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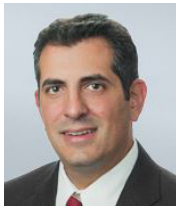
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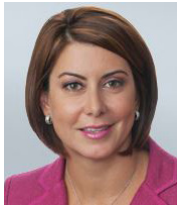
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CMS Issues Rule Proposing New Approach to Paying Clinicians for Value and Quality

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On April 16, 2015, President Obama signed the Medicare Access and CHIP Reauthorization Act of 2015 ("**MACRA**"). Among other things, MACRA: 1) repealed the Sustainable Growth Rate that was applicable to the Medicare Physician Fee Schedule, and 2) combined parts of the Physician Quality Reporting System ("**PQRS**"), the Value-Based Payment Modifier and Medicare EHR Incentive Program ("**Meaningful Use**") into the Merit-Based Incentive Payment System ("**MIPS**"). MACRA implemented statutory provisions which advance Medicare's broader push away from fee-for-service toward value and quality-based reimbursement. Changes to clinician reimbursement under MACRA are expected to significantly impact the health care industry.

On April 27, 2016 the Centers for Medicare and Medicaid Services ("**CMS**") issued a Notice of Proposed Rulemaking ("**NPR**") to implement key portions of MACRA, including the Quality Payment Program ("**QPP**"), which is a new approach to paying clinicians for the value and quality of services they provide. If enacted, the QPP will impact payment to clinicians beginning in 2019. We summarize key aspects of the 962-page NPR below.

The QPP includes two paths that clinicians can participate in: 1) MIPS, or 2) Advanced Alternative Payment Models ("**APMs**").

Merit-Based Incentive Payment System

With certain exclusions -- newly Medicare-enrolled clinicians, clinicians that bill less than $10,000 and see fewer than 100 Medicare Part B beneficiaries during the performance year, Qualifying APM Participants and Partial Qualifying APM Participants -- MIPS applies to Medicare Part B clinicians including physicians, physician assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists and groups that include such clinicians. Under MIPS, eligible clinicians would be measured in four weighted performance categories:

1. **Quality** (50% of score in Year 1) – as with PQRS, clinicians will choose six measures to report from among a range of options that accommodate differences among specialties and practices.

2. **Advancing Care Information** (25% of score in Year 1) -- clinicians will choose to report customizable measures that reflect how they use technology in their day-to-day practice, with a particular emphasis on interoperability and information exchange. Unlike the existing Meaningful Use program, this category is scaled and does not require all-or-nothing EHR measurement or redundant quality reporting. This component does not apply to hospital based physicians.

3. **Clinical Practice Improvement Activities** (15% of score in Year 1) – clinicians will be rewarded for clinical practice improvements, such as activities focused on care coordination, beneficiary engagement, and patient safety. Clinicians may select activities that match their practices' goals from a list of more than 90 options. In addition, clinicians will receive credit in this category for participating in Alternative Payment Models and Patient-Centered Medical Homes.

4. **Cost** (10% of score in Year 1) -- for this category, the score will be based on Medicare claims, meaning no reporting requirements for clinicians. This category would use 40 episode-specific measures to account for differences among specialties.

Based on their score in the four performance categories eligible clinicians will receive positive, negative, or neutral adjustments to Medicare Part B reimbursement. Over time potential negative adjustments would increase ranging from -4% in 2019 to –9% in 2022 and after, with corresponding positive adjustments. Because the law requires budget neutrality, the maximum positive adjustments would be scaled up or down, meaning, by way of example, that the maximum positive adjustment in 2019 could be higher or lower than 4%. In the first five performance years, MACRA allows for an additional $500 million in additional performance bonus that is exempt from budget neutrality for exceptional performance. The rule proposes that the first performance period will be January 1 through December 31, 2017 for payments adjusted in 2019.

Alternative Payment Models

Under MACRA clinicians who participate in certain (those that accept "more than nominal financial risk") APMs ("**Advanced APMs**") are not subject to MIPS. From 2019 through 2024, eligible clinicians who "substantially participate" in Advanced APMs ("**Qualifying APM Participants**" or "**QPs**") would receive a lump sum payment equal to five percent (5%) of their prior year's Medicare Part B covered professional services payments. Beginning in 2026, Qualifying AMP Participants will receive a higher update under the Medicare Physician Fee Schedule than non-QPs. Under CMS's proposed criteria for Advanced APMs the following APMs qualify as Advanced APMs:

1. Comprehensive ESRD Care (Large Dialysis Organization arrangement)
2. Comprehensive Primary Care Plus
3. Medicare Shared Savings Program Tracks 2 & 3
4. Next Generation ACO Model
5. Oncology Care Model two-sided risk arrangement (available in 2018)

Note Medicare Shared Savings Program Track 1 (upside risk only) and bundled payment programs do not qualify as Advanced APMs under CMS's proposed criteria.

To satisfy the requirement for "substantially participating" in Advanced APMs, eligible clinicians must satisfy either the payment or patient requirements as follows:

Payment Year	2019	2020	2021	2022	2023	2024 and later
% of Payments through an Advanced APM	25%	25%	50%	50%	75%	75%
% of Patients through an Advanced APM	20%	20%	35%	35%	50%	50%

CMS estimates that as many as 90,000 clinicians could receive the bonus for substantially participating in Advanced APMs in the first payment year. CMS is accepting comments on the proposed regulations until June 27, 2016.

If you have questions, please contact Kelly Leahy at (614) 628-6815 or kleahy@slk-law.com; Jenifer Belt (419) 321-1222 or jbelt@slk-law.com; Ron Christaldi at (813) 221-7152 or rchristaldi@slk-law.com; or Erin Aebel at (813) 227-2357 or eaebel@slk-law.com.

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