

Farrell Fritz PC

Healthcare Industry Transformation Drives Need for a Place at the Regulatory Table

The past decade has seen a radical reimagining of the health care industry in New York and around the nation—a transformation that has already reinvented the way hospitals, physicians, and nursing homes serve their patients and are paid for their services.

Twelve years after the final report of the New York State Commission on Health Care Facilities in the 21st Century (commonly known as the Berger Commission), and eight years after passage of the Affordable Care Act (commonly known as Obamacare), that revolution has yet to subside. Rather, it has taken on new energy and focus that will change the way services are provided and is fundamentally changing the way smart law firms tackle transactional and regulatory health care matters.

“While the Berger Commission closed and downsized hospitals, and Obamacare shrank the rolls of the uninsured, the most lasting impacts may be felt by federal and state reforms, including Governor Cuomo’s Medicaid Redesign Team (MRT), which continue to move New York’s Medicaid program—the largest in the nation—away from a fee for service model,” explained Mark Ustin, former General Counsel to the Berger Commission and now a partner in Farrell Fritz’ Albany office. “In its wake, a healthier patient focused, value-based payment infrastructure is being put in place. Affordable Care Organizations, Health Homes, and the Delivery System Reform Incentive Payment (DSRIP) Program are all elements of a fundamental restructuring of how services are provided, particularly to vulnerable populations, including the poor, senior citizens, people with developmental disabilities, the mentally ill, people with substance use disorders, the physically disabled, etc.”

“Before these changes, New York’s healthcare system was constructed in such a way that healthcare providers were paid each time a service was delivered,” added Bob Creighton, Managing Partner of Farrell Fritz who has worked on several transactional healthcare matters on Long Island. “This created an incentive to provide as many services as possible rather than focus on the outcome to the patient, resulting in unnecessary cost and inefficiency within an arcane and overburdened system.”

While the Berger Commission focused on the stockpile of unused beds within facilities across the state in order to cut waste, the Medicaid Redesign Team was tasked with the challenge to create a system that motivates providers to seek good outcomes. The MRT slowed the growth of Medicaid spending while devoting more resources to primary care and achieving healthier communities.

Vital Legal Implications

As the Berger Commission drove large health care institutions into mergers and affiliations, and the MRT drove patients into managed care, the legal issues facing health care institutions and organizations providing services to vulnerable populations, including people with mental illness, developmental disabilities and substance use disorders, became exponentially more complex. In the healthcare space, what would otherwise be a simple transaction is inexorably linked to regulatory matters, and as we look to the future it becomes clear that these trends show no sign of abating.

To meet the legal challenges facing healthcare institutions and other non-profit organizations working with Medicaid populations, Farrell Fritz recruited Ustin, whose healthcare regulatory expertise dovetailed with the firm’s extensive transactional healthcare practice. “Developing regulatory and government relations expertise is absolutely necessary for providers in today’s healthcare landscape,” Ustin added. “It gives companies and individuals the ability to impact the changes that are being made and with which they will ultimately have to comply.”

Farrell Fritz Leads Solutions for Healthcare Providers

Farrell Fritz’ healthcare and government relations practices enable a collaborative approach for clients seeking to navigate new and changing regulations. With the new administration in Washington, healthcare providers are facing a large amount of uncertainty. “We are no longer moving down the same path as the previous administration, and the future is unpredictable,” said Ustin. “State level policy makers are working to create structures to protect them-



Bob Creighton and Mark Ustin with Government Relations Director Vanessa Bongiorno and Healthcare Associate Daniel Rubin

selves from this uncertainty, which has the unfortunate side effect of placing a large burden on healthcare providers. At Farrell Fritz, we ensure that our clients have a voice in Albany so that the State understands the implications of the decisions they are making.”

Asked for an example with which he has given a healthcare provider legal help, Ustin described one situation in which he assisted a transaction where a hospital was being acquired out of a bankruptcy. The client came to Ustin when a grave error was discovered in which they had forgotten to get approval from the Public Health and Health Planning Council for the transfer of their homecare services. “The client needed an immediate hearing for the council to issue final approvals. Their bridge funding was running out and they were at risk of closing their homecare services entirely, which would mean a whole asset being lost and patients losing their care.”

With his deep industry ties and dogged determination, Ustin was able to work with key regulators and secure a separate hearing for the provider’s home healthcare entity. They then secured the necessary approvals, saved the homecare services, preserved their reputation with the Department of Health, and protected a large asset for the sale.

According to Creighton, as New York’s healthcare industry evolved over the past decade, two things have remained the same: State agencies, such as the

Department of Health and Office for People with Developmental Disabilities, have continually expanded their regulatory frameworks; and Medicaid continues to be the single largest element of New York State’s budget. These essential facts require healthcare attorneys to offer the kind of comprehensive government relations solutions that Farrell Fritz’ new Albany office makes possible.

“The shift in focus to value-based payment within the healthcare industry is driving the consolidation of healthcare providers across the board,” Creighton noted. “Because of this, we are no longer exclusively seeing horizontal affiliations, i.e. where larger hospitals acquire smaller hospitals. We are beginning to see systems reaching out to different kinds of providers, such as hospitals acquiring nursing homes and homecare agencies, so that they can oversee patient care across the board. It is because of this new frontier that providers need legal advocates and representation to see them through these crucial proceedings. A missed deadline or forgotten service can turn a smooth acquisition into lost assets and a ruined reputation.”

“Our mission is to be our client’s fiercest advocate and ensure that nothing is forgotten,” Ustin said. “The healthcare industry is implementing major changes to better serve their patients and communities, but they need to also look after their own well-being. We’re here to help so that they can focus on giving the best care possible.”