

# PUBLICATION

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## CMS Bundled Payment Initiative Offers Providers Flexibility

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The Centers for Medicare and Medicaid Services (CMS) has finally provided an initiative that will allow providers greater say in designing a financial risk-sharing initiative. CMS released its Request for Applications (RFA) for participation in its new bundled payment initiative on August 23, 2011. Health care providers can apply to receive Medicare payment for services delivered across an episode of care as a reconciled bundle rather than as payments for separate services.

The Innovation Center at CMS will use its authority under the Affordable Care Act to test alternative models of bundled payments that will incentivize care redesign. Applicants are expected to have experience with cross-provider care improvement efforts, and either have already begun to redesign care or be prepared to commence to redesign care, and enter into payment arrangements that include financial and performance accountability across episodes of care.

If your organization has been reviewing previous initiatives and opportunities from CMS and has not found something that allows tailoring to your particular circumstances, this may provide the needed flexibility. According to CMS, providers will have flexibility to determine which particular episodes of care will be bundled and which services will be included in the bundled payment, so that providers of different sizes and stages of readiness can participate. Gainsharing will also be permitted.

CMS states that all proposals must identify a single entity (e.g., hospital, health system, physician hospital organization, etc.) that will accept financial responsibility for delivery of the bundled payments to Medicare beneficiaries. All applicants must demonstrate the necessary relationships between the awardee and those other service providers necessary to furnish the bundled services. Further, CMS declares in the RFA, "For all proposals that include care across multiple settings, this initiative proposes no limitations on the relationship between the awardee and other entities beyond existing statutory requirements." We interpret this to mean that CMS will not attempt to layer on the governance and other requirements of either the Shared Savings or the Pioneer ACO program.

In its RFA, CMS proposes four broadly-outlined payment models from which applicants can choose.

- 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.

We believe the provider community will welcome the flexibility inherent in the bundled payment initiative. In our experience, however, the thinking on payment methodologies is getting even farther ahead of the regulatory environment and causing a great deal of angst within the provider community. Unless the Administration addresses those "existing statutory requirements" in a manner that recognizes that new payment models do not have the same inherent risk as fee-for-service models, many providers will be unwilling to participate in

novel risk-sharing arrangements with referral sources. Such a chilling effect will keep the number of applicants lower than it should be.

Applicants must submit a Letter of Intent to CMS or their applications will not be considered.

- For Model 1, the Letter of Intent must be submitted by September 22, 2011, and the deadline for an application to participate under Model 1 is October 21, 2011.
- For Models 2-4, the Letter of Intent must be submitted no later than November 4, 2011, and the applicant must ask for a Research Request Packet (for Medicare data to be supplied by CMS). Applications for participation under Models 2-4 must be submitted by March 15, 2012.

Applicants are encouraged to apply for and participate in one or more models. In addition, applicants are encouraged to include other payers in their projects, including state Medicaid programs. Applicants may have participated in previous Medicare demonstration projects and may also participate in the Shared Savings Program and/or the Pioneer ACO initiative.

While beneficiaries will continue to have the right to choose their provider, they will not be allowed to "opt out" of the model payment methodology if their provider is participating in the program. All beneficiaries enrolled in both Parts A and B who use providers participating in the bundled payment initiative will be included in the bundled payments.

For assistance as you consider the requirements of the new bundled payments program or any other payment reform initiative, please contact your Baker Donelson attorney.