



Community Behavioral Health
A DIVISION OF DBHIDS | CBHPHILLY.ORG

Fighting Fraud in Value Based Payment Models



City of
Philadelphia

2021 CBH
Compliance
Forum

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Information contained in this presentation should not be used as legal advice, please consult with qualified counsel and/or subject matter experts for your information on your specific situation



What are Value Based Payments?



VBPs

- Purchasing vs. Payment vs. Programs
 - Pays for value instead of volume
 - Risk is inherent in VBPs for everyone except our members
 - We have multiple VBP models to utilize
 - All VBPs are APAs; Not all APAs are VBPs
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VBPs are NOT

- Free of fraud concerns
- New
- Optional
- Scary
- Cure-alls



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Why are we doing Value
Based Payments?



TWO main answers

1. We have to

2. The potential to positively impact our members' care



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**OFFICE OF MENTAL HEALTH AND SUBSTANCE ABUSE
SERVICES (OMHSAS) VBP FRAMEWORK**

Risk Category	VBP Model	Description
Small	1	Performance-based Contracting (PBC): Contracts in which payment is linked to provider performance and requires providers to undertake specific activities or meet certain benchmarks for services. These contracts may include incentives and penalties, caseloads and Pay-for-Performance.
Medium	2	Bundled and Episodic: A single bulk payment for all services rendered to treat an individual for an identified condition during a specific time period. These payments also include case rates.
Medium	3	Shared Savings: Supplemental payments to providers if they are able to reduce health care spending for a defined patient population relative to a benchmark. The payment is a percentage of the net savings generated by the provider.
Medium	4	Shared Risk: An arrangement of shared financial responsibility between payer and provider that allows for cost control, efficiency of service use and quality. In this arrangement, both financial savings and losses are shared.
Large	5	Capitation: A payment arrangement for health care service providers that pays a set amount for each enrolled person assigned to them, per period of time, regardless of whether the person receives services during the period covered by the payment.
Large	6	Capitation + Performance-based Contracting: This payment arrangement adds performance-based contracting as a supplemental incentive to a capitation contract.

- The table displayed here has been adapted from Health Management Associates who was retained by CBH to aid in transitioning to VBPs

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Compare/Contrast with Fee For Service



FFS vs. VBP

<u>FFS</u>	<u>VBP</u>
Microwave	Air Fryer
Risk = Missed Appointments	Risk = Budgeting Errors
Risk = Non-Billable Activities	Risk = Actuarial Errors




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FFS vs. VBP

<u>FFS</u>	<u>VBP</u>
Fraud = Unnecessary Svcs.	Fraud = “Cherry Picking”
Fraud = Kickbacks	Fraud = Kickbacks
Monitoring = High Utilization/Spikes	Monitoring = Deviations From Norms/Spikes



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VBP changing the FWA landscape



Adapt

- ✓ **Payer and oversight screening must adapt**
- ✓ **Internal compliance must adapt**
- ✓ **Regulatory bodies and rules must adapt**





Payer and Oversight Adaptations

- ✓ Data mining and analysis changes
- ✓ Split focus for some time
- ✓ Identification of exploitable loopholes






Regulatory Adaptation

- For definitions please see:

<https://oig.hhs.gov/compliance/physician-education/fraud-abuse-laws/>

- ✓ **AKS**
 - ✓ Stark Law
 - ✓ False Claims Act
- 


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Regulatory Adaptation

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Internal Compliance & VBP



New Questions to Ask

- ✓ Are we providing/arranging for all care needed?
- ✓ Are we violating AKS/EKRA rules?
- ✓ Are “healthy” individuals prioritized over those thought to be “needy”?



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Take-Aways

1. ...



Key Points

- 1 VBPs will become more common
 - 2 The process need not be scary
 - 3 VBPs have potential to increase clinical flexibility
 - 4 Expect regulatory guidance adaptation over time
 - 5 Compliance plans will need review and updates
 - 6 Likely an extended period of split focus
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RESOURCES

HHS OIG Overview of FWA laws

- ✓ <https://oig.hhs.gov/compliance/physician-education/fraud-abuse-laws/>
AKS 12/20 Final Rule
- ✓ <https://www.federalregister.gov/documents/2020/12/02/2020-26072/medicare-and-state-health-care-programs-fraud-and-abuse-revisions-to-safe-harbors-under-the>
Stark 12/20 Final Rule
- ✓ <https://www.federalregister.gov/documents/2020/12/02/2020-26140/medicare-program-modernizing-and-clarifying-the-physician-self-referral-regulations>
False Claims Act (FCA) Primer
- ✓ https://www.justice.gov/sites/default/files/civil/legacy/2011/04/22/C-FRAUDS_FCA_Primer.pdf
Proposed FCA Changes
- ✓ <https://www.grassley.senate.gov/news/news-releases/senators-introduce-of-bipartisan-legislation-to-fight-government-waste-fraud>
- ✓ [https://www.grassley.senate.gov/imo/media/doc/117s2428 -
false claims amendments act.pdf](https://www.grassley.senate.gov/imo/media/doc/117s2428_-_false_claims_amendments_act.pdf)



RESOURCES (cont)

[Intent In AKS Cases](#)

- ✓ <https://lawcommons.luc.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1279&context=annals>

[CMS Value Based Services Page](#)


- ✓ <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Value-Based-Programs/Value-Based-Programs>



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TO REPORT POTENTIAL FRAUD, WASTE, or ABUSE

CBH Compliance Hotline

PHONE: 1-800-229-3050

EMAIL: CBH.Compliancehotline@phila.gov

Pennsylvania DHS Tips (BPI)

PHONE: 1-844-347-8477





Questions?