PRESENTED AT

The University of Texas School of Law
30th Annual Health Law Conference

April 4-6, 2018
Houston, TX

Value-Based Purchasing and Bundled Services/ Payments – Reconciling Interests of Participating Providers

Janet Walker
Sheryl Dacso
Robert McStay

Janet Walker
Ascension
Austin, TX

Janet.Walker@ascension.org
512.324-5923

Sheryl Dacso
Seyfarth Shaw LLP
Houston, TX

SDacso@seyfarth.com
713.238.1810

Robert Mcstay
Memorial Health
Houston, TX

Robert.Mcstay@memorialhermann.org

Sarah Murphy
Ascension
Milwaukee, MI

Sarah.Murphy2@ascension.org

Introduction

With increasing pressure to do more with less, health care systems are continuing to focus efforts on finding innovative ways to increase quality while reducing costs. One ongoing trend is the movement toward innovative incentive payment models, including value-based care purchasing and bundled payment arrangements. The goal of such models is to achieve cost reductions based on a higher level of patient care coordination.

Despite 2017 bringing a fair amount of political uncertainty regarding the Centers for Medicare & Medicaid Services (CMS)'s commitment to value-based reimbursement and bundled payment arrangements, for the time being, it appears these alternative payment models are here to stay. The new Secretary of Health and Human Services (HHS), Alex Azar, has re-affirmed his support of value-based care. While the Trump Administration is not pursuing alternative payment models as ambitiously as the Obama administration, they are not backing away either – recognizing the need to continue cost reductions while moving away from strictly fee-for-service payment models. Additionally, we are seeing more commercial payors, employer self-funded plans and provider organizations continue to move forward with value-based payment models fueled by the incentives of the Affordable Care Act (ACA) for development of Accountable Care Organizations (ACO).

In this paper, we will look into how value-based care and alternative pricing arrangements are structured and discuss the options and challenges associated with potential risk sharing, legal and practical considerations.

1. Value-Based Contracting

Overview

Before we can discuss value-based contracting, we first must understand value-based programs. CMS describes value-based programs (VBP) as those which reward health care providers with incentive payments for the quality of care they give to people covered by Medicare. These programs focused on quality measures that affected provider reimbursement as part of achieving the three-part aim of better care for individuals; better health for populations and lower costs. Medicare's value-based programs focused initially on Hospital Value-Based Purchasing (HVBP), Hospital Readmission Reduction (HRR) Program, Value Modifier (VM) Program (also called the Physician Value-Based Modifier or PVBM) and the Hospital Acquired Conditions (HAC) Program. CMS subsequently added the End-Stage Renal Disease (ESRD) Quality Initiative Program, Skilled Nursing Facility Value-Based Program (SNFVBP) and Home Health Value Based Program (HHVBP.) In 2018, CMS reported that although VBP participation was reduced by almost 3%, more hospitals in the program received bonuses than penalties. For pay-for-performance arrangements, it was reported that for FY 2018, 53% of hospitals received bonuses while 43% faced reductions.[1]

[1] https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2017-Fact-Sheet-items/2017-11-03.html?DLPage=1&DLEntries=10&DLSort=0&DLSortDir=descending

Contracting Considerations

The success of any VBR arrangement requires a constellation of many factors. These include a basic foundation based on shared goals and incentives as well as strong leadership and governance. There should be an assessment and careful preparation taking into consideration the following:

- Delivery service area and system infrastructure, resources, and contract scope
- Types of arrangements
- Capacity to assume risk
- Types of risk
- Strategy and contracting plan

Financial and operational assessments should be conducted to include:

- Capital requirements
- Unit Costing and tracking
- Financial/actuarial assessment and planning
- Contracting capabilities
- Data infrastructure and IT

The contracting process should include a credentialing and disclosure component that addresses:

- Initial questions
- Responsibilities and risk
- Financial impact
- Credit risk

Steps in the process should involve prioritizing clinically integrated systems of care to accelerate personalized care and move from an episodic to a managed care delivery model. One must know the network's capabilities including the clinician's ability to furnish high-quality, affordable, personalized care. There must be an infrastructure capable of managing the care and the cost that can transition from fee for service to fee for value by managing the total cost of care (i.e., full provider risk). Contracting strategy should consider both market and population. These are discussed in more detail in the section regarding bundled payments, below.

In moving to new payment models, physicians groups are looking for more predictable reimbursement, hospitals want models that can increase net reimbursement, particularly as more care moves to an ambulatory setting; payors want predictability about cost to help manage medical loss ratio; employers want simplification, lower cost, and convenience; and consumers want affordable, high quality options. Generally, value-based contracting includes payment methodologies where a portion of the provider's total potential payment is tied to a provider's performance on cost-efficiency and quality performance measures. This may include one or more of the following (i) a performance bonus based upon quality and cost; (ii) bundled or episodic payments; (iii) down-side risk or risk corridors with variable payment; (iv) capitation; (v) other similar arrangements or (vi) combinations of the above.

Title search: Value-Based Purchasing and Bundled Services/Payments: Reconciling Interests of Participating Providers

Also available as part of the eCourse
Reconciling Interests of Participating Providers: Nuts and Bolts of Value-Based Purchasing and Bundled Services/Payments

First appeared as part of the conference materials for the
30th Annual Health Law Conference session
"Nuts and Bolts of Value-Based Purchasing and Bundled Services/Payments: Reconciling Interests of Participating Providers"