

February 25, 2013

Dear Colleague:

One of the salient characteristics of our evolving health care delivery system is the growing market presence of single- and multi-specialty “mega” physician practices, physician practices that provide highly-specialized and capital-intensive services, and physician practices with close ties to corporate entities (henceforth collectively referred to as “enhanced physician practices”). These practices may employ hundreds of physicians, and they may operate surgery, advanced diagnostic imaging, urgent care and/or radiation therapy centers. They may be organized as independent practices, faculty practice plans, or closely-affiliated (or “captive”) practices of hospitals, insurance companies or turn-key companies.

As you may know, the State’s Public Health and Health Planning Council (PHHPC) recently released a Report on Certificate of Need (CON) Redesign and Health Planning which examined trends in health care organization, delivery and payment and sought to align CON and health planning with these changes. The PHHPC suggested that enhanced physician practices present both opportunities and risks. They may provide robust administrative infrastructure to support new models of care and payment, to promote population health, and to implement evidence-based practices. However, they may also exercise market power to destabilize safety net providers by attracting commercially-insured patients, while declining to serve Medicaid beneficiaries and the uninsured. Although they provide increasingly complex and costly services, these practices operate with far less regulatory oversight, including oversight of quality and patient safety, than licensed health care facilities.

Along with 22 other recommendations in the report, the PHHPC requested that the Department provide it with recommendations to update the criteria that trigger the facility licensure requirement and equalize the treatment of physician practices and facilities with respect to CON. The PHHPC asked for recommendations informed by input from stakeholders and:

- Consideration of the relative quality and cost of surgical care, radiation therapy, and imaging services in physician practice and facility settings, including costs attributable to excess utilization due to self-referral patterns.
- Consideration of the impact of physician practice services such as surgery, radiation therapy and imaging on neighboring hospitals, access, disparities and public health.

- Consideration of the effectiveness of local initiatives like the Community Technology Assessment Advisory Board (CTAAB) implemented in the Finger Lakes Region.

(Report of the PHHPC on Redesigning CON and Health Planning at p.38, available at http://www.health.ny.gov/facilities/public_health_and_health_planning_council/#con_report)

The Department is developing recommendations, in response to the PHHPC's request. We are interested in your organization's perspectives on the risks and benefits presented by the growth of enhanced physician practices and the appropriate level of state oversight of their activities. To focus your comments, please consider the following questions:

1. To what extent are enhanced physician practices – whether faculty practice plans, captive practices, or independent practices – affecting access to care, quality of care, patient satisfaction, disparities, costs, or population health in your community? If so, how?
2. Are enhanced physician practices affecting the operations or finances of your organization or your organization's members? If so, how?
3. Are facilities or enhanced physician practices that provide urgent care affecting access to care, quality of care, patient satisfaction, disparities, costs, or population health in your community? Are they affecting your organization or your organization's members? If so, how?
4. Are enhanced physician practices that provide office-based surgery affecting access to care, quality of care, costs, patient satisfaction, disparities, or population health in your community? Are they affecting your organization or your organization's members? If so, how?
5. Are enhanced physician practices that provide advanced diagnostic imaging (e.g., CT scans, PET scans, and MRI) affecting access to care, quality of care, patient satisfaction, disparities, costs, or population health in your community? Are they affecting your organization or your organization's members? If so, how?
6. Are enhanced physician practices that provide radiation therapy affecting access to care, quality of care, patient satisfaction, disparities, costs, or population health in your community? Are they affecting your organization or your organization's members? If so, how?
7. Current statutes and regulations require certificate of need (CON) approval of certain health care facility construction projects, equipment acquisitions and service changes. In addition, health care facilities must be licensed and are subject to various regulations governing their operations and physical plant. Physician practices are not generally subject to these regulations. However, Department of Health regulations at 10 NYCRR §600.8 set forth criteria that define the operation of a diagnostic and treatment center and trigger the applicable CON and licensing requirements, whether or not a health care provider is organized as a physician practice.
 - Should New York State expand or modify the criteria that define a diagnostic and treatment center under 10 NYCRR 600.8? If so, how?

- How would extending these regulations to certain services or equipment operated by physician practices affect your community? Your organization or its members?
 - How would your community be affected if CON and/or licensing requirements were eliminated for certain facility-based services or equipment? Your organization or its members? Please specify the services or equipment you are referencing.
 - Some states require a CON for radiation therapy equipment regardless of setting. Should New York State follow suit?
 - Some states require a CON for advanced imaging equipment (CT scanners, MRIs, PET scanners) regardless of setting. Should New York State follow suit?
 - Some states require a CON and/or health facility license for ambulatory surgery, regardless of setting – particularly if an office-based surgery practice has more than one operating room. Should New York State follow suit?
 - Some states do not impose CON requirements for the types of equipment or services mentioned above, regardless of setting. Should New York State follow suit?
8. New York’s Education Law prohibits the practice of medicine by anyone other than a licensed professional or an organization authorized by law. An individual licensed practitioner, professional partnership, professional corporation, professional limited liability partnership, and professional limited liability company are all authorized to practice medicine. Business corporations, not-for-profit corporations and other non-professional organizations are generally prohibited from providing health care, unless they are licensed as a facility or agency under the Public Health Law.
- Are enhanced physician practices (e.g., “mega” practices, captive professional organizations and faculty practice plans) consistent with the spirit of this prohibition? Please explain your response.
 - Are they affecting access, quality, disparities, costs and population health in your community?
 - Are they affecting your organization or your organization’s members?
 - Should New York modify its regulatory approach to the corporate practice of medicine?
9. A spectrum of non-hospital urgent and emergent care is evolving in New York. It includes retail clinics, physician-based urgent care, urgent care centers, free-standing emergency departments, and hospital-based emergency departments.
- Are urgent care providers, or lack thereof, affecting quality, access, costs, disparities, patient satisfaction, or population health in your community?
 - Are urgent care providers affecting your organization or its members?
 - Should New York State modify its approach to regulating these providers? If so, how?

10. In the Rochester area, the Community Technology Assessment Advisory Board provides evidence-based appraisals of the need for new technology and specialized services in both health care facility and physician practice settings and makes recommendations to payers that may have reimbursement implications for providers. Please comment on the effectiveness or value of this type of process and whether such a process would be appropriate for your region.

Please provide us with your comments at your earliest convenience, but no later than March 25, by transmitting them via email to phhpcplanning@health.state.ny.us. Thank you very much.

Sincerely yours,

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