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GOVERNMENT

Skepticism greets Medicare ACO shared savings program

The proposed rule for accountable care organizations allows physicians to share quality rewards, but some experts question how many will buy into the program.

By CHARLES FIEGL, amednews staff. ***Posted April 18, 2011.***

Washington -- Physicians and hospitals coordinating their patients' care would share in potentially millions of dollars' worth of savings to the Medicare program under a new payment model set to begin in 2012.

The Centers for Medicare & Medicaid Services released a long-awaited proposed rule outlining the accountable care organization program on March 31. It's the latest effort by CMS to pay doctors based on quality of care and patient outcomes instead of just service volume.

Physicians volunteering to be part of the effort would share risk by paying penalties for failing to coordinate care and costing Medicare more money than anticipated.

The American Medical Association is reviewing the proposal and related draft guidance from other federal agencies, such as the Federal Trade Commission and the Dept. of Justice, said Jeremy A. Lazarus, MD, speaker of the AMA House of Delegates.

ACOs will work only if all doctors who want to participate are able, Dr. Lazarus said. "For this to happen, significant barriers must be addressed, including the large capital requirements to fund an ACO and to make required changes to an individual physician's practice, existing antitrust rules and conflicting federal policies."

An estimated 1.5 million to 4 million Medicare patients will receive care from an ACO, CMS said in the proposed rule. The agency estimates startup costs and first-year operating expenditures for each ACO would be $1.76 million. Payouts to the 75 to 150 ACOs could reach $800 million in bonuses over three years, although CMS estimates it would assess $40 million in penalties.

ACO networks must have at least 5,000 patients. A hospital would not necessarily need to be included. Networks would report 65 quality measures on patient experience, care coordination, patient safety, preventive health and care to at-risk populations.

The University of Michigan has participated in the Medicare physician group practice demonstration project, a type of shared savings payment model, during the past four years. The university has earned $12 million in bonuses while saving the Medicare program about $36 million, said David Spahlinger, MD, senior associate dean for clinical affairs and executive director of the university's faculty group practice.

The university probably will bid to participate in the ACO program next year, but the regulations as written would make earning bonuses difficult, Dr. Spahlinger said. He cited the increase in quality measures from the 32 measures his demonstration group has reported. Challenges also will arise when attempting to meet standards for creating an ACO governing board. Dr. Spahlinger worries that appointing members could conflict with the state's constitution.

Two ACO payment tracks

The proposed rule outlines two tracks for ACOs. The first track establishes lower risks and rewards, ideally for groups just getting started with the care coordination concept. Groups can earn bonuses for three years, sharing up to 50% of savings, but they are exposed to potential penalties only during the third and final year.

The second track has higher risks and rewards. Groups are subject to penalties for all three years, but they are eligible to capture up to 60% of savings in annual bonuses based on the ACO's quality performance.

Doctors in an ACO will continue to bill Medicare under the fee-for-service system. Unlike in managed care, patients also retain the right to see the physicians they choose regardless of ACO affiliation, said CMS Administrator Donald M. Berwick, MD.

"Beneficiaries don't enroll in an ACO; the provider does," he said. "Under the rule, the provider who is forming the ACO is required to inform patients ... that [the provider is] a member of the ACO."

Advocate Physician Partners, an alliance of 3,800 physicians in Illinois, is in the first year of a shared savings program with BlueCross BlueShield of Illinois. Officials are studying the CMS rule, but they are not sure if Advocate will participate as a Medicare ACO next year, said Mark Shields, MD, senior medical director of the Oak Brook, Ill.-based alliance.

"It's a significant hurdle to succeed with the Medicare ACO program as the regs are now written," Dr. Shields said.

"It's not the place for an organization that has not already done significant care reorganization."

For instance, the ACO proposal requires that 50% of the physicians are meaningful users of electronic medical records as defined by the Dept. of Health and Human Services.

Several federal agencies vetted the proposed rule because of antitrust and tax concerns. After the review, the Justice Dept., the FTC, the Internal Revenue Service and the HHS Office of Inspector General cleared the rule for release. Policy statements indicated that physicians and hospitals must continue to be cognizant of federal restrictions.

"By forming an ACO, one is not exempt from antitrust laws," said Christine Varney, assistant attorney general with the Justice Dept.'s Antitrust Division. "Those who collaborate to fix prices inappropriately will be prosecuted."

Doubts about a revolution

Some experts are skeptical that ACOs will change the American health system to a significant degree. Michael Cannon, director of health policy studies at the libertarian Cato Institute in Washington, D.C., said he gives the federal ACO effort a zero percent chance of realizing significant savings for the Medicare program. He said the concept works only in the private market.

ACOs aim to save money "by getting doctors to provide fewer services," Cannon said.

"If you do that they are going to get paid less, there will be fewer jobs for doctors, and the doctors are going to protest."

There are ACOs and integrated health systems that save money and control costs, said Robert Laszewski, a health policy analyst in Alexandria, Va. But these systems represent a tiny percentage of the U.S. health system. Laszewski said Medicare ACOs are great in theory, but he questioned whether they will change the system, because doctors and hospitals always can make more with fee-for-service.

ADDITIONAL INFORMATION:

Staying compliant in an ACO

The Dept. of Justice, Federal Trade Commission, Internal Revenue Service and Dept. of Health and Human Services Office of Inspector General have released draft policy statements on accountable care organizations. Here are some key elements:

Antitrust policy: The Justice Dept. and the FTC would review an ACO with a 50% or greater share of any common service that two or more independent ACO participants provide to patients in the same primary service area.

"Safety zone": An ACO with a combined market share of 30% or less of common services is considered "highly unlikely to raise significant competitive concerns."

Waivers: The Centers for Medicare & Medicaid Services and the OIG will waive the physician self-referral, anti-kickback and civil monetary penalties statutes for ACOs when groups meet federal criteria.

Taxes: The IRS says tax-exempt organizations must ensure that shared savings with an ACO will not produce net earnings that benefit insiders.

How to weigh in

The Centers for Medicare & Medicaid Services expects a significant number of public comments on the proposed ACO rule before the comment period closes at 5 p.m. June 6. All comments must refer to the rule's file code, CMS-1345-P.

- Make comments online (**www.regulations.gov**). Follow the "Submit a comment" instructions and type "accountable care organizations" or "CMS-1345-P" in the "keyword or ID" field.
- Mail comments to: Centers for Medicare & Medicaid Services, Dept. of Health and Human Services, Attention: CMS-1345-P, P.O. Box 8013, Baltimore, MD 21244-8013
- Send by express or overnight mail to: Centers for Medicare & Medicaid Services, Dept. of Health and Human Services, Attention: CMS-1345-P, Mail Stop C4-26-05, 7500 Security Blvd., Baltimore, MD 21244-1850

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Centers for Medicare & Medicaid Services accountable care organizations fact sheet for medical professionals (**www.cms.gov/apps/media/press/factsheet.asp?counter=3914**)

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