ADJUSTING GLOBAL PAYMENTS FOR SOCIAL DETERMINANTS OF HEALTH
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BENEFITS

Adjusting global payments for social determinants of health (SDOH) may:

• Reduce provider risk, facilitating adoption
• Prevent SDOH-based “cherry picking”/“lemon dropping”
  • Cf. Incomplete history of risk adjustment for mental health/substance use disorders.
• Encourage “lemon picking,” e.g., housing assistance programs?
  • Cf. Dan Diamond, How the Cleveland Clinic grows healthier while its neighbors stay sick, POLITICO (July 17, 2017).
EXAMPLE


- Massachusetts’ first-of-kind effort to incorporate SDOH into risk adjustment, for MassHealth (Medicaid) MCO payments.
- Beginning 2016, “modest[]” improvement in overall explanatory power; “dramatic[]” improvement in explanatory power for “several categories of vulnerable members.”
- Variables include: “economic distress” of census block, substance use disorder, mental illness, disability, housing.
  - “Economic distress” based on FPL, unemployment rate, car ownership, education.
Legal challenge: Authority?

• “Woodwork” and legal authority for global payment. Increased access may = increased cost.

• CMMI model TESTS need not be budget neutral, but EXPANSIONS must be “expected to—[reduce spending[,]” including certification by CMS Actuary. 42 U.S.C. § 1315a(c).
Legal challenge: Fraud, waste, and abuse laws

• Anti-kickback statute
• Stark Act
• Civil Monetary Penalties
**Table.** Laws Inhibiting Delivery System Innovation and Proposed Reforms

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Abbreviation: CIDS, Commission for Innovation in Delivery Systems.
Legal challenge: Fraud, waste, and abuse laws

- CMS granted waivers to facilitate compliance for APMs. See, e.g., Medicare Program; Final Waivers in Connection With the Shared Savings Program, 80 Fed. Reg. 66726 (Oct. 29, 2015).

- Legislative concern that waivers are incomplete. See e.g. “Why Stark, Why Now? Suggestions to Improve the Stark Law to Encourage Innovative Payment Models,” Senate Finance Committee Majority Staff Report (June 2016).
Legal Challenge: Fragmentation/Coordination

• Have an idea? Just check: HHS OIG, CMS, CMMI, DOJ Antitrust, DOJ Civil & Criminal, FTC, IRS, State law, state common law.
  • Welcome to healthcare!

• Jost & Emanuel (2008): Statutory commission with power to approve models, preempt state law?

• CMMI RFI—Comments due November 20, 2017.
THANK YOU
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