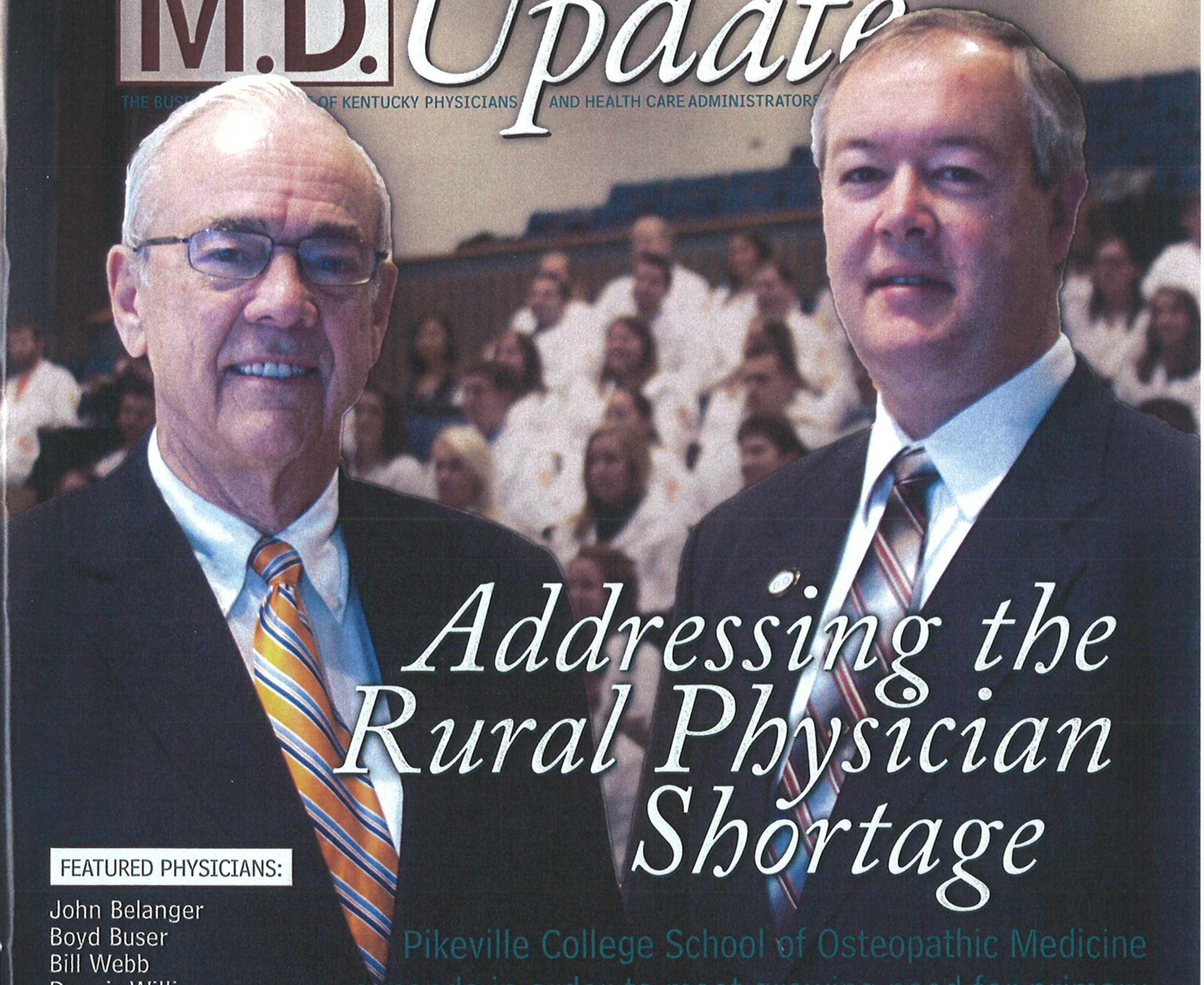
Central and Southeastern Kentucky Edition

JANUARY 2011

ISSUE SPOTLIGHT:
Rural Medicine

M.D. Update

THE BUS... OF KENTUCKY PHYSICIANS AND HEALTH CARE ADMINISTRATORS



Addressing the Rural Physician Shortage

Pikeville College School of Osteopathic Medicine expands in order to meet growing need for primary care physicians in rural Kentucky and Appalachia.

FEATURED PHYSICIANS:

- John Belanger
- Boyd Buser
- Bill Webb
- Dennis Williams
- Anthony Yonts
- Michael J. Zackek

Rural Family Physician John Belanger

Saint Joseph Mobile Health Service

Kentucky Blood Center

VOLUME 2, NUMBER 1

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ACOs: An Alternative to Employment by a Hospital?

With a backdrop of rising health care costs, 50 million uninsured Americans, and a health care system that spends more per person but has lower quality than 37 other developed countries, Congress passed a comprehensive health care reform law with the vision of doctors and hospitals joining forces, coordinating care to hold down costs for the prospect of earning government bonuses for controlling costs.[1]

While no one can foresee exactly how all the provisions of the new law will mesh with the current system, four of Kentucky's largest hospital systems are negotiating mergers and many of the smaller systems are buying up other providers or seeking to enter into controlling management arrangements.

Not only are hospitals creating new healthcare systems, physicians and their groups are increasingly looking to hospitals as employers. It is a buyer's market for hospitals with the financial reserves to buy physician practices, but not every physician practice can be bought by a hospital nor does every physician want to be employed by a hospital.

While this activity is being driven by decreases in reimbursement, it is also a product of the new health reform law, which encourages providers to create integrated health care delivery systems that can improve the quality of health care services and lower health care costs. Accountable Care Organizations (ACOs) are the vehicles through which shared savings are to be passed along when certain quality performance standards are met. Hospitals and

Lisa English Hinkle

physicians must find ways other than employment relationships to align themselves as ACOs.

The health reform law establishes a Medicare shared savings program for ACOs that is to take effect no later than January 2012. This is not a demonstration project; the law makes contracts with ACOs a permanent option under Medicare. Because the Health Reform Act left most of the details about what an ACO is supposed to look like to the Secretary of Health and Human Services (HHS) and the Federal Trade Commission (FTC), industry is eagerly awaiting the implementing regulations that will impact how ACOs are structured and how they ultimately function.

Physicians are the focal point for developing ACOs because they are the gatekeepers for all healthcare services. Integration of care must start at the physician level, but that does not mean that all physicians must be employees of a hospital.

Complicating the scenario is the fact that shared savings arrangements have the potential to violate current fraud and abuse laws as well as antitrust prohibitions, particularly if physicians are not employed by the system establishing the ACO. Consequently, the AMA and other groups are actively lobbying the HHS and the FTC to waive requirements of existing laws and create new safe harbors regulations that give guidance to providers. Both the FTC and HHS are soliciting comments about ACOs prior to promulgating implementing regulations.

The Health Reform Act, however, gives enough guidance to motivate mergers and acquisitions of existing systems and hospital employment of physicians. Under the Health Reform Act, entities that may participate as ACOs must have a legal structure in place and can include physician group practices, networks of individual practices, arrangements between hospitals and ACO professionals, hospitals employing ACO professionals, and other groups of providers as the Secretary deems appropriate.

Appearing to be motivated to develop an ACO, at least four of Kentucky's large healthcare systems including Jewish Hospital & St. Mary's HealthCare/Jewish Hospital Healthcare Services, Catholic Health Initiatives and its Kentucky based operations that include Saint Joseph Health System, and the University of Louisville announced intentions to establish an integrated system that partners with physicians to provide the full continuum of care. Likewise, UK HealthCare and Norton Healthcare recently announced an intention to form a partnership that is focused on improving patient care while emphasizing efficiency and accountability.

With all this in mind, physicians are the focal point for developing ACOs because they are the gatekeepers for all healthcare services. Integration of care must start at the physician level, but that does not mean that all physicians must be employees of a hospital.

Years ago, the FTC identified how to successfully achieve clinical integration without an employment relationship. In 1996, the FTC identified several requirements for integration including mechanisms to monitor quality and costs; selective choosing of network physicians; and the capital investment necessary to develop the infrastructure that has the capability to realize efficiencies.[2]

Serious obstacles currently exist to the integration of care that ACOs are supposed to achieve. Some physician specialties benefit directly from maximizing the

volume of services they provide and may not see possible shared savings as enough to offset the revenue they would lose from a reduced use of services. Solo practitioners and small physicians groups lack the data systems and organizational structure needed to form ACOs.

Commentators agree that if ACOs are to achieve success, use of health information technology, including electronic health records, to coordinate care, communicate among network providers, eliminate unnecessary duplication of tests, and collect performance data will be critical.

With the increasing need for investment in technology and for collaboration between physicians and hospitals to establish ACOs, implementing regulations should expand the types of new relationships providers may develop and permit a more free exchange of money. If cost efficiencies are to be achieved, new models for delivery of health care services must evolve so that physicians have alternatives other than hospital employment.

Older models of Independent Physician Associations (IPA) could serve as a springboard for ACO development. While many hospitals and physicians, through their IPAs, formed physician hospital organizations in the nineties, most of those organizations failed because of the lack of the ability to share clinical information due to the high cost of implementing technology systems. With better technology as well as the ability to be rewarded through shared savings, ACOs may be the answer if the regulating bodies give physicians and hospitals the flexibility they need to create new models of health care delivery other than hospital employment of physicians.

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This article is intended as a summary of newly enacted federal law and does not constitute legal advice.

ENDNOTES

1 The Business Roundtable Health Care Value Comparability Study, Executive Summary at 2 (2009) at Http://s73976.grindserver.com/healthcarestudy.pdf.

2 US Department of Justice and Federal Trade Commission, Statements of Antitrust Enforcement Policy in Health Care; Network Joint Ventures. http://www.ftc.gov/bc/healthcare/industryguide/policy/statement8.pdf. ◆