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Alerts

Medicare Shared Savings Program

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Health Care Alert

Hinshaw Health Law Alert describing the Medicare Shared Savings Program is the fourth in a series of advisories regarding accountable care organizations (ACOs).

Section 3022 of the Patient Protection and Affordable Care Act (PPACA) amended Title XVIII of the Social Security Act, 42 U.S.C. 1395 *et. seq*., by adding a new Section 1899 to the Social Security Act to establish a Shared Savings Program. The Shared Savings Program is designed to improve Medicare-beneficiary outcomes and increase the value of care by:

- Promoting accountability for the care of Medicare beneficiaries;
- Requiring coordinated care for all services provided under Medicare Parts A and B; and
- Encouraging investment in infrastructure and redesign care processes for high-quality and efficient service delivery.

Establishment of Shared Savings Program

The new Section 1899(a)(1) of the Social Security Act requires the Centers for Medicare & Medicaid Services (CMS) to establish the Shared Savings Program no later than January 1, 2012. Eligible providers, hospitals and suppliers may participate in the Shared Savings Program by creating or joining an Accountable Care Organization (ACO). The proposed ACO regulations published in the *Federal Register* on April 7, 2011, would implement Section 3022 of PPACA, which contains provisions relating to Medicare payment to providers of services and suppliers participating in ACOs. Under the proposed ACO regulations, providers and suppliers can continue to receive traditional Medicare fee-for-service payments under Medicare Parts A and B, and may also be eligible for additional payments for "shared savings" based upon meeting specific quality and savings requirements.

As an incentive to ACOs that successfully meet quality and savings requirements, the Medicare program can share a percentage of the achieved savings with the ACO. To meet the intent of the Shared Savings Program, as established by PPACA, CMS will focus on achieving its highest-level goal of the following three-part aim:

- Better care for individuals. This goal is described by all six dimensions of quality in the Institute of Medicine report: safety, effectiveness, patient-centeredness, timeliness, efficiency and equity.
- Better health for populations with respect to educating beneficiaries about the upstream causes of ill health. This goal includes education related to poor nutrition, physical inactivity, substance abuse, economic disparities, and the importance of preventative services such as annual physicals and flu shots.
- Lower growth in expenditures by eliminating waste and inefficiencies, while not withholding any needed care that helps beneficiaries.

Sharing in Savings

Under the Shared Savings Program, an ACO will only share in savings if it first generates shareable savings and then meets the requisite quality standards. The proposed ACO regulations require an ACO to take responsibility for improving the quality of care it delivers to a group of Medicare beneficiaries, while lowering the growth in costs, in return for a share of the resulting savings. In addition to establishing a shared-savings model for rewarding quality and financial

performance, the program also holds ACOs accountable for excess expenditures by establishing an optional two-sided risk model that requires repayment of the losses by the ACO to CMS. This represents a new approach for the Medicare program because providers historically have had little or no financial incentives to coordinate the care for their patients or to be accountable for the total costs and quality of care provided.

Because there is not much comparative experience with alternative payment models and implementing a Shared Savings Program at the national level, CMS sought input on the impact of this proposed Shared Savings Program from a range of external experts, including academic researchers, clinical managers and credentialed actuaries on the potential impact of the program. Based upon this input, CMS estimates that up to 5 million Medicare beneficiaries will receive care from providers participating in ACOs and expects that many of these beneficiaries will be located in higher-cost areas. CMS therefore believes that the Shared Savings Program will have a significant impact on lowering Medicare expenditure growth.

Meeting Quality Performance Standards

CMS is seeking to structure the Shared Savings Program where ACOs electing to initially enter the one-sided model not requiring the ACO to repay CMS for any losses realized by the ACO would then be automatically transitioned to a two-sided model during the final year of the ACO's initial three-year agreement. CMS will offer the two-sided model as an option at the beginning of the Shared Savings Program, and will reward ACOs electing to enter the two-sided model with higher sharing rates available under that model. CMS has indicated that this approach provides an opportunity for more experienced ACOs ready to accept risk to enter a sharing arrangement that provides greater reward for greater responsibility.

ACOs that enter into an agreement with CMS to participate in the Shared Savings Program will be required to participate for a minimum of three years and sign an agreement. The participating ACO will be eligible to receive shared-savings payments for each year of the agreement period if it meets the established quality-performance standards and has achieved the required percent of savings below its benchmark. However, Section 1899 of the Social Security Act is silent with respect to when the shared-savings determination should be made.

CMS listed the measures in the proposed ACO regulations that it intends to use to establish quality-performance standards that the ACOs must meet for shared savings for the first performance period based upon the three-year agreement. These standards will measure clinical processes and outcomes, patient and caregiver experience of care, and utilization, such as rates of hospital admission for ambulatory-sensitive conditions.

Before an ACO can share in any savings created, the ACO must demonstrate that it is delivering high-quality care. A calculation of the quality-performance standard will indicate whether an ACO has met the quality-performance standard that would deem the ACO eligible for shared savings. CMS considered the following two alternative options for establishing quality standards: rewards for better performance and a minimum-quality threshold for shared savings.

If the ACO meets the quality-performance standards established by CMS, then "a percent (as determined appropriate by CMS) of the difference between such estimated average per capita Medicare expenditures in a year, adjusted for beneficiary characteristics, under the ACO and such benchmark for the ACO may be paid to the ACO as shared savings and the remainder of such difference shall be retained by the Medicare Program." This percentage will be the "sharing rate" and the limits set on the total amount of shared savings to be paid to an ACO will be referred to as the "sharing cap." CMS estimates a total aggregate median impact of $510 million in net federal savings for calendar years 2012-2014 from implementation of the Shared Savings Program.

In addition to having the capability under the new Section 1899(i) of the Social Security Act to implement alternative-payment models, including partial capitation, CMS also has authority to test innovative payment models. Therefore, as CMS gains experience with the Shared Savings Program and alternative payment models, it will most likely have to continue to refine and improve the program in the future to ensure that the program is effective in achieving CMS' stated three-part aim of better care for individuals, better health care for populations, and lower growth in expenditures.

Coordinated Interagency Approach

While developing the Shared Savings Program, CMS worked with other federal agencies to develop policies to encourage participation and ensure a coordinated interagency and intra-agency effort in the implementation of the program. The result has been the release of several notices that providers should be aware of, including: a joint notice from CMS and the U.S. Department of Health and Human Services Office of Inspector General related to the Medicare Program and Waiver Designs in Connection with the Medicare Shared Savings Program and the Innovation Center; an Internal Revenue Services notice soliciting comments regarding the need for additional tax guidance for tax-exempt organizations, including tax-exempt hospitals, participating in the Shared Savings Program; and a proposed antitrust policy statement issued by the Federal Trade Commission and the U.S. Department of Justice.

An upcoming issue of the Hinshaw *Health Law Alert* will discuss the proposed waiver provisions and other interagency coordinated matters.

For more information, please contact your regular Hinshaw attorney.

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