hospital – a reported \$300 Million. Patients in the Birmingham area may also see three free-standing emergency departments based on rulings this year. The Alabama CON Review Board recently approved requests by UAB Medical West and the Baptist Health System to build free-standing emergency departments in western Hoover. Several months ago, Brookwood Medical Center's proposal to build a free-standing emergency department in the Greystone area received a favorable court ruling. Effective July of this year, the Alabama Department of Public Health adopted licensure rules for free-standing emergency departments, which should clear the way for construction to begin in 2014.

6. GOVERNMENT FRAUD AND ABUSE INITIATIVES. Bolstered by additional ACA funding, and a belief by the government that 8 to 10 percent of all Medicare claims are fraudulent, provider audits and investigations continued to increase in 2013. To make it easier for providers to "self-report" violations of the Anti-kickback Statute and related laws, the Office of Inspector General ("OIG") issued in April of this year updated Provider Self-Disclosure Protocols. Over the course of its roughly 15-year existence, the self-disclosure program has resulted in more than 800 disclosures and the recovery of more than \$280 Million to federal healthcare programs. On March 26, 2013, the OIG issued a strongly worded Special Fraud Alert calling "inherently suspect" physician-owned entities that derive revenue from selling implantable medical devices ordered by their physician-owners for use by their owners in hospitals or ambulatory surgery centers ("ASC"). According to the OIG, these physician-owned entities or distributors (called PODs) could represent an unlawful opportunity for a referring physician to earn a profit, including through an investment in a POD, for which the physician generates business. Further, the OIG warned hospitals and ASCs that they may be at risk if purchasing devices from a POD in order to maintain or secure referrals from the POD's physician-owners. In keeping with the theme of transparency in the healthcare industry, effective February 2013, the federal Physician Payments Sunshine Act requires that medical device and pharmaceutical companies report data on payments and gifts to physicians and teaching hospitals, with the information publicly available on a federal database starting in September 2014. In a case closely watched by the healthcare legal community, South Carolina Tuomey Healthcare System was recently ordered to pay more than \$276 Million in fines after it was found guilty of violating the federal Stark Law. Toumey was found to have entered into part-time contracts with 19 surgeons on its staff that based salaries and bonuses on the physicians' referrals to the hospital. And finally, closer to home, the government has intervened in a "whistle-blower" False Claims Act lawsuit against Mobile, Alabama based Infirmity Health System, Inc. and related entities. The lawsuit alleges violation of the Stark Law and Anti-Kickback Statute and seeks over \$500 Million in damages.

5. NEW HIPAA REGULATIONS. On January 17, 2013, the Department of Health and Human Services released its final HIPAA rules. The new rules expand HIPAA obligations for business associates and their subcontractors, revises the requirements regarding the use and disclosure of patient information, expands patient rights, clarifies the content of Notice of Privacy Practices to be provided by healthcare providers, modifies the breach notification requirements, and expands enforcement provisions and penalties. The new rules became effective September 23, 2013.

4. CONSOLIDATION IN THE HEALTHCARE INDUSTRY. Driven in part by the ACA and the emphasis on coordinated care between providers, the pace of consolidation in the healthcare industry increased in 2013. As an example, this year Community Health Systems offered \$7.6 Billion, which includes the assumption of debt, to acquire Health Management Associates. Once complete, Community Health will operate eleven hospitals in Alabama. With its \$4.3 Billion acquisition of Vanguard Health System, Tenet Health System, which owns Brookwood Medical Center, now operates 77 acute care hospitals, 173 outpatient centers, five health plans and six accountable care organizations. In 2013, consolidation was also strong among EHR vendors, including Vista Equity Partners' \$644 Million acquisition of Greenway Medical Technologies, which supplies EHR software to many physician practices in Alabama. Closer to home, at the beginning of this year Northeast Alabama Regional Medical Center in Anniston, Alabama acquired Jacksonville Medical Center and just recently East Alabama Medical Center in Opelika, Alabama announced it is acquiring George H. Lanier Memorial Hospital. Finally, hospitals throughout Alabama continue to employ physicians, especially cardiologists, orthopedists and primary care physicians.

3. MEDICAID REGIONAL CARE ORGANIZATIONS. This year new regulations were issued to move the Alabama Medicaid Program from a fee-for-service to a regional managed-care model. Under the new regulations, the State will be divided into five regions and in each region one or more "regional care organizations" will be established. In exchange for a capitated payment, the RCOs, as they are called, will be responsible for providing health benefits to Medicaid beneficiaries in their region, with a few exceptions. RCOs will be required to contract with any provider who is willing to accept the fee schedule and comply with the requirements of the RCO. The RCOs will make money if they can provide care for less than the capitated payment. According to the Alabama Medicaid Program, the RCOs will begin operation by October 2016.

2. HEALTH INSURANCE EXCHANGES. Beginning October 1 of this year, individuals without insurance were able to shop for health coverage through state and federal-administered insurance exchanges. Individuals without health insurance by March 31, 2014 will face a penalty of 1 percent of yearly income or \$95, whichever is higher. The penalty increases each year, rising in 2016 to 2.5 percent of yearly income or \$695 per person. The Obama Administration is aiming for 7 million individuals to purchase insurance through the exchanges, a majority of whom need to be in the 18-25 year old bracket. These "young and healthy" individuals must purchase insurance in order for the insurance companies to be able to provide "affordable" coverage without any pre-existing limitations to more chronically ill individuals. In thirty-six states, insurance is available through healthcare.gov, which has been plagued with problems resulting in very low numbers of enrollees. It is anticipated that enrollment will also suffer due to the recent announcement by President Obama that individuals can keep existing health insurance coverage for one year even if the coverage does not meet the ACA's "essential health benefit" requirements.

1. STILL NO EXPANSION TO ALABAMA MEDICAID. Under the original healthcare reform law, individuals earning less than 133% of the federal poverty level, or roughly \$15,856 for an individual or \$31,800 for a family of four, would have been eligible for Medicaid. In June of 2012, however, the U.S. Supreme Court decided that States could elect not to expand their Medicaid rolls. As I am writing this article, 25 States have elected not to expand Medicaid, including Alabama. It has been reported that this decision by Governor Bentley will leave between 300,000 and 435,000 Alabama citizens without health insurance coverage. According to the Kaiser Commission on Medicaid and the Uninsured, if Alabama Medicaid was expanded the State would spend about \$1 Billion for additional services over the next 10 years while receiving about \$14 Billion in additional federal support.

May all of you have a happy, healthy and successful 2014!

Howard Bogard is a partner in the Health Care Practice Group at Burr & Forman LLP and exclusively represents healthcare providers in regulatory and corporate matters.

Howard E. Bogard

Partner

Birmingham Office

Phone (205) 458-5416

E-Mail hbogard@burr.com

