




DuaneMorris®

HEALTHCARE REFORM—SOME KEY BUSINESS OPPORTUNITIES EVERY HOSPITAL CEO SHOULD KNOW

The passage of the Patient Protection and Affordable Care Act (H.R. 3590) (the "Act") on March 23, 2010, was significant, both historically and politically. Differences of opinion remain on whether this legislation is the best policy initiative to solve the United States' healthcare concerns. However, the Act provides many noteworthy opportunities for hospital CEOs and their boards to consider, which are presented below.

1. Invest in Primary Care. While the new Act will provide opportunities to insure more than 32 million uninsured people, one of the most significant criticisms of the Act is that the timing may result in a shortage of primary-care doctors to provide the care.

Hospitals should consider developing new relationships with federally-qualified health centers ("FQHCs"). Under the Act, more than \$35 billion has been appropriated for FQHCs to serve medically indigent individuals. For some time, FQHC governance requirements have made it difficult for hospitals to joint-venture with FQHCs. In many markets, especially rural and urban communities, safety-net hospitals may need to find opportunities to make these new relationships work. There is substantial funding for new centers under the Act. Hospitals may want to consider adding more nurse practitioners and physician assistants to expand the capacity of their current primary-care physicians' practices. Hospitals may also want to develop primary-care recruiting strategies, as more competition for a limited number of primary-care doctors is likely. It is important to note that over time, Medicare will pay for more services provided by primary-care doctors, with a goal of substantially increasing their annual compensation to encourage more doctors to become primary care physicians.

2. Consider New Models of Delivery. The Act provides demonstration grants for accountable-care organizations and medical homes. Each of these models enables greater coordination and control of healthcare delivery and medical decision making. Playing a significant role in a local accountable-care organization is likely to be a key to controlling healthcare delivery in your marketplace as well as improving reimbursement for certain services—as payers aim to pay for the value of services, and not the number of procedures. There have been advances in medical homes to manage chronic and acute care, using the primary-care delivery model. These models also provide greater continuity and control of care within the community and are usually associated with higher payment for value. To take advantage of where payment trends are headed, hospitals should become leaders in developing these models locally.

3. Collaborate with Specialty Hospitals. The Act also imposes restrictions on physician ownership of hospitals, especially specialty hospitals. The Act may ultimately limit the number of new hospitals, as only those hospitals with provider numbers at the end of the year will be grandfathered under the new regulations. Medicare will not enroll additional physician-owned hospitals after that date. Physician-owned hospitals will not be able to grow their investors and are likely to find a limited marketplace for exit strategies. Community hospitals with competing specialty hospitals should consider

approaching these competitors to seek a mutually acceptable joint-venture arrangement with a specific buyout for the physician owners over time.

4. Look for Bargains in Imaging. The Act has made imaging services a target of significant cost and volume reductions. Many radiologists started imaging centers several years ago when reimbursement and equipment costs were both high. Physicians often personally guaranteed the equipment debt, and then reimbursement costs significantly decreased. It has not yet bottomed out, and many imaging centers are either in bankruptcy or are financially distressed and looking for partners. This may present an opportunity for hospitals to gain market share inexpensively or to eliminate a new potential competitor that may purchase the distressed imaging center.

5. Expand Prevention Services. For many years, despite increasing demand for preventive services, insurers have not funded these key services. Hospitals may want to keep track of actions taken by the Centers for Medicaid & Medicare Services as it expands Medicare's prevention services. Prevention is likely to be a continuing source of revenue for hospitals from Medicare, private payers and consumers. The Act provides for significant investments in public health, chronic disease and primary prevention services including childhood obesity. Given the pervasiveness of childhood obesity, hospitals may wish to consider how to innovatively address this issue and capture more of the insured market share.

To be successful in this new environment, hospitals may want to reassess their relationships with physicians, payers, other hospitals and strategic partners to develop a new and challenging vision of the future.

If you have a question on this material or would like to discuss legal services, please contact us at healthcare@duanemorris.com.

Duane Morris LLP is an international full-service law firm of more than 700 lawyers, approximately 35 of whom advise a wide range of healthcare organizations on all aspects of corporate matters, mergers and acquisitions, regulatory compliance and enforcement, reimbursement, litigation, labor and employment, real estate and taxation matters.



David E. Loder is chair of Duane Morris' Health Law Practice Group. He focuses his practice on hospital governance, accreditation, credentialing, litigation reimbursement issues, managed-care arrangements and Medicaid and Medicare programs. He represents numerous for-profit and nonprofit organizations in the healthcare industry.



C. Mitchell Goldman is a partner in Duane Morris' Health Law Practice Group. He has been advising members of the U.S. Senate and their staffs on health insurance reform issues. He focuses his practice on the finance and corporate aspects of healthcare delivery, with an emphasis on reimbursement, mergers and acquisitions, and other government regulations. He also advises and consults with startup healthcare-related companies.