

# Insights and Commentary from Dentons

The combination of Dentons US and McKenna Long & Aldridge offers our clients access to 1,100 lawyers and professionals in 21 US locations. Clients inside the US benefit from unrivaled access to markets around the world, and international clients benefit from increased strength and reach across the US.

This document was authored by representatives of McKenna Long & Aldridge prior to our combination's launch and continues to be offered to provide our clients with the information they need to do business in an increasingly complex, interconnected and competitive marketplace.

# CMS pilot programs aim for multipayer platforms

**Readmission programs, for example, must be coordinated across Medicare, Medicaid and private payers**

BY SUMMER MARTIN AND JESSICA ABRAHAMS



Summer Martin is a partner at McKenna Long & Aldridge LLP



Jessica Abrahams is a partner at McKenna Long & Aldridge LLP

**A**s payment reform demonstrations begin in earnest, streamlining provider incentives across all payers deserves increased attention. Business groups have long advocated for reforms that engage both public and private payers, yet providers encounter problems with trying to meet conflicting expectations to qualify for incentives among different payers.

The Obama administration has indicated its preference for demonstrations and pilot programs that leverage multiple payers to drive reform. Most recently, the announcement regarding the community-based care transitions or readmissions program emphasized that applicants must address how they will align their care transition programs with care transition initiatives sponsored by payers other than Medicare, including Medicaid, Medicare Advantage and the private sector.

In addition, the Centers for Medicare and Medicaid Services (CMS) recently added Medicare to the list of payers participating in medical home experiments in eight states. Private payers, providers and their contractors must prepare in advance.

**Regulatory compliance**—Expect any demonstration project for CMS to come with requirements to demonstrate compliance not only with existing laws and regulations—such as HIPAA, Stark, anti-kickback laws and civil monetary penalty laws—but also with requirements set forth by CMS through the demonstration program. Some may come with opportunities to seek waivers or exceptions, however, entities should ex-

pect vigilant compliance to be necessary.

**Corporate governance**—Recent guidance promulgated by the administration for payment reform efforts indicates that regulators are placing specific requirements on applicants with respect to corporate governance, including the individuals that should be represented on the boards of the organizations. In the case of the proposed rules for Accountable Care Organizations (ACOs), for example, ACOs must have a compliance program certified by “a designated compliance official or individual who is not legal counsel to the ACO and who reports directly to the ACO’s governing body.”

This requirement is in line with the administration’s efforts to hold officers and directors individually accountable for organizational activity by ensuring the board is aware of compliance activities.

**Increased monitoring**—Entities participating in multi-payer demonstrations may be subject to additional audits by various payer groups. Requirements could include providing government agencies, their contractors and other entities the right to inspect documents, data, corporate systems and organizational relationships, including quality performance measures and financial arrangements impacting the demonstration. Be prepared to locate and produce this information quickly.

Regardless of the construct of the demonstration, contracts with CMS present unique challenges. Payment reform demonstrations can help you drive innovative payment policy by showing policymakers what works and what does not.

Yet, entering into an agreement with CMS to conduct a demonstration requires appropriate legal consideration, including compliance, corporate governance and reporting and monitoring requirements, among other concerns. Entities should be mindful of these tradeoffs and take appropriate steps to prepare accordingly. **MHE**

*This column is written for informational purposes only and should not be construed as legal advice.*