

BLAW Q&A

Health Law

This Month: What was the most significant health law development of 2011?



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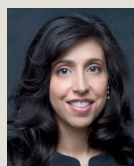
It is tempting to say it was the issuance of the final rule for accountable care organizations under the Medicare Shared Savings Program. ACOs are a key component of the Obama administration's health reform initiative. A significant departure from the traditional fee-for-service model, the MSSP is a value-based purchasing model that links payment to efficiency and quality of care - rewarding providers for delivering better care, not more care. The proposed rule was a monumental undertaking completed in short order in the face of a looming statutory deadline. But it was largely considered dead on arrival in the provider community due to the economics of the proposal and its complexity. So CMS listened to the comments, took them into account, and tried again. And lo and behold, the final rule is less burdensome, lowers risk while improving reward, and has been well-received by key stakeholders. Even the FTC, Department of Justice, and the IRS have done their part by alleviating concerns about potential antitrust and tax barriers to participation in the program.

Still, even the final ACO rule must take a back seat to the legal challenges to the constitutionality of the Affordable Care Act and the Supreme Court's decision to grant cert and review the cases, with a decision anticipated at the end of the Court's term in June. It promises to be not only the most important healthcare decision of our time, but also one of the most significant cases in the history of the Court. One need only observe the Court's unprecedented action to schedule 5 1/2 hours of oral argument over 3 days to appreciate the import of this development.



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The most significant health law development is CMS's SRDP. There is now a process for the correction of Stark Law violations. However, given that there only a few known settlements, the provider community is still anxious about CMS's willingness to compromise and the reasonableness of settlements. In light of the financial strains on providers, everyone will be apprehensively tracking the CMS settlements as they deal with their potential compliance issues in 2012.



Linda A. Malek, Moses & Singer LLP

With eligible hospitals and providers now being given financial incentives for building electronic health record (EHR) functionalities that incorporate "meaningful use" of certified EHR technology, the development and increased use of healthcare technology should be considered one of the most significant developments in health law for 2011. Healthcare technology not only provides the public with access to data relating to medical treatment, but it also provides a forum to collaborate with innovators on a variety of new applications. Although this new found transparency can help individuals make more informed choices about their healthcare and encourage more efficient delivery of healthcare, it also introduces a host of privacy and security issues for key stakeholders such as patients, providers and vendors.

If you have a health law question that you'd like to ask, submit it to blawcontrib@bloomberg.net, subject line "Health Law Q&A." Your question may be selected to be answered in a future column.

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