

EPISODE-BASED BUNDLED PAYMENT MODELS POISED TO MAKE A COMEBACK

Health and Human Services ("HHS") Secretary Alex Azar announced on Thursday, November 8, 2018 that HHS intends to reconsider some of the episode-based payment models that it withdrew almost one year ago. According to Secretary Azar, HHS is exploring new and improved episode-based payment models, including a mandatory bundled payment model for radiation oncology.^[1]

Secretary Azar's remarks, which were made at a conference sponsored by the Patient-Centered Primary Care Collaborative, indicate that he supports the use of mandatory episode-based payment models "as the most effective way to know whether these bundles can successfully save money and improve quality,"^[2] Azar further stated, "we will use all avenues available to us—including mandatory and voluntary episode-based payment models."^[3]

Although there are no confirmed details on the rollout of a new radiation oncology bundled payment model, our contacts on Capitol Hill believe a proposal will be released before the end of the year and that participation by certain designated providers will likely be mandatory.

BACKGROUND

The Affordable Care Act ("ACA") created the Center for Medicare and Medicaid Innovation ("CMMI") to test innovative payment and care models with the potential to reduce federal health care program expenditures while preserving or enhancing quality of care. Traditional Medicare makes separate payments to different types of providers for the individual services they provide to beneficiaries for a single illness or course of treatment. This fee-for-service system potentially incentivizes overutilization of services and does not reward quality, clinical outcomes or care coordination. CMMI has been experimenting with bundled payment models since 2013 when it developed the voluntary Bundled Payments for Care Improvement ("BPCI") initiative, linking payment for multiple services provided to beneficiaries during an "episode of care."^[4] An advanced version of the BPCI initiative, which began October 1, 2018, covers 32 clinical conditions and includes over 1,000 participants.

Building on BPCI and other bundled payment initiatives, in December 2016, CMS announced a demonstration program to test mandatory episode-based bundled payment programs ("Episode Payment Models" or "EPMs") for acute myocardial infarction, coronary artery bypass graft and surgical hip/femur fracture treatment to be operated out of the CMMI. However, on November 30, 2017, after multiple postponed start dates, CMS cancelled the EPMs and rescinded the corresponding regulations, noting that termination of the mandatory EPMs would give CMS "greater flexibility to design and test innovations that [would] improve quality and care coordination across the in-patient and post-acute care spectrum."^[i] ^[5] Former HHS Secretary Tom Price and CMS Administrator Seema Verma have been critical of *mandatory* bundled payment programs in the past. However, Secretary Azar's announcement indicates that HHS may be expanding models that address cardiac care and reconsidering its stance on mandatory bundled payment models at least with respect to radiation oncology.

PRACTICAL TAKEAWAYS

- To date, Secretary Azar and HHS have declined to offer any details on future reintroduced cardiac or radiation oncology EPMs. Based on Secretary Azar's limited public comments, it would appear that at least some of the new EPMs will mandate participation by certain designated providers.
- We do not yet know whether CMS will publish an advance notice of proposed rulemaking, proposed rules or employ another mechanism to implement the new EPMs. We will stay abreast of developments and publish future articles on this topic as we learn new information.
- Radiation oncology providers will not be surprised at the introduction of a radiation oncology EPM. CMS has provided multiple opportunities for radiation oncology stakeholder input on potential design options for radiation oncology alternative payment models, including a May 3, 2017 public listening session referenced in an [HHS report](#) to Congress. Nevertheless, the prospect of new care and payment models elicits uncertainty and trepidation for affected providers. Following Secretary Azar's November 8 comments on the forthcoming introduction of a radiation oncology EPM, the American Society of Radiation Oncology ("ASTRO") issued the following statement,

While ASTRO is enthusiastic about the prospect for a RO-APM [Radiation Oncology Alternative Payment Model], we have

concerns about the possibility of launching a model that requires mandatory participation from all radiation oncology practices at the outset. . . ASTRO believes it is important to acknowledge that any radiation oncology payment model will represent a significant departure from the status quo. Care must be taken to protect access to treatments for all radiation oncology patients and not disadvantage certain types of practices, particularly given the very high fixed costs of running a radiation oncology clinic. ASTRO is committed to working with Secretary Azar and CMMI to ensure payment stability for radiation oncology practices and the highest quality of care for people who need radiation therapy services.[6]

Again, neither HHS, CMS nor CMMI have provided any additional information on development of a mandatory radiation oncology EPM. However, we anticipate significant further discussion of the types of concerns expressed by ASTRO as any new radiation oncology EPM evolves.

Stay tuned for further developments. If you have any questions, please contact:

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[1] *Azar previews plans for bundled payment models*, American Hospital Association News (Nov. 9, 2018) found at: <https://www.aha.org/news/headline/2018-11-09-azar-previews-plans-bundled-payment-models>

[2] DHHS Secretary Alex M. Azar, Remarks on Primary Care and Value-Based Transformation at Patient-Centered Primary Care Collaborative conference (Nov. 8, 2018) found at: <https://www.hhs.gov/about/leadership/secretary/speeches/2018-speeches/remarks-on-primary-care-and-value-based-transformation.html>

[3] *Id.*

[4] Fact Sheet: Bundled Payments for Care Improvement Initiative Fact Sheet (July 31, 2014) found at: <https://www.cms.gov/newsroom/fact-sheets/bundled-payments-care-improvement-initiative-fact-sheet-0>; Bundled Payments for Care Improvement Initiative: General Information found at: <https://innovation.cms.gov/initiatives/bundled-payments/>

[5] Press Release, CMS Finalizes Changes to the Comprehensive Care for Joint Replacement Model, cancels Episode Payment Models and Cardiac Rehabilitation Incentive Payment Model (Nov. 30, 2017) found at: <https://www.cms.gov/newsroom/press-releases/cms-finalizes-changes-comprehensive-care-joint-replacement-model-cancels-episode-payment-models-and>

[6] Statement in response to HHS Secretary Azar's comments on a radiation oncology alternative payment model (Nov. 8, 2018) found at <https://www.astro.org/News-and-Publications/News-and-Media-Center/News-Releases/2018/Statement-in-response-to-HHS-Secretary-Azar%E2%80%99s-comm>