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AUGUST 2018

The New Paradigm for Physician Compensation: Payment for Value/Quality v. Volume

In the future, how will physician compensation arrangements be impacted by MACRA with respect to determining Fair Market Value and commercial reasonability?

The enactment of the Medicare Access and CHIP Reauthorization Act (MACRA) in November 2016 set forth future options for payment from Medicare, those being participation in the Merit-Based Incentive Payment System (MIPS) or participation in one or more Alternative Payment Models (APM's). Both models will likely change how physicians are compensated.

MIPS requires participating Medicare providers to be subject to payment adjustments, both positive or negative, based on their performance as determined by four measures, those being (1) quality, (2) advancing care information, (3) clinical practice improvement activities and (4) cost. While MIPS was designed to provide incentives for both quality and value improvements, it was also designed to maintain budget neutrality for Medicare expenditures. Therefore, some physicians will see improved reimbursement while others will see a decline in their reimbursement from Medicare.

While it is incumbent upon each physician/provider to become familiar with the details surrounding the criteria for enhancing their Medicare reimbursement through MIPS and/or APM's, the potential adverse impact associated with potentially declining reimbursement poses significant risks for hospitals and their employed physicians. In effect, if employed physicians fail to meet the required metrics for full Medicare reimbursement under MACRA but their compensation arrangement does not adjust accordingly, there could be a problem in terms of Stark/AKS compliance. These issues should be discussed with legal counsel. However, it is clear that the traditional models of physician compensation, particularly those focused on volume incentives (patient encounters or WRVU's) have the potential of being problematic in the future.

Aside from hospital boards and C-Suite executives being concerned about the operational losses associated with hospital affiliated physicians/practices, there is growing concern as to the risk of liability under the Stark Law, Anti-Kickback Statute and/or the False Claims

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Act. Again, while these issues must be addressed by legal counsel, there is growing concern about fair market value and commercial reasonability in light of substantial and seemingly unjustified losses associated with hospital employed physicians. Given the impact of MACRA/MIPS, it will be difficult to project future revenues for individual providers during this period of uncertainty (not to mention any impact of the ACA repeal/replacement legislation).

Although there has been a two-year lag between the period during which MIPS performance data is collected (measurement period) and the period during which payment adjustments will be made (payment period), beginning in 2018 and beyond, the standards will become more strict which suggests that payment enhancements and reductions will be recognized in 2020 and later years.

While there is no immediate cause for alarm, hospitals should be preparing both themselves and their employed physicians about the future changes. Future contractual issues which may be impacted are multi-year agreements with non-adjusting salary guarantees or fixed compensation per hour/per visit/per WRVU; bonuses or penalties inconsistent or incompatible with payer quality standards; and/or financial metrics which suggest inappropriate risk (or lack thereof) for one party versus another. Effectively, one party cannot be put in a position of financial loss due to the other party's actions without the other party bearing commensurate risks, as this might be deemed to be inconsistent with prevailing business practices or "commercially unreasonable".

We recommend all physician compensation arrangements be reviewed from both a Fair Market Value and commercially reasonable standpoint. Therefore, many organizations are "easing" into the value/quality based compensation models by offering both base salary (either a flat amount per year or based on a given amount of WRVU's), coupled with incentive compensation based upon quantitative criteria (number of patient encounters, WRVU's, etc.) and qualitative criteria (using quality indicators such as PQRS, MIPS, etc.). This approach to physician compensation is compliant from a regulatory standpoint and reasonable in terms of compensating physicians as well as changing the mindset toward value based compensation as required in the future.

For further information regarding Fair Market Value Compensation Opinion Letters for Physician Contractual Arrangements, please contact us directly.

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