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## *Getting in front of the wave of health care mergers*

In today's market, virtually any discussion of the future plans of a health care organization will include references to affiliation, integration, merger, acquisition or network formation.

Providers are increasingly convinced they need to integrate to survive, and that conviction is overriding traditional biases in favor of independence and autonomy.

Several forces are encouraging this wave of provider integration, including market demands for increased efficiency and lower costs, need for access to capital, and changes in the reimbursement system.

The advent of health care reform accelerated but certainly did not initiate the renewed interest in integration and the trend toward consolidation.

Even before Congress enacted the Affordable Care Act, both government and private sector health insurance plans were experimenting with new reimbursement models that move away from paying for the volume of health care services and seek to reward providers based on the value of the services delivered.

The Affordable Care Act built upon this concept by establishing a value-based purchasing program and other pay-for-performance initiatives. The reform legislation also includes financial incentives for "coordinated care," or collaboration among hospitals, physicians, and other health care providers.

One highly touted program, "accountable care organizations," would involve a combination of hospitals, physicians and other industry professionals, which would be rewarded with a portion of the shared savings derived from collectively achieving quality and efficiency standards.

Another program that the federal government is scheduled to launch in 2013 would provide a single Medicare payment, rather than multiple payments, to cover the services delivered to a Medicare patient by hospitals, physicians, home

### LEGAL UPDATE



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are pursuing, providers must find ways to align incentives and establish an infrastructure that promotes cooperation and effective communication.

The historical model, with each provider operating independently in its own silo, is not well-suited to deliver the cost efficiencies and quality improvements that both the government and private sector are demanding.

Existing fraud and abuse laws, however, continue to impede cooperative ventures and efforts to align incentives among otherwise unaffiliated providers. The regulatory restrictions are reduced (and sometimes eliminated) when the providers either join a single organization or form an integrated network structured to permit risk sharing among participants.

Whether by merger, acquisition or affiliation, health care organizations are under significant pressure to find some means of integrating with other providers in order to remain competitive under the new regime.

Growing economic pressures are also prompting providers to consider integration alternatives. Many independent physicians and small physician groups already view consolidation as an attractive option, if not a necessity. Forced to contend with rising operational costs such as implementing electronic health-record systems, physicians can gain stability and access to infrastructure enhancements by entering into partnerships with either a hospital or a larger group.

health providers, rehabilitation and skilled nursing facilities during a defined episode of care.

To adapt to market demands and the new delivery models, which government and private payers

In some subspecialties, changes in reimbursement have significantly affected physicians' incomes and sparked increased interest in hospital employment.

At the same time, some hospitals are facing increasing bad debt, pension liabilities, aging facilities and lower charitable giving. Through an affiliation with a larger hospital or health system, struggling hospitals can take advantage of economies of scale and gain access to capital.

Consolidation in health care has been a long time coming. Unlike financial services or other major industries, health care has been historically controlled at a local or regional level with a large number of independent providers, many with little capital for investment.

A wave of consolidation during the 1990s resulted in more than 900 hospital mergers. At the same time, hospitals and health systems were acquiring scores of primary care physician practices. Many of those practice acquisitions were ultimately unwound, but the hospital mergers were generally more enduring. At present, the industry remains highly fragmented.

The current challenges facing the industry will likely move health care out of the "Mom and Pop" era toward a more consolidated, and hopefully more efficient, system.

This process will not be without its casualties and missteps. The challenge for individual providers and health care organizations is to identify the integration alternatives that best fit their individual circumstances while still creating the structure necessary to enhance efficiency and maintain quality.

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