CMS Announces ACO Initiatives Including New Model Options for Establishing ACOs

On May 17, 2011, the Centers for Medicare & Medicaid Services ("CMS") announced three initiatives to help physicians, hospitals and other providers become Medicare Accountable Care Organizations ("ACOs"). A copy of the announcement is available here. The announcement follows CMS's proposal last month of long-awaited regulations for the Medicare Shared Savings Program (the "Shared Savings Program"), authorized under section 3022 of the Affordable Care Act (the "Act") (analyzed by Ropes & Gray in a previous alert). The three new initiatives are: (i) the Pioneer ACO Model ("Pioneer Model"), (ii) the Advance Payment ACO Model ("Advanced Payment Model"), and (iii) the provision of Accelerated Development Learning Sessions on ACOs. The newly established Center for Medicare and Medicaid Innovation ("CMMI"), which has broad authority and $10 billion in funding to develop and support new delivery system models, will undertake these initiatives. The initiatives provide alternatives to the Shared Savings Program, modifying many of the program details that have been criticized by the provider community, and offer other means to support the efforts of physicians, hospitals and other providers to become ACOs.

Pioneer Model. The Pioneer Model is designed for "vanguard" organizations that are already functioning as an ACO or other accountable care model and is designed to work in conjunction with similar "outcomes based" payments systems developed by other payers (Medicaid and commercial insurance). While many of the requirements of the Pioneer Model are consistent with those of the Shared Savings Program, the two models differ in several important respects, including the opportunity for a more aggressive assumption of risk (and potential upside) by the ACO, the possibility of electing a prospective beneficiary assignment methodology, and an expansion in the kind of primary care providers serving ACO patients. The Pioneer Model Request for Application includes a chart summarizing the differences between the Shared Savings Program and the Pioneer Model. The Pioneer Model will be open to up to 30 organizations and is projected to save Medicare up to $430 million over three years. Participating organizations will be selected through a competitive application process. Letters of Intent are due to CMS by June 10, 2011, and applications must be postmarked by July 18, 2011. CMS will hold an Open Door Forum to review the request for applications on June 7, 2011.

Program Components:

- **Eligibility** – Eligibility criteria are similar to the Shared Savings Program, although the Pioneer Model requires the governing board to have a consumer advocate representative and the ACO to have a minimum of 15,000 (rather than 5,000) aligned Medicare beneficiaries unless it is serving rural populations.
- **Participation Period** – The Pioneer Model agreements will be for three performance periods beginning in the fall of 2011, with two annual renewal periods on January 1, 2013 and January 1, 2014 (slightly more than three years total). Qualifying ACOs may be able to extend participation for an additional two years.
- **Beneficiary Assignment** – While the Shared Savings Program as proposed allows only for retrospective beneficiary assignment to the ACO, the Pioneer Model permits a participating ACO

to choose either retrospective assignment as designed under the Shared Savings Program or a newly designed prospective assignment process. Under the prospective process, primary care services provided by nurse practitioners, physician assistants and, under certain circumstances, specialists may be taken into account in the assignment process. As in the Shared Savings Program, beneficiaries will maintain full free choice of providers.

- **Payment Arrangements** – CMS will offer participants a choice of payment arrangements: a "Core Payment Arrangement" described in the Request for Applications, as well as two variations on the core arrangement, and an Alternative Payment Arrangement for which CMS is soliciting ideas from applicants. CMS will review the proposals and decide on the structure of the Alternative Payment Arrangement, allowing the participating ACOs to choose between the two as they enter into their contract with CMS.

  The Core Payment Arrangement is similar to the two-sided model in "Track 2" of the Shared Savings Program, except that it offers the possibility of a higher shared savings percentage and risk for a greater percentage of losses. Under the standard Core Payment Arrangement, the ACO would share in up to 60% of savings and losses in Year 1, capped at 10% of total expenditures, and up to 70% of shared savings and losses in Year 2, capped at 15% of total expenditures. (One of the variations on this arrangement would increase these savings/loss percentages to 70% in Year 1 and 75% in Year 2, with a 15% cap for both years.) ACOs will be required to achieve savings of at least 1% of the benchmark (the "minimum savings rate") in order to receive shared savings, but once this threshold is met, the savings will be shared on a first dollar basis. If the ACO achieves a specified minimum savings amount in the first two years, it will be eligible to transition to a "population-based" (or partially capitated) payment beginning in Year 3. Under this approach, the ACO would receive fee-for-service payments at 50% of payment rates on submitted claims, and per-beneficiary-per-month payments that equal the other 50% of the ACO's projected FFS revenue. Despite the prospective per-beneficiary payment, at the end of the payment period, there would be a reconciliation of all payments made (fee-for-service and per-beneficiary) and an overall shared savings or loss payment would be determined based on the percentages and methodology used in Year 2.

- **Quality Measures –** The quality performance measures will be identical to those ultimately adopted in the final regulations for the Shared Savings Program (a detailed list of the 65 proposed measures is available here). A quality performance score will be calculated on the same basis as in the Shared Savings Program, and applied to the Shared Savings and Loss rates described above.

- **Participation of Other Payers –** By the end of the second performance period, CMS is requiring that at least 50% of the aggregate revenues of the ACO attributable to participating providers (including Medicare revenues) be "outcomes based" – or paid pursuant to contracts holding the providers accountable for the quality and efficiency of care provided. CMS is not mandating that other payers participate pursuant to the same payment model as Medicare, but anticipates greater commitment to an outcomes-based business model if the ACO is held accountable for at least half of its revenues. CMS is particularly encouraging ACOs to work with state Medicaid agencies, in addition to private payers and self-insured employers.

- **Legal and Regulatory Guidance –** CMS has indicated that the antitrust and tax guidance issued by the FTC, DOJ and IRS in connection with the Shared Savings Program will be applied to the Pioneer Model. The OIG and CMS "expect to apply consistent principles to the consideration of fraud and abuse waiver designs for all ACO programs and models in the Medicare program."

Advance Payment Model. The Advance Payment Model attempts to address concerns that have been raised regarding lack of access to the capital needed to invest in the infrastructure and resources necessary to establish an ACO and to coordinate care. Under the Advance Payment Model, an eligible organization could receive an advance on expected shared savings as a monthly payment for each aligned Medicare beneficiary. The pre-payment amounts would be recouped through the entity's earned shared savings. To be eligible for advance payment, a participating ACO would, among other criteria, be required to provide a plan for use of the advanced funds. The demonstration would examine whether participation in the Shared Savings Program would be encouraged by pre-paying projected future shared savings to potential participants.

Advanced Payment Model Comment Submission Information:

- CMMI will be accepting comments on this proposal until June 17, 2011. Comments can be submitted electronically to advpayACO@cms.hhs.gov.

Accelerated Development Learning Sessions. CMS will offer four Accelerated Development Learning Sessions ("Learning Sessions") on (i) ACO functions, (ii) methods to build capacity to achieve better and cheaper care through integrated care models, and (iii) methods to develop an action plan for improving coordination of care. The curriculum for each Learning Session will be based on "core competencies" for ACO development, but CMS indicates that the Learning Sessions will not include specific requirements for participation in any CMS ACO program, nor will attendance at Learning Sessions be considered as a factor for selection or participation in any such program.

Registration & Scheduling Information:

- The initial Learning Session will be held on June 20-22, 2011, in Minneapolis, MN, but will be aired through webcast with the accompanying materials made available online. Registration information regarding the June Learning Session is available at https://acoregister.rti.org/.
- CMS will announce information on the remaining three Learning Sessions for 2011 at a later time.

If you have questions about these initiatives or other questions related to ACOs, please contact the Ropes & Gray attorney who normally advises you. Additional Ropes & Gray ACO analyses, including materials from our ongoing ACO webinar series, can be found at the ACO page of the Ropes & Gray Health Reform Resource Center.