



California Closing in on Licensure Requirements for ACOs and Other Risk-Bearing Entities

California's Department of Managed Health Care ("DMHC") has proposed regulations that could require accountable care organizations ("ACOs") and other entities that assume "global risk" to obtain licensure as a health care service plan. The proposed regulations, currently open for comment through June 1, 2018, memorialize the DMHC's previously unwritten rules governing "restricted" Knox-Keene licenses. However, by broadly defining "global risk," the proposed regulations may capture arrangements previously thought to be outside the scope of the DMHC's licensing authority. Though the proposed regulations contemplate an exemption process, there are no clear guidelines for determining the circumstances under which an exemption might be granted, and the DMHC has indicated that it "will likely not grant many exemptions."

The Knox-Keene Act requires "[a]ny person who undertakes to arrange for the provision of health care services ... in return for a prepaid or periodic charge paid" to be licensed as a health care service plan. The DMHC has for many years required and issued "restricted" licenses to entities that accept "global risk" from fully licensed plans, although there are no statutory or regulatory provisions addressing the specific requirements for such licenses. It has generally been understood that restricted licenses are required whenever an entity accepts global capitation or otherwise assumes complete financial risk for the provision of both institutional and professional health care services from a fully licensed plan. However, given that Act does not define "global risk" or, for that matter, what constitutes a "prepaid or periodic charge," it has been unclear whether participation in emerging shared risk and other value-based payment arrangements would trigger the need for licensure. In the absence of clear regulatory guidance, some entities have entered into arrangements with payors involving limited or nominal risk (such as fee for service arrangements with a limited "shared risk" component) without seeking a restricted license.

If the proposed regulations are made final in their current form, ACOs and other entities that currently consider themselves outside the reach of the Knox-Keene Act—such as those that are parties to limited shared savings/shared risk arrangements—may be required to obtain a restricted Knox-Keene license or face penalties for noncompliance with the Knox-Keene Act. ACOs and other organizations engaged in risk - and other value-based contracting arrangements should carefully review the terms of such arrangements to determine whether the new regulations will affect them.



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