

Wiley Rein Urges the Centers for Medicare & Medicaid Services to Streamline and Incentivize the Share Savings Plan

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Earlier this week, Wiley Rein submitted comments on the Centers for Medicare & Medicaid Services' (CMS) proposed rule for its Share Savings Plan. With the passage of the Affordable Healthcare for America Act, the U.S. Congress charged CMS with promoting accountability, improving coordination, and investing in infrastructure and processes to improve the quality and efficient delivery of services. Accountable Care Organizations (ACOs) are a route to doing so, but require a well-received Shared Savings Program to incentivize participation.

Wiley Rein's comments, prepared by senior partner Bert W. Rein and associate J. Elizabeth Poole, are designed to "streamline implementation of the Shared Savings Program, incentivize providers to join ACOs, and increase the chance that Medicare expenditures will drop and ACOs will recover their savings." The comments further state that while the concept of ACOs and the Shared Savings Program has the "potential benefit to the entire healthcare industry," the proposed rule as currently drafted has few supporters. The comment states that this reality is "not merely unfortunate for CMS' implementation" but also "a wasted opportunity to create a realistic, workable program." Wiley Rein further emphasizes that "unless the ACO concept is widely adopted, it will not make a significant contribution to resolving the health care cost problem."

Wiley Rein offers two suggestions that will simplify the ACO incentive program and "increase the likelihood of substantial participation." First, Wiley Rein suggests that "ACOs should be given the ability to control, within the scope of their capabilities, the total cost borne by

Related Professionals

Bert W. Rein
Founder
202.719.7080
brein@wiley.law

Medicare for treating their assigned populations" and adds that ACOs "should be permitted and incentivized to offer ACO participation agreements to Medicare beneficiaries." Wiley Rein also advises that "an ACO's efficiency benchmark should be determined by the historic adjusted cost of treating patients accepting its ACO participation contract" and that the program should be adjusted "toward average national Medicare expenditures."