

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

Senate Joint Resolution 6 (Senator Middleton)

Finance

Rules and Executive Nominations

Safe Harbor Legislation and Regulations Needed to Form Accountable Care Organizations

This joint resolution urges the Federal Trade Commission (FTC), the U.S. Department of Justice, and the U.S. Department of Health and Human Services to act expeditiously to adopt regulations that will guide the development of accountable care organizations (ACOs) and establish antitrust safe harbors for physicians, hospitals, and other health care providers to form and deliver care through ACOs.

The General Assembly requests the U.S. Congress to consider whether additional legislation, including antitrust safe harbor protections, is desirable to ensure that the potential value of health care delivery system reforms, including formation of ACOs, can be fully realized.

Fiscal Summary

State Effect: None. Compliance with this joint resolution will not affect State finances.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law/Background: Chapters 598 and 599 of 2010 authorize contracts between health insurance carriers and clinically integrated organizations (CIOs) to include a provision to pay for coordination of care services and bonuses or incentives to promote efficient, medically appropriate delivery of medical services. The Insurance

Commissioner may adopt regulations that specify the types of payments and incentives that are permissible. The Acts require health insurance carriers to share medical information about covered individuals with a CIO and its members if there is a written agreement specifying how medical information will be shared, the information is used by the CIO to promote efficient, medically appropriate health care delivery or to coordinate care, and there are procedures for disclosing to individuals how information will be shared. A CIO is defined as a joint venture between a hospital and physicians (such as TriState Health Partners, a physician-hospital organization in Hagerstown) that has received an advisory opinion from FTC and has been established to improve the practice patterns of the participating health care providers and promote the efficient, medically appropriate delivery of covered services, as well as a joint venture that the Insurance Commissioner determines meets the federal criteria for an ACO.

The federal Patient Protection and Affordable Care Act (ACA), enacted in March 2010, encourages the development of ACOs. An ACO is an organization of health care providers that agrees to be accountable for the quality, cost, and overall care of Medicare beneficiaries who are enrolled in the traditional fee-for-service program but assigned to the ACO. ACOs will receive bonuses when providers keep costs down and meet specific quality benchmarks. The federal Centers for Medicare and Medicaid Services plans to begin entering into agreements with ACOs beginning January 1, 2012.

ACA specifies that the following organizations may form an ACO: (1) physicians and other professionals in group practice; (2) physicians and other professionals in networks of practices; (3) partnerships or joint venture arrangements between hospitals and physicians/professionals; (4) hospitals employing physicians/professionals; and (5) other forms that the U.S. Secretary of Health and Human Services may determine appropriate.

An ACO must (1) have a formal legal structure to receive and distribute shared savings; (2) have a sufficient number of primary care professionals for the number of assigned beneficiaries (5,000 beneficiaries is the minimum); (3) agree to participate in Medicare for at least three years; (4) have sufficient information regarding participating ACO health care professionals to support beneficiary assignment and for the determination of payments for shared savings; (5) have a leadership and management structure that includes clinical and administrative systems; (6) have defined processes to promote evidenced-based medicine, report data to evaluate quality and cost measures, and coordinate care; and (7) demonstrate that it meets patient-centeredness criteria.

Many in the health care industry have raised concerns that ACOs could run afoul of antitrust and antifraud laws, which try to limit market power that drives up prices and stifles competition. One concern is that ACOs, particularly those in rural markets, could grow so large that they would employ the majority of providers in a region. To help providers avoid legal problems, FTC is trying to clarify antitrust guidelines for ACOs,

and the U.S. Department of Justice's antitrust division has offered to provide an expedited antitrust review process for ACOs.

The American Medical Association supports the establishment of a full range of waivers and safe harbors that will enable independent physicians to effectively participate in ACOs.

Additional Information

Prior Introductions: None.

Cross File: HJ 6 (Delegate Conway) - Rules and Executive Nominations.

Information Source(s): American Medical Association, Centers for Medicare and Medicaid Services, Kaiser Health News, Department of Legislative Services

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Analysis by: Jennifer B. Chasse

Direct Inquiries to:
(410) 946-5510
(301) 970-5510