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CMS Responds to ACO Criticisms

By **Jed Morrison**

On May 17, 2011, the Centers for Medicare and Medicaid Services announced three new initiatives designed to facilitate the development of accountable care organizations (“ACOs”) pursuant to the Patient Protection and Affordable Care Act. The original ACO regulations published on April 7, 2011 [[see our e-Brief](#)] have been widely criticized as not reflecting realistic market conditions and not providing sufficient financial incentives for potential ACOs to participate in the program.

The three new initiatives include Development Learning Sessions, an Advanced Payment Initiative designed to encourage ACO participation, and a “Pioneer ACO Model” designed to attract participation by existing ACOs.

The Development Learning Sessions are simply a series of four learning sessions offered by the Center for Medicare & Medicaid Innovation (“CMMI”) designed to provide detailed feedback and discussion opportunities for the executive leadership teams of existing and emerging ACOs. The first session will be conducted June 20–22, 2011, in Minneapolis, MN.

The Advanced Payment Initiative is a response to providers’ criticism that any shared savings under the ACO program would not take place for at least 18 – 24 months after the ACO began investing in the program. The CMMI is considering an initiative to test whether it might provide a portion of future shared savings to ACOs to encourage participation in the program. Under the proposed initiative, eligible organizations could receive an advance on the shared savings they are expected to earn as a monthly payment for each assigned Medicare beneficiary.

Finally, CMS has proposed a “Pioneer ACO Model.” CMS notes that the goals of the Pioneer ACO Model are to:

- Test a more rapid transition for providers from volume-based fee for service payments to payment for coordination and outcomes; and
- Promote a diversity of successful ACOs, including physician-led ACOs and those serving indigent or rural populations.

The Pioneer Model envisions some combination of the following proposals:

- Payment arrangements that place groups of providers at joint risk for quality performance and financial performance for the majority of their patients and revenues (including non-Medicare patients). The arrangements would require transition from FFS payments to population-based payments by the third year.
- CMS would provide technical support in the form of rapid data feedback and shared learning activities.
- CMS expects to contract with approximately 30 organizations under the Pioneer Model, with a minimum of 15,000 Medicare

- beneficiaries for each ACO (5,000 for rural ACOs).
- The contract duration is expected to be between five and six years beginning in the third or fourth quarter of 2011.

Interested parties may review the request for application on the CMMI website by **CLICKING HERE**.

CMS's threefold effort demonstrates its commitment to the ACO shared savings program, but it also demonstrates the reality that providers across the country have been underwhelmed by the ACO program, and few participants have stepped forward.

If you have any questions, please contact **Jed Morrison** at 210.978.7780 or **jmorrison@jw.com** or **any member of the Jackson Walker L.L.P. Health Care Section**.

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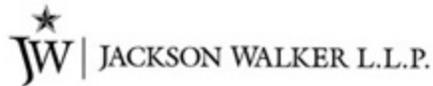
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