

# Value-Based Innovation & Clinical Integration

Under value-based payment models, providers' payment depends on their management of the overall health outcomes and costs of their patients. These arrangements can be extraordinarily complex and they pose new legal and business opportunities and risks for providers. Most importantly, providers must develop innovative new strategies to succeed in a payment environment that prioritizes value over volume.

Polsinelli's team of professionals combines technical prowess, practical experience and innovative perspectives to support a wide variety of participants in today's changing value-based environment. We work with clients including hospitals, integrated health systems, physicians, post-acute providers and other licensed health care provider entities to evaluate and develop strategies for success under these models. Our team can help you understand the advantages and disadvantages of participating in innovative public sector, commercial and direct-to-employer (or self-insured) value-based care models across the nation.

We also support innovators and entrepreneurs who administer or manage value-based operations, develop technologies to assist with care transformation, and design new ways to work with patients and providers to deliver better care.

Our team of attorney advisors includes former officials with CMS and the HHS Office of Civil Rights, former valuers, and attorneys with extensive experience helping entities establish and operate under Accountable Care Organizations and other value-based models. We have deep expertise in substantive areas including fraud and abuse, reimbursement, payor contracting, licensure and enrollment, data privacy and analytics, technology development and transactions, antitrust, state insurance laws and regulation of financial risk, public policy, FDA, government contracting and many other areas relevant to this complex and changing field.

Our services include the following:

- Financial relationship compliance analysis.
- Payment model design, selection and implementation as well as evolution using current operations and infrastructure.
- Comprehensive support for clients engaging in value-based care, at all stages from corporate formation, to operations advice, to accommodating growth and evaluating potential exit strategies.
- Population health management advice regarding risk adjustment strategies and interventions to address social determinants of health.
- Legal services related to health care technology, including intellectual property, product licensing, and developing and optimizing compliant data security and monetization strategies.
- Advising and assisting with corporate structure, governance, finance, tax and M&A, contracting strategies, labor and employment and regulatory compliance.

# Matters

---

## **Helping clients understand the opportunities and challenges in available value-based care models:**

- Representing a variety of Accountable Care Organization clients, including some of the largest, most geographically widespread, and highest-performing ACOs under the Medicare Shared Savings Program.
- Working as a business partner of the National Association of ACOs to share information and policy resources to help current or prospective ACOs (or their vendors and partners) better understand their opportunities.
- Helping providers understand the rules and risks of CMS Innovation Center Alternative Payment Models including Next Generation ACOs, Bundled Payments for Care Improvement (“BPCI”), Comprehensive Primary Care Plus (“CPC Plus”), and Direct Provider Contracting, as well as commercial or Medicaid Alternative Payment Models.
- Advising on payor contracting arrangements involving gainsharing, shared savings, bundled/global fee, global budget, at-risk payments, quality-based holdbacks, and other arrangements, including under commercial, Medicare Advantage, and other payors.
- Designing strategies to allow providers to get the greatest use out of value-based infrastructure and experience by creating a single platform coordinating electronic health records, analytics compliance functions, financing/funds flow, and other “back office” operational activities across multiple initiatives.
- Assisting providers to leverage the data and expertise gained through their value-based care experiences most effectively to improve processes, manage population health, achieve better quality, meet savings goals, or for monetization/commercialization activities.
- Advising employers, health systems, and private ACO/CINs to develop, negotiate, and implement direct-to-employer value-based contracts.
- Providing expert guidance on the Merit-based Incentive Payment System (“MIPS”) and Alternative Payment Model (“APM”) rules and helping clients understand the relationship between MIPS, APMs, and value-based payment opportunities.
- Providing legal guidance on establishing and operating pharmacy benefit managers (“PBMs”), and advising ACO/CINs and other providers to develop relationships with PBMs to manage pharmaceutical costs, identify savings in the pharmaceutical supply chain, and improve patient adherence and satisfaction.
- Developing strategies and advising clients to engage and support patients to improve their health status and access to care and address social determinants of health.
- Representing physicians/physician practices in the development and implementation of new relationships with hospitals and health systems, including addressing governance, compensation, funds flow, incentive structures and other variables. Designing models to promote physician leadership and direction as consistent with emerging initiatives directed at clinical quality, cost management and population health.
- Helping a prospective ACO client understand and comply with state insurance laws impacting its ability to take on “downside” financial risk under the Pathways to Success rule.

## **Assisting health care providers, investors, and other entities to operate value-based payment models:**

- Advising on provider network funds flow, development of a unified technology platform, and data privacy, security and other operational matters.
- Designing compliant strategies to allow a hospital-led ACO/CIN to share technology, care coordination personnel, and other essential infrastructure to achieve quality and cost goals.
- Helping providers in a value-based care organization design a beneficiary engagement program that complied with federal and state anti-fraud and abuse laws.
- Assisting health care organizations in the establishment and operation of clinically integrated networks and Accountable Care Organizations under public and private sector arrangements, including under the Medicare Shared Savings Program “Pathways to Success” rule.

- Assisting to develop affiliations and other contracting strategies for a variety of ACO structures including hospital-led, physician practice-based, and single legal entity-operated ACO models.
- Supporting third party management services organizations (“MSOs”) and other business organizations working with providers to operate under public or private Alternative Payment Models.

**Advocating for new or better opportunities to participate in value-based models:**

- Partnering with major trade organizations to educate their members about legal and regulatory changes with value-based care implications, and advocate for increased or improved value-based payment models in front of CMS, other executive branch agencies, and Congress.
- Meet with officials in the Innovation Center and relevant CMS offices to discuss new value-based model development opportunities.
- Helping providers identify new opportunities for bundled payments or similar specialty-specific models and negotiating with payers, including governmental payers, to implement these models.