

Roundtable on Bundled Payment Strategies: Overview of Legal Issues

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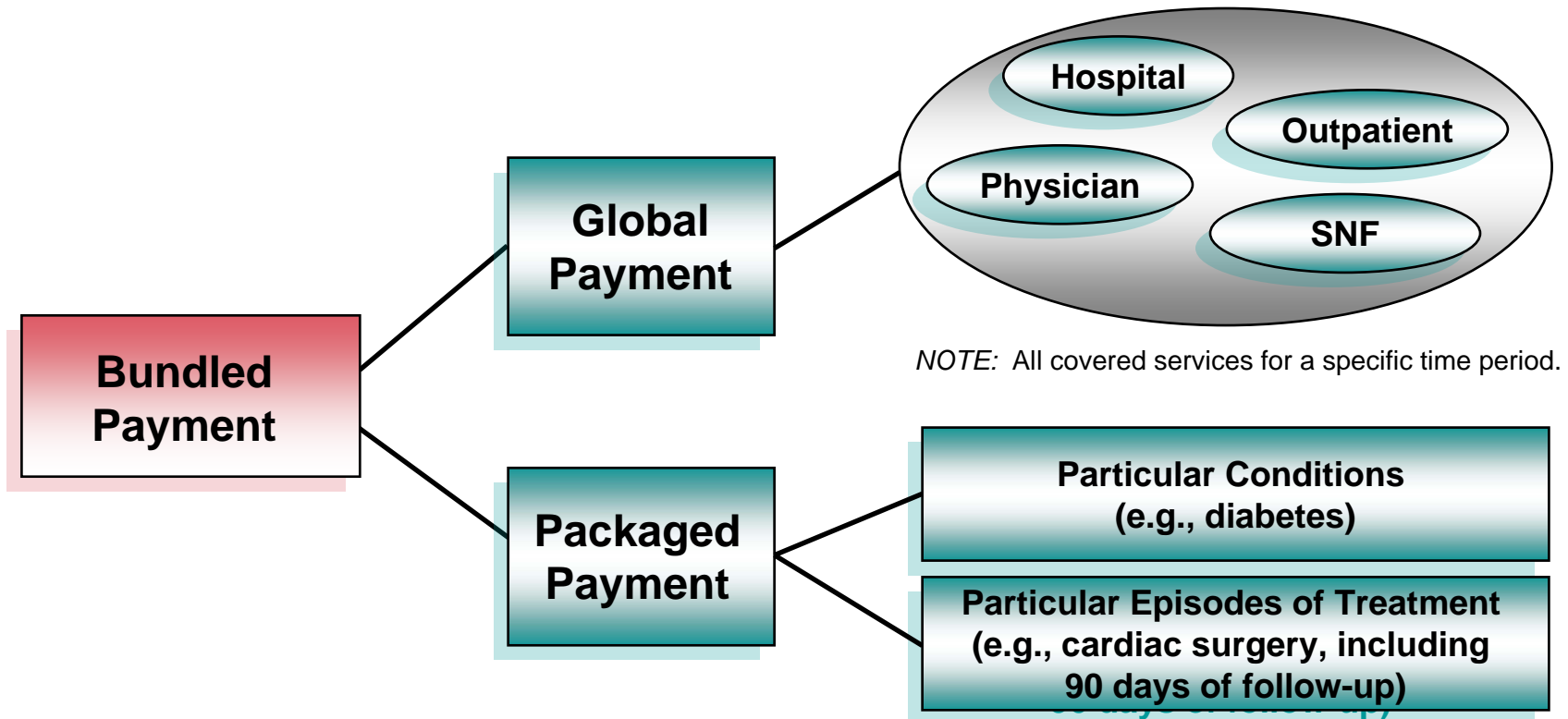
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Bundled Payment Models



Gainsharing CMP: The Hospital “PIP Law”

- Prohibits a **hospital or a critical access hospital**
- from knowingly **paying**, directly or indirectly, a **physician**
- **to reduce or limit services** provided to Medicare or Medicaid patients under the physician’s direct care.
- Penalty of up to \$2,000 for each Medicare or Medicaid patient
- Applies to payments to induce reduction or limitation of even **medically unnecessary** care.
- Applies only to Medicare and Medicaid FFS.

Stark Law

- **The Basic Prohibition:** Referring Medicare patients for certain “designated health services” to an entity with which the physician has a financial relationship unless an exception applies . . .
- **Favorable Exceptions:**
 - Employment
 - Indirect Compensation Arrangements
 - Risk Sharing Arrangements

Anti-Kickback Statute

- Prohibits knowingly and willfully **soliciting, receiving, offering, or paying** remuneration for referrals of federal health care program patients or for items or services paid under a federal health care program.
- **Safe Harbors:**
 - Bona fide Employment Relationships
 - Personal Services Arrangements
 - Provider Discounts to Health Plans
 - Provider Discounts to Managed Care Plans
 - Risk Sharing

Commercial Bundled Payment Model: A Way Forward

- Program Limited to Commercial Enrollees—
 - Can use single structure for all commercial and self-pay
- Can be implemented by hospital and physicians without payor cooperation
- Flexibility on incentives, terms, structure
- PIP law only applies to Medicare/Medicaid FFS
- AKS only applies to Federal health care programs
- Problem: Potential spill over effect for Medicare/Medicaid business?
- Problem: Medicare Secondary Payor issues?

Stark Analysis for Commerical Bundled Payment Model

- Hospital is at risk for fixed hospital payment from plan
- Hospital is downstream of plan (downstream contractor)
- Hospital is managing hospital care (MCO itself)
- Hospital is sharing risk of its payment with physician for care to plan enrollee
- Payment is a covered bonus

Other Considerations

- Antitrust
- State Corporate Practice of Medicine Doctrine
- State Self-Referral, Anti-Kickback and Fee Splitting Prohibitions
- State Insurance Regulations
- State Tax Considerations