

What's New For CMS Bundled Payments Program

By **Michael Lampert, Devin Cohen, Josef Weimholt and Evander Williams** (June 3, 2019)

On April 24, 2019, the Centers for Medicare & Medicaid Services released a request for applications for the Bundled Payments for Care Improvement Advanced model for its second cohort of applicants since the program's inception.[1]

BPCI Advanced is an initiative of CMS' Center for Medicare & Medicaid Innovation, and is designed to increase participation in voluntary bundled payment models.[2] BPCI Advanced commenced for the first cohort of participants on Oct. 1, 2018, and the second cohort will begin participation on Jan. 1, 2020 for model year 3.[3] As CMS does not anticipate issuing additional requests for applications for model years 4 (2021) through 6 (2023), this may be the last opportunity for stakeholders to participate in BPCI Advanced as conveners or nonconveners participants contracting with CMS.

New applicants have until June 24, 2019, to apply. Current BPCI Advanced participants had until June 1, 2019, to execute an optional amendment to the initial BPCI Advanced agreement, which was recently released by CMS.

The implications of the proposed amendment, and basis for CMS' changes, are discussed in further detail below.

BPCI Advanced Model

With BPCI Advanced, CMS is testing an alternative payment model that uses bundled payments tied to stakeholder performance on quality measures as a means to incentivize financial accountability, care redesign, data analysis and feedback, as well as provider, caregiver and patient engagement.[4] BPCI Advanced uses a retrospective bundled payment approach, meaning that stakeholders continue to receive customary fee-for-service payments for all items and services within a given clinical episode, and the total nonexcluded Medicare fee-for-service expenditures are reconciled against a predetermined target price for that clinical episode.[5]

On an annual basis, CMS pays stakeholders a net payment reconciliation amount payment if the fee-for-service expenditures for all episodes treated during the year are less than the targeted price for those episodes, or, if the fee-for-service expenditures for all episodes treated during the year exceed the targeted price for those episodes, the stakeholders pay CMS a repayment amount.[6]

Some stakeholders may apply to become a "participant," which is an entity that enters into the BPCI Advanced model agreement with CMS. CMS requires all participants to take on downside financial risk (i.e., to agree to pay the repayment amount if actual fee-for-service expenditures exceed targeted prices) from the outset, and classifies them into two categories: convenue participants and nonconvenue participants. Both categories of participants may enter into relationships with downstream physicians and nonphysician practitioners to share the net payment reconciliation amount payment or to



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apportion responsibility for the repayment amounts, if any. There are, however, differences between conveners and nonconveners, for which we provide a high-level summary below.

Convener Participants

Convener participants must bear full financial risk to CMS on behalf of at least one acute care hospital or physician group practice, and must enter into an agreement with a physician group practice or acute care hospital that requires the physician group practice or acute care hospital to adhere to the terms of the BPCI Advanced model agreement. CMS further classifies physician group practices and acute care hospitals participating in BPCI Advanced as “downstream episode initiators” responsible for triggering the clinical episode for which the convener participant is ultimately financially responsible.

Nonconvener Participants

Only physician group practices and acute care hospitals may act as nonconvener participants. In these arrangements with CMS, the nonconvener participant bears full financial risk only for themselves, and the nonconvener participant initiates the episode of care for which the nonconvener participant is responsible.[7]

The BPCI Advanced Model Year 3 Timeline[8]

To apply to participate, applicants must submit their materials to CMS through the BPCI Advanced application portal.[8] After CMS selects the applicants based on their submitted materials, the applicants must pass a required provider vetting process, in addition to law enforcement screenings before they can participate.

April 24, 2019: CMS posted the request for applications, and the application submission period began for the second cohort of participants.

June 24, 2019: The application period ends.

June to July 2019: CMS reviews applications.

September 2019: CMS distributes the model year 3 participation agreements to selected applicants.

November 2019: The selected applicants sign and submit the participation agreements in addition to their participant profile.

December 2019: The selected participants must submit all deliverables for Quarter 1 2020 to CMS. (The required deliverables include the following: Participant profile due about 60 days prior to the start of the model year; the care redesign plan due about 30 days before the start of the model year; and the quality payment program list and financial arrangement list, which are both due about 30 days before the start of the quarter.)[10]

Jan. 1, 2020: Model year 3 begins, and the second cohort of participants starts providing services through the BPCI Advanced.[9]

Model Year 3 Changes

The request for applications released by CMS includes certain changes to BPCI Advanced for model year 3 compared to model years 1 and 2. Specifically, more clinical episodes are available for model year 3 (37 instead of 32)[11] and stakeholders have more flexibility with respect to quality measures. CMS may permit participants to choose either the

administrative quality measures set, which contains the quality measures used in 2018 and 2019, or an alternate quality measures set.[12]

The alternative quality measures will include both claims-based and registry-based (i.e., a tailored set of quality measures for each specialty specific clinical episode) measures, as opposed to only claims-based measures used for the administrative quality measures.[13] CMS will use the same calculation methodology to assess the quality measures, regardless of the quality measure set the new participants select. CMS aims to release the alternate quality measures for model year 3 prior to June 24, 2019, when the application period ends.[14]

In addition to the changes reflected in the request for applications for model year 3, CMS has offered current participants the option to amend their existing BPCI Advanced model agreements. The recently released amendment — which would be effective upon execution (and presumably will be incorporated automatically into the model agreements for new participants in model year 3) — includes the following changes:

- Elimination of the 50% cap on net payment reconciliation amount sharing payments, which some believed weakened the financial incentive for physician group practices and acute care hospitals to act as a convener participant;
- Changes to allow convener participants with downstream episode initiators to avoid the need for a secondary repayment source (which must consist of funds held in escrow or a letter of credit) if all of the participant's downstream episode initiators enter into agreements allowing CMS to collect repayment amounts owed by the convener participant through reduction of Medicare payments otherwise owing to the downstream episode initiators;
- Elimination of the one-year reapplication waiting period for participants who terminate the agreement early;
- Changes to the reporting mechanism through which CMS tracks participation in the quality payment program, to allow all eligible clinicians participating in BPCI Advanced (including physicians and nonphysician practitioners) to be assessed for quality payment determinations and scored under the advanced payment model scoring standard; and
- Expansion of the existing telehealth payment policy waiver to allow Medicare payment for telehealth services regardless of whether the service is furnished to a BPCI Advanced beneficiary located in a telehealth originating site, provided that the telehealth service is furnished to a BPCI Advanced beneficiary in their home or place of residence during a BPCI Advanced clinical episode by an eligible provider.

CMS sent participants the amendment, which participants had to sign by June 1, 2019, if

they wished to take advantage of the recent changes.

Amendment Implications

The amendment signaled an acknowledgment by CMS of industry dissatisfaction and concern with the initial BPCI Advanced structure, and in particular, its 50% cap on net payment reconciliation amount sharing payments. Stakeholders have argued that the 50% cap substantially reduced the appeal for high-functioning physician group practices or acute care hospitals to participate in BPCI Advanced as downstream episode initiators — where they may focus exclusively on care coordination, quality improvement and cost management, rather than network development and oversight.

In turn, the initial program structure incentivized these physician group practices and acute care hospitals to act as participants, which are not subject to the cap. The amendment and elimination of the 50% cap highlights the value physician group practices and acute care hospitals provide to BPCI Advanced as downstream episode initiators, as well as the efficiencies created by legacy participants with whom they contract and have substantial experience in day-to-day oversight across participating providers.

The amendment further expanded opportunities for participants to allocate financial risk across their downstream episode initiators, and eliminated certain administrative burdens associated with CMS repayment amount collections. The original BPCI Advanced agreement held participants directly responsible for repayment amounts and imposed onerous requirements in order to ensure participants maintained adequate access to capital throughout the arrangement's term, on behalf of itself and its downstream episode initiators.

The amendment, however, now permits downstream episode initiators to provide CMS with the express right to collect any outstanding repayment amount by reducing independent Medicare payments. Provided that all contracted downstream episode initiator arrangements include such provisions, CMS has alleviated the secondary repayment source requirements imposed upon applicable participants. Further presuming that this same change is included in the model 3 BPCI Advanced agreement, program participation as a participant convener or nonconvener participant could be appealing to organizations with more limited financial resources. Conversely, however, networks that do not require direct risk assumption by downstream episode initiators may become more appealing for physician group practices and acute care hospitals.

In addition to alleviating secondary repayment source requirements and eliminating the 50% cap on net payment reconciliation amount, the amendment resolves ambiguity surrounding the impact of a convener participant's decision to terminate the BPCI Advanced agreement early.

Before the amendment, if a participant elected to terminate the BPCI Advanced agreement early for any reason, CMS would impose a one-year waiting period before such participant could "reapply" to participate in BPCI Advanced. However, it was unclear whether the one-year waiting period on "reapply[ing]" would prohibit a convener participant from applying with an entirely different set of downstream episode initiators.

When CMS indicated that the one-year waiting period would indeed apply to convener participants seeking to participate with different downstream episode initiators,^[15] many convener participants promptly objected. CMS in turn issued guidance prior to a March 1, 2019, deadline in connection with the one-time "Retroactive Withdrawal Policy" that the waiting period would not prohibit convener participants from applying for model year 3, thus freeing up convener participants — many of whom have multiple BPCI Advanced

agreements in place with CMS — to terminate (whether retroactively by the March 1 deadline, or prospectively for other terminations) some or all such agreements without fear of being locked out of the model year 3 enrollment period. The amendment now formally eliminates the one-year waiting period altogether.

Finally, the amendment signals CMS' move towards a simpler, more flexible BPCI Advanced program with changes to QPP list requirements and the program's telehealth waiver. With respect to the QPP list, the amendment imposes streamlined documentation submission requirements in order to better conform with requirements of the Medicare Access and CHIP Reauthorization Act of 2015 and reduce participant administrative costs.

Additionally, CMS broadened the telehealth waiver to include services furnished at any BPCI Advanced beneficiary's home may allow for greater access to BPCI Advanced for more beneficiaries, tracking CMS' broader initiatives to loosen telehealth access requirements for Medicare and Medicaid participants.

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[1] CMS, BPCI Advanced: Applicant Res. (last visited May 1, 2019), <https://innovation.cms.gov/initiatives/bpci-advanced/applicant-resources.html#applicant>.

[2] Id.

[3] Id.

[4] CMS, Request for Applications, BPCI Advanced for Model Year 3, 3-4 (April 18, 2019), available at <https://innovation.cms.gov/Files/x/bpciadvanced-my3-rfa.pdf>.

[5] An overview of key features and program logistics of BPCI Advanced is available at the following link: <https://www.ropesgray.com/en/newsroom/alerts/2018/02/What-To-Know-About-CMS-New-Bundled-Payment-Model>.

[6] Id.

[7] CMS, General FAQs – BPCI Advanced Model Year 3, Question 4 (Apr. 2019), <https://innovation.cms.gov/Files/x/bpciadvanced-general-faq.pdf>.

[8] CMS, BPCI Advanced: Applicant Resources (May 1, 2019), <https://innovation.cms.gov/initiatives/bpci-advanced/applicant-resources.html#applicant>.

[9] CMS, Application Road Map – Model Year 3 (last visited May 1, 2019), <https://innovation.cms.gov/Files/x/bpci-advanced-my3-app-roadmap.pdf>. CMS notes all dates are subject to change.

[10] CMS, General FAQs – BPCI Advanced Model Year 3, Question 29 (Apr. 2019), <https://innovation.cms.gov/Files/x/bpciadvanced-general-faq.pdf>.

[11] The added clinical episodes for Model Year 3 include: Bariatric Surgery; Inflammatory Bowel Disease; Seizures; Transcatheter Aortic Valve Replacement; and Major joint replacement of the lower extremity. CMS, General FAQs – BPCI Advanced Model Year 3, Question 10 (Apr. 2019) <https://innovation.cms.gov/Files/x/bpciadvanced-general-faq.pdf>.

[12] CMS, Request for Applications, BPCI Advanced for Model Year 3, Appendix B (Apr. 18, 2019), <https://innovation.cms.gov/Files/x/bpciadvanced-my3-rfa.pdf>.

[13] Id.

[14] BPCI Advanced, (May 1, 2019), <https://innovation.cms.gov/initiatives/bpci-advanced>.

[15] CMS, CMS Statement Regarding the Retroactive Withdrawal Policy and the new Participation Agreement for BPCI Advanced, 1 (August 1, 2018), available at: <https://innovation.cms.gov/Files/x/bpciadvanced-withdrawal-participation.pdf>.