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## **CMS' Independence at Home Demonstration: Deadlines, Requirements and Legal Risks**

In-home primary care providers may have an opportunity to participate in Medicare cost savings realized in providing care to chronically ill beneficiaries in the home setting. Pursuant to Section 3024 of the Affordable Care Act (P.L. 111-148), the Centers for Medicare & Medicaid Services (CMS) will conduct the Independence at Home (IAH) Demonstration to test home-based primary care for Medicare fee-for-service beneficiaries having multiple chronic illnesses. The IAH Demonstration will run for three years, and participating primary care providers will have the opportunity to receive a percentage of program savings,<sup>1</sup> as determined by their performances on various quality indicators.<sup>2</sup> If the home-based primary care is successful in forestalling the need for care in institutional settings, the proposed savings to be shared with providers could be substantial. Additionally, IAH providers will continue to bill and be paid standard Medicare reimbursement. Providers interested in participating in the IAH Demonstration must apply by February 6, 2012.

As further discussed below, there are a number of eligibility requirements that providers must satisfy for participation. Among these, providers must, on average, have at least 200 eligible beneficiaries as patients for each year of the IAH Demonstration. Note, however, that providers within a geographic area that do not individually have 200 eligible beneficiaries may form a consortium in order to reach this patient threshold. Providers that want to participate as a consortium must file a letter of intent by the February 6, 2012, application deadline, but they will then have 90 days thereafter to complete formation of their consortium and the IAH Demonstration application.

- 1 This will be determined with respect to a so-called "minimum savings requirement" (MSR). CMS will establish MSRs for participating providers to identify whether any annual savings are statistically greater than normal year-to-year variation. MSRs will be influenced by numbers of qualifying patients, such that those participating providers with fewer patients will need to produce greater savings to achieve a statistically significant result.
- 2 Those measures tied to incentive payments are as follows:
  - Number of inpatient admissions for ambulatory-care sensitive conditions per 100 patient enrollment months;
  - Number of readmissions within 30 days per 100 inpatient discharges;
  - Number of emergency department (ED) visits for ambulatory-care sensitive conditions per 100 patient enrollment months;
  - Contact with beneficiaries within 48 hours upon admission to hospital and discharge from hospital and/or ED;
  - Medication reconciliation at home; and
  - Patient preferences documented.

To qualify for incentive payments, a participating provider must meet or exceed performance requirements on at least three of these six quality measures.

## Provider eligibility

To be eligible for participation in the IAH Demonstration, providers must be individual physicians or nurse practitioners or a multispecialty group comprising such members as physicians, nurse practitioners, physician assistants, social workers, and other clinical support staff. Such providers must—

- be experienced in providing home-based primary care to applicable beneficiaries;
- make in-home primary care visits;
- be available 24/7 to carry out plans-of-care tailored to the needs of individual patients;
- be organized (at least in part) for the purpose of providing physician services;
- use electronic records, remote monitoring, and mobile diagnostic technology;
- furnish services to an average of 200 or more eligible beneficiaries during each year of the IAH Demonstration;
- report information about their patients and the health care services provided; and
- report on required quality measures.

Note that home health agencies may participate in the IAH Demonstration if they have an existing in-home primary care service directed by a physician, nurse practitioner or physicians' assistant and if they meet other applicable requirements. Alternatively, a home health agency may participate by establishing a relationship with an in-home provider that is applying to participate in the IAH Demonstration.

## Eligible beneficiaries

CMS has noted that the IAH Demonstration is targeted at the 25 percent of Medicare beneficiaries who account for 85 percent of Medicare costs. To be counted as part of the IAH Demonstration, patients must—

- be entitled to Medicare Part A and enrolled under Medicare Part B;
- not be enrolled in a Medicare Advantage plan under Medicare Part C;
- not be enrolled in a PACE program (i.e., Program for All-inclusive Care for the Elderly established under Title 18, Section 1894 of the Social Security Act);
- have two or more chronic conditions;<sup>3</sup>
- have had a hospital admission within the past 12 months;
- have received acute or sub-acute rehabilitation services in the past 12 months (includes skilled nursing facility, home health, and inpatient and outpatient rehabilitation services); and
- require assistance for two or more activities of daily living.

## Options for provider participation

There are three different options available to providers for participation in the IAH Demonstration. First, any provider meeting all of the eligibility criteria may apply as a sole legal entity. Second, multiple primary care providers within a geographic area may form a consortium. CMS will treat all providers participating in the

<sup>3</sup> Here, a disease or medical condition that is expected to last for more than one year, limits what a person can do and requires ongoing medical monitoring. Examples include congestive heart failure, diabetes, chronic obstructive pulmonary disease, ischemic heart disease, stroke, neurodegenerative diseases and dementias such as Alzheimer's disease.

consortium as a single IAH provider in establishing expenditure targets, evaluating quality, and determining incentive payments. Finally, providers with between 200 to 500 eligible beneficiaries as patients may opt for participation as part of a national pool. This will require individual providers to waive the right to have savings determined at the provider level, and all financial targets will be calculated based on the pooled providers. Savings will then be distributed according to (i) beneficiary months of enrollment (risk and frailty adjusted) at the provider level and (ii) the number of quality measures satisfied at the provider level.

## **Consortium option**

Providers within a geographic area that do not individually have at least 200 eligible beneficiaries as patients may form a consortium to meet this requirement. The consortium must be a separate legal entity. The providers participating in the consortium must designate a single Taxpayer Identification Number to act as the agent for the consortium and be responsible for distributing any incentive payments to the individual participating providers. Note that it will be up to each consortium to determine how any incentive payments will be distributed among its participating providers.

Providers participating as a consortium must submit a letter of intent by the initial February 6, 2012, deadline, but will then have an additional 90 days, or until May 4, 2012, to complete and submit the application; this is to allow them time to organize and create the legal entity housing the consortium. The letter of intent that must be submitted by February 6, 2012, must include the following:

- a statement that the consortium as a whole furnishes services to at least 200 eligible beneficiaries;
- a statement that each involved provider meets eligibility requirements;
- an approximate number of eligible beneficiaries from each individual provider in the consortium, as well as a total number for the entire consortium;
- an address for each individual provider;
- the name and address that the consortium will use to form the legal entity (if then available); and
- the name of the consortium representative who will sign the formal IAH application (if then available).

## **Program limitations**

The IAH Demonstration is limited to no more than 10,000 eligible beneficiaries and 50 providers. If the pool of eligible beneficiaries exceeds 10,000, CMS will select a subset of eligible providers for participation. In this situation, providers will be selected to provide balance in terms of location (high-cost area, state and region, urban and rural) and size of provider patient population. Consideration will also be given to those providers that meet all eligibility criteria at the time of application. CMS has indicated that it may also limit the number of beneficiaries per provider to maintain the 10,000 eligible-beneficiary cap.

## Legal considerations

Because the federal anti-kickback statute can be violated merely by discussing a savings-sharing arrangement with enrolled providers who refer patients, providers developing IAH models would be well advised to enter into a memorandum of understanding that references the parties' intent to establish a mode as encouraged by the IAH Demonstration. Consideration should also be given to other potential regulatory constraints, such as state-level corporate practice of medicine prohibitions and fee-splitting laws.

## Conclusion

Under the IHA Demonstration, eligible providers will work with CMS to provide home-based primary care on behalf of chronically ill beneficiaries targeted under the program over a three-year period. Physician primary care practices, home health agencies and other providers that have a "house call" service model could potentially be eligible to participate. Those providers that do not have the requisite number (200) of eligible beneficiaries as patients can form a consortium with other similarly situated providers in their geographic area to achieve this patient threshold. Click [here](#)<sup>4</sup> for further information on the IAH Demonstration, eligibility requirements and the application process.

<sup>4</sup> <http://www.cms.gov/DemoProjectsEvalRpts/MD/itemdetail.asp?filterType=none&filterByDID=-99&sortByDID=3&sortOrder=descending&itemID=CMS1240082&intNumPerPage=10>