Health Law Alert: CMS Launches Bundled Payment Initiative, Opportunities to Participate Begin this Month

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The Center for Medicare and Medicaid Innovation (CMMI), at the Centers for Medicare and Medicaid Services (CMS), recently unveiled a new, voluntary bundled payment program: the Bundled Payments for Care Improvement Initiative (the Initiative). The CMMI was created by 2010's Affordable Care Act (the Act) with the goal of finding innovative methods to pay for health care in a way that rewards quality and the achievement of performance objectives. Under the Initiative, the services that patients receive to treat a specific medical condition during a single hospital stay and/or recovery from that stay will be bundled as an episode of care. The goal of this bundled payment program is to improve the quality of care provided to patients through increased coordination among health care providers, while establishing incentives to reduce costs for the Medicare program.

Medicare has historically made separate payments to providers on a fee-for-service (FFS) basis. The FFS model has long been criticized for rewarding the volume of care provided, as opposed to the quality of care delivered. A central goal of the Act is to depart from FFS reimbursement and move towards forms of reimbursement that reward collaboration across providers at different platforms of care delivery. CMS' experience with other coordinated payment programs suggests significant cost saving potential exists. In describing the Initiative, CMS noted one example in which a Medicare heart bypass surgery bundled payment demonstration saved $42.3 million, approximately 10 percent of expected costs, and saved patients $7.9 million in coinsurance while improving care and lowering hospital mortality.

How the Bundled Payment Initiative Works

The Initiative will pay for services delivered across an episode of care—such as a fractured hip—rather than paying for each service associated with the medical issue separately. The intended effect would be to deliver high quality care at a lower cost by encouraging providers to seek methods that reduce unnecessary services and implement cost control measures.

To participate in the Initiative, physicians and hospitals would design their own models of bundled payment under four general types of payment models. Providers then submit bids to CMMI. The bids should propose a target price for an episode of care, such as the services needed to treat a patient who had a fractured hip. Participants would receive discounted payments under the FFS system, and at the end of the episode the

total payments for the care would be compared to the target price. Those involved in providing the patient's care could share in any savings generated to Medicare. However, the group can also be held financially liable for missing the target price and would pay back money owed to the program.

Four Available Models

CMS has established four broad categories of models under the Initiative:

- Model 1: Retrospective payment models for the acute inpatient hospital stay only
- Model 2: Retrospective bundled payment models for hospitals, physicians, and post-acute providers for an episode of care consisting of an inpatient hospital stay followed by post-acute care
- Model 3: Retrospective bundled payment models for post-acute care where the bundle does not include the acute inpatient hospital stay
- Model 4: Prospectively administered bundled payment models for hospitals and physicians for the acute inpatient hospital stay only

Retrospective bundled payments means the usual FFS payments are made and then the total payment for the episode is compared to the target price. Under the prospective bundled payment model, a negotiated single payment is paid as a lump sum as opposed to paying out the separate FFS payments.

CMS has undertaken similar initiatives in the past, but those projects have focused on inpatient services related to surgeries, particularly orthopedic and cardiac procedures. The new Initiative is much broader. It will encompass both in-hospital and post-discharge care and can include chronic disease and other medical admissions, as well as surgeries.

Application Requirements and Deadlines

Applicants will be required to identify the clinical condition(s) using Medicare codes, define the time period for the episode of care, and identify the services included in the bundled payment. Additionally, the applicant must plan and implement quality assurance and improvement activities as a condition of participation in the Initiative and participate in CMS quality monitoring by reporting appropriate quality measures. The performance period for the Bundled Payments Initiative agreements will be three years, with the possibility of extending an additional two years.

To apply, providers for Model 1 must submit a nonbinding Letter of Intent by September 22, 2011, and a completed application by October 21, 2011. Applicants for Models 2, 3, and 4 must submit a nonbinding Letter of Intent by November 4, 2011, and a completed application by March 15, 2012. The anticipated program start date is the first quarter of 2012 for successful applicants of Model 1. CMS has not indicated the anticipated start date for Models 2, 3, and 4.

Is Gainsharing Permitted?

CMS has indicated that its authority under the Act to waive certain fraud and abuse laws applies to the Initiative. This waiver authority is the same as CMS plans to employ in the Accountable Care Organizations (ACO) program. As with the ACO program, however, the precise scope of CMS' willingness to waive application of the Stark Law, Anti-kickback Statute, and Civil Monetary Penalty "gainsharing" law remains unclear. CMS noted in explaining the Initiative that the particular waivers that it grants will be included in the terms and conditions of any agreements between CMS and providers participating in the Initiative. Obviously, physicians, hospitals, and other providers desiring to participate in this new program will need to think through how the fraud and abuse rules apply to payment models they intend to implement under the Initiative.

Participation in Multiple CMS Initiatives

The Act provided that organizations may not participate in multiple shared savings programs. However, CMS has explained that the Bundled Payment Initiative program does not constitute a "shared savings program," and that organizations that form ACOs may still participate in the Initiative. Given the uncertain state of the ACO program—and the understandable desire of many providers to have the option of participating in ACOs—this is helpful clarification from CMS.

If you have questions about the Payment Bundling Initiative, please contact Jesse Berg at jesse.berg@lathropgpm.com or 612.632.3374.