

CMS Announces Bundled Payment Demonstration Project

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Last week the Centers for Medicare and Medicaid Innovation (CMMI) announced “The Bundled Payments for Care Improvement” initiative and published requests for applications to participate in the program. CMMI, a new agency created by the 2010 Affordable Care Act, established the basic parameters for four different bundled payment models but offers flexibility to participants to determine which services will be bundled together and how to allocate payments among participating providers. This means nimble providers—who develop proposals that are accepted—have an opportunity to try structures that otherwise might entail too much legal risk.

The first three bundled payment models are retrospective payment arrangements where providers are paid a discounted Medicare fee-for-service rate. Historical data would be used to set a target price for an episode of care and if the payments are less than the target the providers may share in the savings. Model 4 is based on prospective payments. Providers may choose to implement more than one model. Notably, the proposals specifically contemplate that gainsharing arrangements may be incorporated.

Model 1. The episode of care is an inpatient stay in a general acute care hospital. The hospital will be paid a discounted IPPS rate and physicians will be paid separately under the fee schedule. The discount rate imposed by the program starts at 0% in the first six months and then rises to 2% in the third year. The hospital and physicians would be able to share in any savings achieved.

Model 2. The episode of care involves an inpatient stay and post-acute care for a minimum of 30 or 90 days after discharge (at the provider’s election). The “bundle” would include physicians’ services, post-acute care services, related readmissions and other services proposed by the provider such as clinical laboratory services, durable medical equipment, and Part B drugs. The minimum discount to CMS will be 3% for the 30- to 89-day period after discharge, and 2% on and after day 90. At the end of the episode of care, the participating providers would be entitled to share in the amount by which total payments were less than the target price. However, if total payments exceed the target price, the provider will be responsible for paying the overage to CMS.

Model 3. The episode of care begins the day the patient is discharged from the hospital and ends no sooner than 30 days after discharge. The bundled payment methodology is structured as in Model 2. CMS, however, did not specify a minimum discount rate.

Model 4. This model contemplates *prospective* payment for an inpatient stay. CMS proposes to pay a single fixed amount for all services by all providers during the stay. The hospital (or some designee) would pay the physicians and all other providers out of the bundled payment and submit “no pay” claims to Medicare for record-keeping purposes. The minimum discount to CMS would be 3% of projected total costs for the episode of care.

All of the bundled payment models contemplate some sort of waiver of restrictions imposed by the federal Stark, anti-kickback and gainsharing civil money penalty laws. In fact, in the initiative's "Frequently Asked Questions," also published last week, the agency specifically highlights the opportunities for gainsharing. Historically, gainsharing programs have been severely restricted by the existing fraud and abuse laws. It appears that the precise scope of the waiver will be addressed in the award if CMS accepts a provider's proposal.

To participate in any of the proposed bundled payment models, providers must submit a nonbinding letter of intent and application to CMMI. In addition to establishing the episode and time period of care, providers will also be required to implement quality improvement programs and to report specific quality metrics to CMS. Providers interested in the program should note that all bundled payment proposals are required to preserve Medicare patients' right to seek care from the doctor or hospital of their choice.

The application deadlines are slightly different depending on which model the provider would like to participate in. For Model 1, a letter of intent must be submitted by Sept. 22, 2011, and a completed application is due by Oct. 21, 2011. Models 2, 3, and 4 require a letter of intent by Nov. 4, 2011, and completed applications must be submitted by March 15, 2012. The applications for each of the four models are available on the CMMI website: <http://innovations.cms.gov/areas-of-focus/patient-care-models/Bundled-Payments-%20Care-Improvement-Application.html>.

The following matrix summarizes the key elements of the four bundled payment models:

	MODEL 1: Inpatient Stay Only	MODEL 2: Inpatient Stay plus Post-Discharge Services	MODEL 3: Post-Discharge Services Only	MODEL 4: Inpatient Stay Only
Services Included in Bundle	Inpatient hospital services	Inpatient hospital services Physician services Related post-acute care services Related readmissions Other services defined in the bundle	Post-acute care services Related readmissions Other services defined in the bundle	Inpatient hospital services Physician services
Discount to Government	To be proposed by applicant CMS requires minimum discounts increasing from 0% in first six months to 2% in 3rd year	To be proposed by applicant CMS requires minimum discount of 3% for 30-89 days post-discharge episode, and 2% for episodes of 90 days or longer	To be proposed by applicant	To be proposed to applicant Subject to minimum discount of 3% Larger discount for MS-DRGs in ACE Demonstration

Payment from CMS to Providers	Acute care hospital: IPPS payment less pre-determined discount Physician: Traditional fee schedule payment (not included in episode or subject to discount)	Traditional fee-for-service payment to all providers and suppliers, subject to reconciliation with predetermined target price	Traditional fee-for-service payment to all providers and suppliers, subject to reconciliation with predetermined target price	Prospectively established bundled payment to admitting hospital Hospitals distribute payments from bundled payment
Prospective or Retrospective	Retrospective	Retrospective	Retrospective	Prospective
Deadlines for Letters of Intent and Applications	LOI by Sept. 22, 2011 Completed application by Oct. 21, 2011	LOI by Nov. 4, 2011 Completed application by March 15, 2012	LOI by Nov. 4, 2011 Completed application by March 15, 2012	LOI by Nov. 4, 2011 Completed application by March 15, 2012
Duration	Bundled care agreements will include a performance period of three years, with the possibility of extending an additional two years, beginning with the respective program date. The program start date may be as early as the first quarter of CY 2012 for awardees in Model 1.			

These new bundled payment models create a window of opportunity for experimenting with gainsharing and other types of innovative payment structures that have previously been plagued by regulatory limitations. If you are interested in learning more about the opportunities created by the Bundled Payments for Care Improvement initiative, contact Bob Homchick or your usual Davis Wright Tremaine lawyer.

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