



Five Key Legal and Regulatory Issues in Payment and Delivery Reform for 2011

MCOL

2011 Future Care Webinar

January 26, 2011

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Defining Value

- Implementing the numerous provisions in the ACA that call for value-based payment
- New quality reporting provisions
- Value-based purchasing provisions
- Pay-for-performance pilots
- Hospital readmission reduction program
- Payment adjustment for conditions acquired in hospitals
- ACO regulations

Quality Measurement, Reporting and Auditing

- New requirements for both plans and providers
- Quality classification and reporting pursuant to the MLR regulations; compliance requirements and associated legal risk
- New provider measurement and reporting requirements throughout the ACA
- Reporting requirements may result in “fraud and abuse”-type enforcement for care deemed substandard
- Greater quality data reporting and transparency will require oversight, including assurance that reporting is accurate

Antitrust and Market Power

- Market power issues in both payer and provider markets and the challenges of implementing coordinated care
- Aggregation does not equal accountability; but some size and scale is necessary for effective care coordination and quality reporting
- As long as the payment system rewards volume, unit pricing and billable transactions, this issue will be difficult to resolve
- New forms of contracting (rather than mergers) among competing providers to accomplish accountable care goals through bundled and global payments may help create antitrust-acceptable pathways
- The private sector would benefit from greater payer-provider collaboration and acceleration of the movement to accountable care
- Failure to do so will put more onus on government to regulate prices of both parties and potentially micro-manage contract provisions

Regulation of Provider Risk Sharing

- To what degree will payment reform trigger a new generation of provider risk arrangements and consequent state insurance regulation?
- Distinguishing between insurance risk and performance risk
- Avoiding a repeat of PSOs
- Assessing shared savings, bundled payments, global fees and partial capitation in this context
- New federal insurance oversight - CCIIO

Fraud and Abuse

- Implementing financial incentives to coordinate care under laws that frown on financial incentives
- Will the Secretary use the waiver authority granted in the ACA or create new safe harbors/exceptions?
- If we can define and measure proper use, then delivery organizations should be able to demonstrate compliance
- New fraud enforcement tools in the ACA

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