
HEALTHCARE LEADERSHIP COUNCIL BRIEFING: Modernizing Legal Frameworks to Enable Value-Based Care

March 24, 2017

Travis G. Lloyd
Bradley Arant Boult Cummings LLP



About Ascension

- Ascension is a faith-based healthcare organization dedicated to transformation through innovation across the continuum of care
- Ascension is the largest non-profit health system in the U.S. and the world's largest Catholic health system, with approximately 2,500 sites of care in 24 states and District of Columbia



CONTINUUM OF CARE SITES

HOSPITALS BY TYPE

Acute Care Hospitals	111
Rehabilitation Hospitals	6
Behavioral Health Hospitals	9
Long-Term Acute Care Hospitals	2
TOTAL	128
Hospitals Not Majority Owned – Joint Venture or Management Agreement	13

SENIOR CARE AND LIVING FACILITIES

Assisted Living	15
Continuum of Care Retirement Communities	8
Independent Living	2
Long Term Acute Care/Skilled Nursing	23
Multi-Service Line Communities	7
Other Senior Living (HUD, Other)	2
PACE Programs	3

POST ACUTE SERVICE SITES

Durable Medical Equipment	15
Home Health Services	42
Hospice Services	16
Outpatient Rehabilitation Centers	148

3

AMBULATORY CARE AND DIAGNOSTICS

Ambulatory Surgery Centers	66
Occupational Health Programs	55
On-Site Employer Clinics	76
Free-Standing Imaging Sites	110
Retail Lab Collection Sites	155
Primary Care Clinics	565
Retail Care Clinics	12
Retail Pharmacy Sites	45
Sleep Centers	31
Specialty Clinics	613
Virtual Care Programs	70

EMERGENCY SERVICES

Free-Standing ER and Urgent Care Sites	74
Emergency Medical Services (EMS)	21

COMMUNITY SERVICES

Community Health Centers	16
Dispensary of Hope Sites	9
Mobile Clinical Services	26
Wellness Centers	23
Community/Social Programs	157



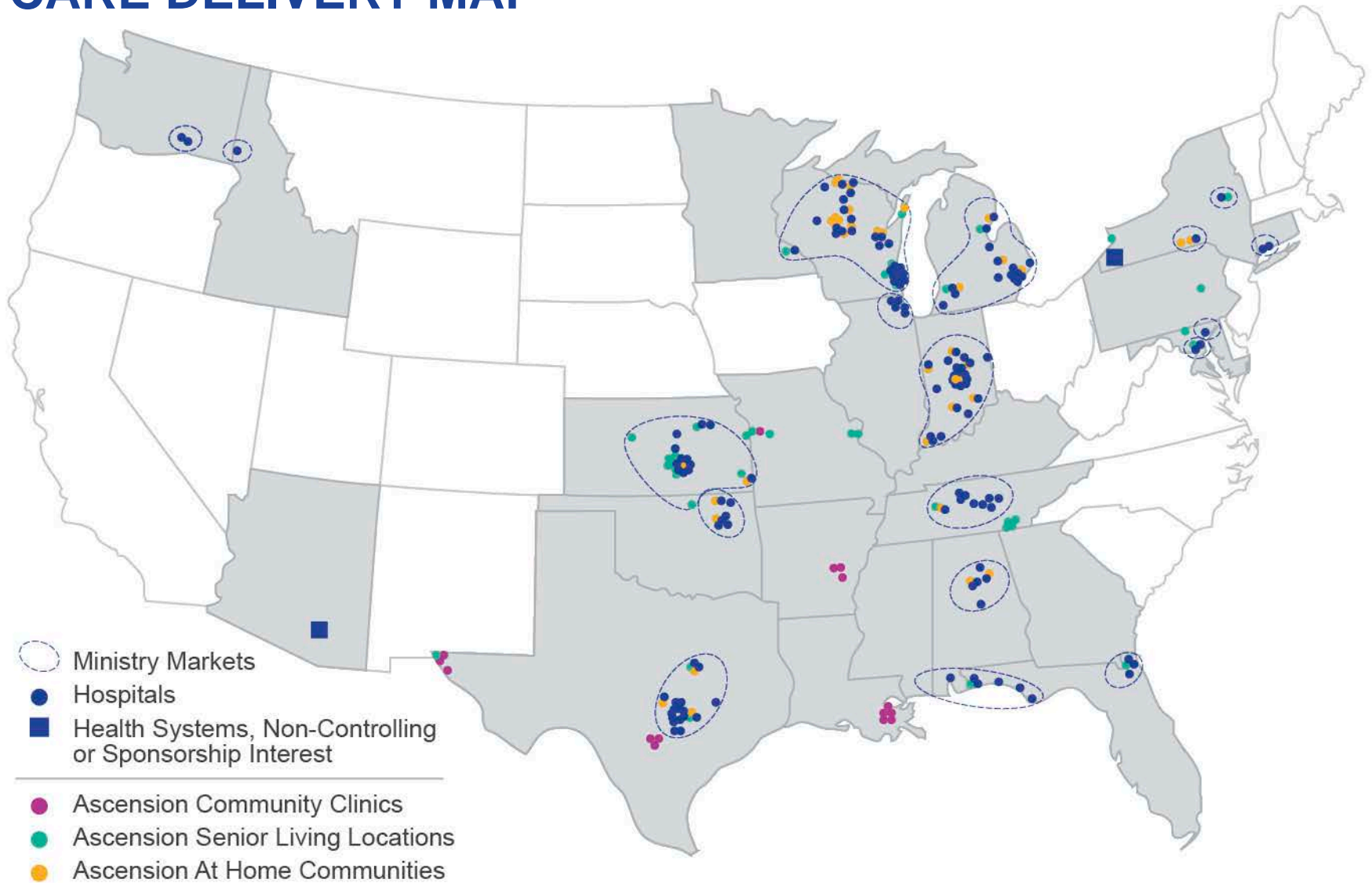
**2,500
Sites of Care**

Facts and Stats

- **\$1.8 billion** in care of persons living in poverty and other community benefit programs
- **23,657,773** outpatient visits (excluding ER visits)
- **11,159,811** physician office visits
- **3,007,923** emergency visits
- **1,527,543** clinic visits
- **1,597,177** equivalent discharges
- **777,593** discharges
- **505,361** home health visits
- **316,804** observation days
- **151,000** associates
- **84,751** births
- **22,990** available beds
- **36,000** aligned providers

**Data for FY2016*

CARE DELIVERY MAP



Evolving Payment Landscape

- Public and private payers are increasingly tying payment to value, not volume, in an effort to achieve quality outcomes, clinical efficiencies, and cost savings
- Congress has created alternative payment models, such as the Medicare Shared Savings Program, and has authorized HHS to create other models as demonstration programs
- New payment models demand teamwork among health care providers—accountability, shared goals, and aligned incentives
- Yet, the Stark Law and Anti-Kickback Statute are built for a fee-for-service or volume-based world, where providers are “siloed” and any financial relationship between them may be problematic

Legal Barriers

- Implementation of value-based payment models has been possible only because Congress has authorized, and HHS has issued, narrowly tailored regulatory waivers of fraud and abuse laws
- Current regulatory waivers are helpful, but result in a patchwork approach that limits providers' ability to provide consistent, uniform incentives across all patient populations
- Consequences of potential noncompliance with the Stark Law and Anti-Kickback Statute are dire, potentially discouraging providers from entering into innovative arrangements that would improve quality outcomes, clinical efficiencies, and cost savings

Legal Barriers

- Examples:
 - Care coordination arrangements involving remuneration (in cash or in kind) to physicians and non-physician practitioners for playing key roles in managing patient care and adhering to care pathways
 - Post-acute support arrangements through which hospitals provide support to post-acute providers to implement plans of care
 - Programs through which providers provide post-discharge support to patients to promote patient engagement and improve quality outcomes
 - Arrangements through which hospitals subsidize shared health IT infrastructure used by providers

Recommendations

- The Stark Law and Anti-Kickback Statute should be updated to provide clear and comprehensive protection for value-based payment arrangements that do not pose undue risk of fraud and abuse
- Some suggestions for reform:
 - Extend waivers to all payers, not just CMS-run programs, and grant HHS broader authority to create regulatory waivers
 - Create new exceptions and safe harbors for care coordination arrangements
 - Clarify key standards found in many Stark Law exceptions and Anti-Kickback Statute safe harbors (e.g., fair market value, commercial reasonableness, volume or value standard)