

## Medicare Bundling Pilot Program

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Many provisions in the Patient Protection and Affordable Care Act (also known as the PPACA or the ACA) have garnered great media attention since the passage of the bill, but Section 3023, involving the Medicare bundling pilot program, has remained relatively elusive.<sup>1</sup> Aimed at curbing over-utilization of medical services, as well as improving coordination, quality, and efficiency in the rendering of medical care, the Medicare bundling pilot seems to have serious pros and cons in terms of implementation.<sup>2</sup>

### Medicare's Current Payment System

In a country where Medicare encompasses 20 percent of the nation's health care spending, related programs aimed at promoting high-quality, cost-conscious health care are needed.<sup>3</sup> Currently, the Medicare system pays suppliers and providers on a fee-for-service basis, which entails the provider being paid for each individual service rendered to a patient.<sup>4</sup> This payment system has been criticized as encouraging over-utilization of resources, while also rewarding providers for making mistakes that result in readmission of the patient for additional procedures.<sup>5</sup> Additionally, some believe it encourages silos, which can lead to fragmentation in care rendered to a patient.<sup>6</sup> The Medicare bundling pilot program represents a shift from this model toward a value-based approach, which has the potential to improve quality and result in significant cost reductions for the program as a whole.<sup>7</sup>

### Medicare Bundling Generally

Beginning on January 1, 2013, the PPACA mandates the U.S. Secretary of Health and Human Services (HHS) implement a pilot program to test and evaluate whether Medicare should permanently shift to the bundled payment method.<sup>8</sup> The Secretary then must make a recommendation by 2016 as to whether the program should be kept as a permanent feature in the Medicare program.<sup>9</sup> During the course of the pilot, Medicare will pay a bundled payment to the health care entities involved in program.<sup>10</sup> The

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<sup>1</sup> See Jonathan W. Pearce, *Evaluating the Medicare Pilot Programs: Comparing ACOs and Bundled Payments*, (Mar. 8, 2011), <http://www.beckershospitalreview.com/hospital-physician-relationships/evaluating-the-medicare-pilot-programs-comparing-acos-and-bundled-payments.html#>.

<sup>2</sup> E.g. BARRY R. FURROW, THOMAS L. GREANEY, SANDRA H. JOHNSON, TIMOTHY S. JOST, AND ROBERT L. SCHWARTZ, *HEALTH CARE REFORM SUPPLEMENT TO HEALTH LAW 140* (Thompson Reuters 2010).

<sup>3</sup> See Brandi Simons, *Can 'bundled' payments help slash health costs?*, (Oct. 26, 2009), [http://www.usatoday.com/news/health/2009-10-25-bundle-payments\\_N.htm](http://www.usatoday.com/news/health/2009-10-25-bundle-payments_N.htm).

<sup>4</sup> See *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> See Pearce, *supra* note 1.

<sup>7</sup> *Id.*

<sup>8</sup> E.g. Furrow, *supra* note 2.

<sup>9</sup> *Id.*

<sup>10</sup> See Pearce, *supra* note 1.

bundled payment will be a single payment for multiple services and cannot equal more than it would cost to provide the same services outside of the pilot program.<sup>11</sup> The program only covers ‘episodes of care’ provided by participating entities to Medicare Part A and Part B beneficiaries.<sup>12</sup> An ‘episode of care’ is defined as the three days prior to admission to a facility, the period of hospitalization following admission, and the thirty days after discharge from the facility, but the Secretary of HHS retains the authority to alter this definition as she sees fit.<sup>13</sup>

Once receiving the bundled payment, participating entities must disburse the payment among all providers involved in an episode of care for a patient.<sup>14</sup> Hospitals, physician groups, skilled nursing facilities, and home health agencies are the types of organizations that are anticipated to be involved in this program.<sup>15</sup> The requirements for participating in the bundled payment pilot entail being accountable for quality, cost and overall care.<sup>16</sup> It is also important for the organization to have a system in place which can distribute payments to providers.<sup>17</sup> Additionally, the entity must be able to offer a variety of choices for beneficiaries choosing providers and suppliers.<sup>18</sup> Further, it must also be able to perform services in a coordinated manner, be able to report quality measures for each episode of care, and have the ability to submit data via electronic health records.<sup>19</sup> Of course, a program such as this one must have an incentive to encourage providers to participate. The incentive for participating in this program is multi-faceted and includes a reduction in the overall cost of performing procedures on Medicare beneficiaries.<sup>20</sup> This cost reduction will likely be achieved through a reduction in internal expenses, lower payments made to providers, the reduced utilization of unnecessary services, and an increased volume of cases.<sup>21</sup> It is important to note that most of the specifics are yet to be worked out and will be issued in the form of regulations by the Secretary of HHS at a later date.<sup>22</sup>

### Learning from the Past

A similar pilot project was initiated by the Centers for Medicare and Medicaid Services (CMS) in 2009, entitled the Acute Care Episodes (ACE) demonstration project.<sup>23</sup> The three-year program entailed implementing a bundled payment system in five hospitals across the country that had previously demonstrated an ability to provide high-quality,

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See Pearce, *supra* note 1; Michael H. Park, *PPACA: National Pilot Program on Payment Bundling*, available at: [http://www.healthlawyers.org/Members/PracticeGroups/LTC/Tutorial\\_Library/Documents/101210\\_Presentation.pdf](http://www.healthlawyers.org/Members/PracticeGroups/LTC/Tutorial_Library/Documents/101210_Presentation.pdf).

<sup>14</sup> See Pearce, *supra* note 1.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> See Pearce, *supra* note 1.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

cost-efficient care to its patients.<sup>24</sup> The hospitals were reimbursed with a single payment, which was then disbursed among the different providers and suppliers involved in rendering care in heart and joint surgeries *only*.<sup>25</sup> This was definitely a shift from the fee-for-service system, where the facility and physicians were reimbursed separately.<sup>26</sup> Critics of this ACE demonstration project feared that it would possibly pressure hospitals to bring in fewer specialists to consult with patients, thereby cutting costs.<sup>27</sup> Surprisingly, the pilot project appeared to overcome such criticism through the positive support by both the hospitals involved in the project and the beneficiaries receiving care. Medicare beneficiaries were excited to be given a cash incentive ranging from \$250-\$1,157 for receiving care at one of these participating hospitals.<sup>28</sup> Further, the doctors were given a monetary bonus in addition to their already guaranteed regular surgical fees if they kept quality high, in a cost-efficient manner.<sup>29</sup> A doctor at a participating hospital commented that before the program was implemented there was no incentive to keep costs down, but with the implementation of the program, the incentive was there.<sup>30</sup> On the downside, one cardiologist involved in the program commented that the extra work involved in performing cost-efficient, high-quality procedures may not be worth it in the end if the financial gain for the hospital is only marginal.<sup>31</sup> Further, some doctors fear that a bundling system will result in the hospital holding onto Medicare reimbursements and taking care of themselves first, leaving payment to physicians an afterthought.<sup>32</sup>

### Looking Toward the Future

Whether the newest pilot program is a success will depend on many factors. If the program can significantly improve quality and coordination of care in a hospital or similar facility, it may be just the ticket to help drive down costs in the Medicare program. On the contrary, if the program turns out to cost more to administer than what is realized in savings, it is foreseeable that the pilot program will be abandoned. Either way, it should be anticipated that providers and suppliers alike will have some apprehension to adopting the Medicare bundling pilot program. In a health care market where many providers feel they are underpaid for providing care, it is understandable that a pilot program which calls for multiple parties to share one lump sum of money would cause some concern. But at the end of the day, we must wait until the specifics of the program are spelled out by the Secretary of HHS and the program is put into play. Only then can the efficiency and effectiveness of the pilot program be adequately analyzed.

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<sup>24</sup> See Simons, *supra* note 3.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> See Simons, *supra* note 3.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

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