

# **A Casual Conversation: The Window of Opportunity Opens for Success in 2018**

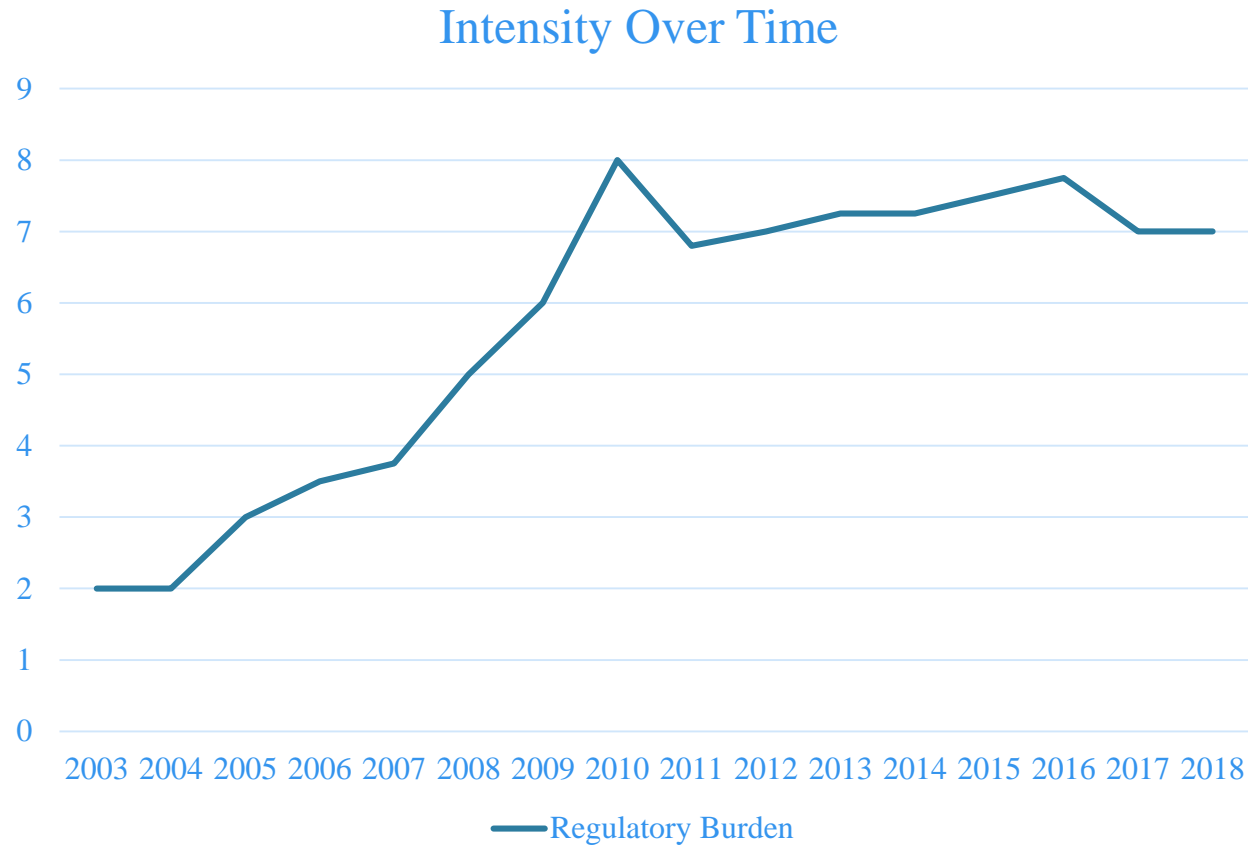
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**September 28, 2017**

# Agenda

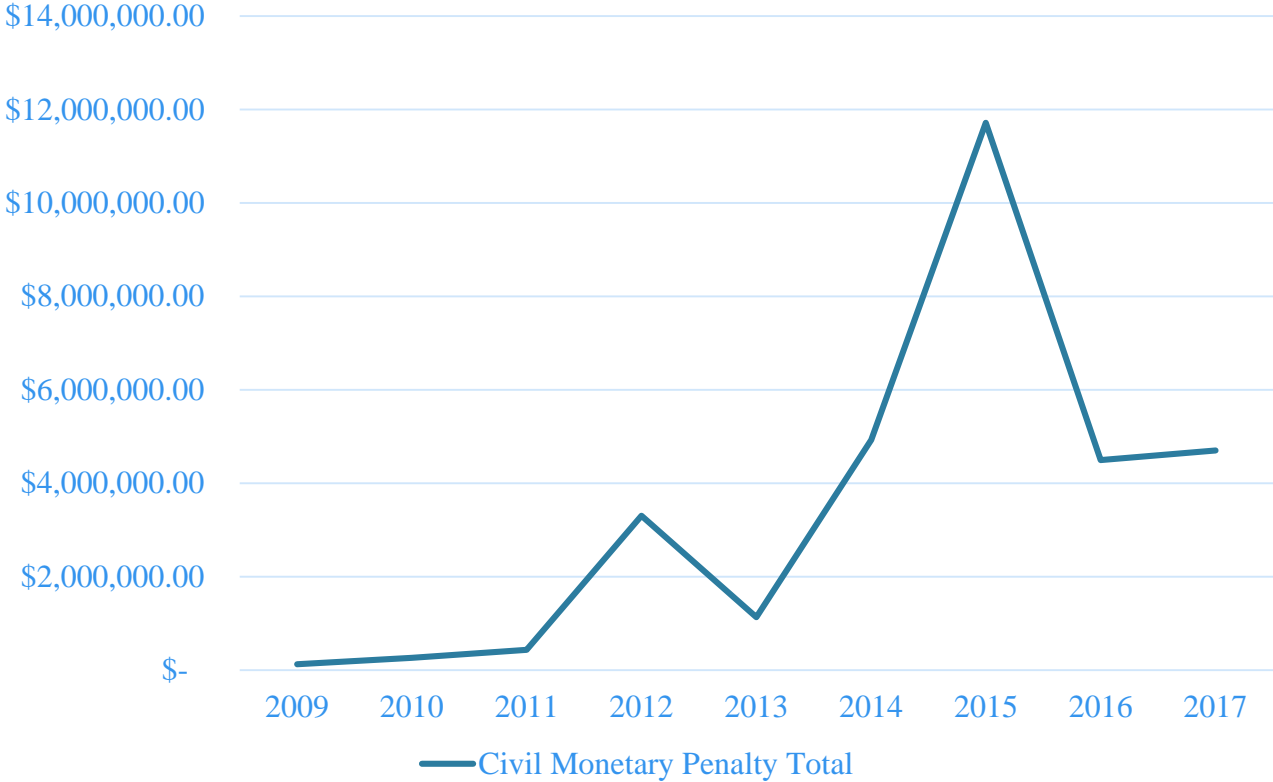
- Medicare Part C & D in 2017 and 2018
- Compliance as a Competitive Advantage
- Managing the Risk of Risk Adjustment
- Value Based Insurance Design
- Don't Forget the States

# A Totally Unscientific Assessment of Part C & D Regulatory Environment



# Part C & D Civil Monetary Penalty Totals by Year Imposed

Civil Monetary Penalty Total



# Key Points from CMS Medicare C & D Fall Conference

- × Goal of “Transparency and Predictability”
  - × Ex. No changes to 2017 Audit Protocols for 2018
- × Desire for beneficiaries to have as many options as they can
- × Consumer-friendly efficiencies, for example:
  - × Can send 1 document to multiple addressees at same residence
  - × Can send directories electronically

# Observations

- ✘ Regulatory environment has stabilized
- ✘ Opens a window of opportunity for growth and innovation
- ✘ Remain attentive to compliance and oversight of vendors



# Risk Adjustment – Regulatory Updates

## ➤ CMS has been relatively quiet

- ❑ 42 C.F.R. § 422.304 – Risk Adjusted Payments – last updated April 15, 2011 (76 Fed. Reg. 21567)
- ❑ 42 C.F.R. § 422.310 – Risk Adjustment Data – last updated February 12, 2015 (80 Fed. Reg. 7960)
- ❑ 42 C.F.R. § 422.311 – RADV Dispute Appeals – last updated May 23, 2014 (79 Fed. Reg. 29956)
- ❑ 2018 Call Letter – CMS announced it was reducing reliance on encounter data when calculating risk adjustment blend
  - ❑ 2017 75% RAPS/ 25% EDS
  - ❑ 2018 85% RAPS/ 15% EDS

# Risk Adjustment – Regulatory Updates

April 2016 GAO Report, “Fundamental Improvements Needed in CMS’s Effort to Recover Substantial Amounts of Improper Payments,” FN 23

“The FFS adjuster accounts for the fact that contract-level RADV audits require diagnoses to be supported by medical record documentation reviews that include those coded by providers in claims, but the same standard is not used in FFS claims to develop the MA risk adjustment model. The actual amount of the adjuster will be calculated by CMS based on a RADV-like review of records submitted to support FFS claims data. ***CMS officials stated that the agency expects to solicit public comments from stakeholders regarding the FFS adjuster in 2016.***”



# Medicare Risk Adjustment Litigation

Case	Status
United States v. Janke	Settled in 2010 for \$22.6M
United States ex rel. Swoben v. SCAN Health Plan	Settled in 2012 for \$3.8M
*United States ex rel. Swoben Secure Horizons	Ongoing
United States ex rel. Valdez v. Aveta, Inc. et al.	Ongoing
United States ex rel. Olivia Graves v. Plaza Medical Centers Corp., et al.	Ongoing
United States ex rel . Silingo, et al ., v. Mobile Medical Examination Services Inc., et al.	Ongoing
United States ex rel. Ledesma v. Censeo Health LLC, et al.	Ongoing
United States ex rel. Sewell v. Freedom Health, Inc., et al.	Settled in 2017 for \$32.5M
United States of America ex rel Benjamin Poehling v. Unitedhealth Group Inc.	Ongoing

# Medicare Risk Adjustment Litigation (cont'd)

## **Common themes:**

- ❑ Certification of data
- ❑ Retrospective chart reviews look only for missing diagnoses, they don't identify incorrect diagnoses
- ❑ MAOs do not meet compliance program requirements because there are inadequate policies, procedures, auditing and monitoring to identify compliance risks related to risk adjustment

# Medicare Risk Adjustment Litigation (cont'd)

*UnitedHealthcare Insurance Company, et al v. Price, et. al.* No. 16-cv-157 (DDC)

Challenge to 2014 Overpayment Rule: MAOs must report and return overpayments within 60 days of identification, and the failure to do so can trigger FCA liability

- CMS's rule would impose a **negligence standard** to trigger FCA liability, whereas the FCA has a heightened knowledge standard
- The rule would also violate the **actuarial equivalence** standard and result in underpayments
  - Requires that MAOs withdraw and repay CMS for any diagnostic code that isn't fully supported, which could result in as much as a 20 percent reduction in the payments
  - However, traditional fee-for-service Medicare participants are paid without requiring a comparison to the underlying medical records

# Compliance as a Competitive Advantage

Compliance is a **key function** in MA and Part D

- Impact on Dollars and Reputation
  - Strong compliance programs mitigate risks and losses due to non-compliance
  - Penalties for ineffective compliance programs
    - Program audits AND operational issues not properly identified
  - Plans expected to audit effectiveness
  - Consider new focus on Risk Adjustment

# Compliance as a Competitive Advantage (cont'd)

For FDRs serving MA and Part D plans, compliance can be a competitive advantage against competitors

- Legitimate policies and procedures
- Robust auditing and monitoring
- Appropriate escalation processes
- Resource for MA and Part D plan sponsors
- CAUTION** –
  - Compliance is not operational
  - Plan sponsors ultimately responsible

# Value-Based Insurance Design

- Balancing Innovation with Legal Risk
  - Non-Interference Clause
  - Anti Kickback Statute
  - Complex regulations
  - Limitations of CMMI Waivers
- New administration and new direction for CMMI?
  - Proposal to cancel some demonstration pay models and to make others voluntary
  - But possible outcomes-based leukemia drug agreement

# September 20<sup>th</sup> RFI

Increased  
Participation in  
Advanced APMs

Consumer-  
Directed Care &  
Market-Based  
Innovation

Physician  
Specialty

Prescription Drug

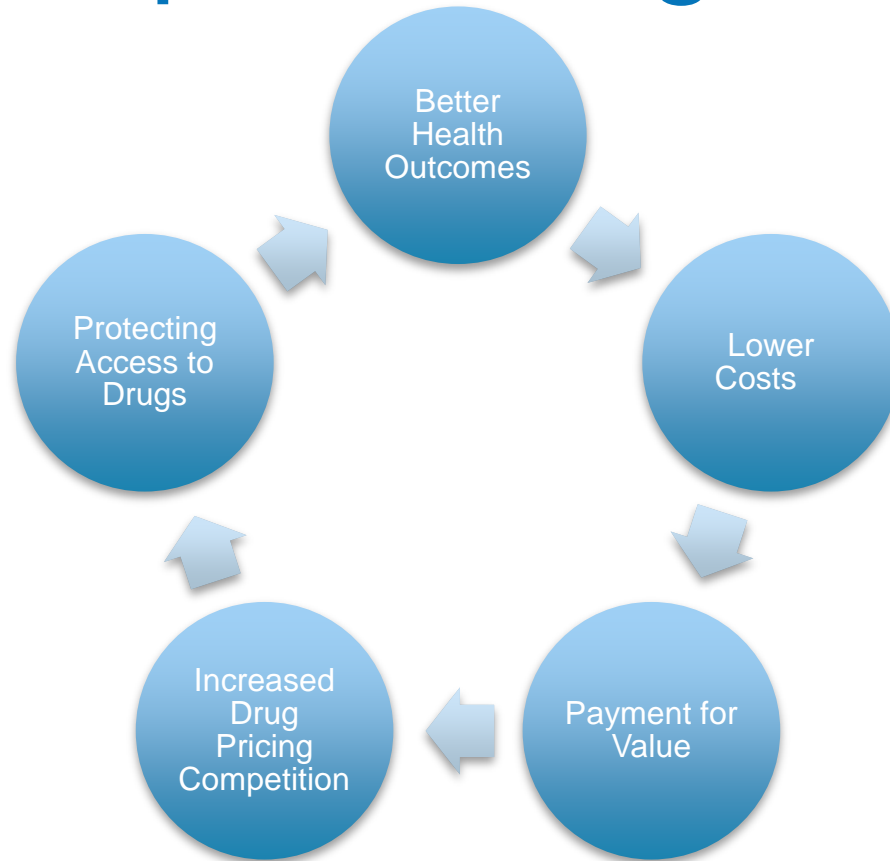
Medicare  
Advantage  
Innovation

State-Based and  
Local Innovation  
(Medicaid)

Mental and  
Behavioral  
Health

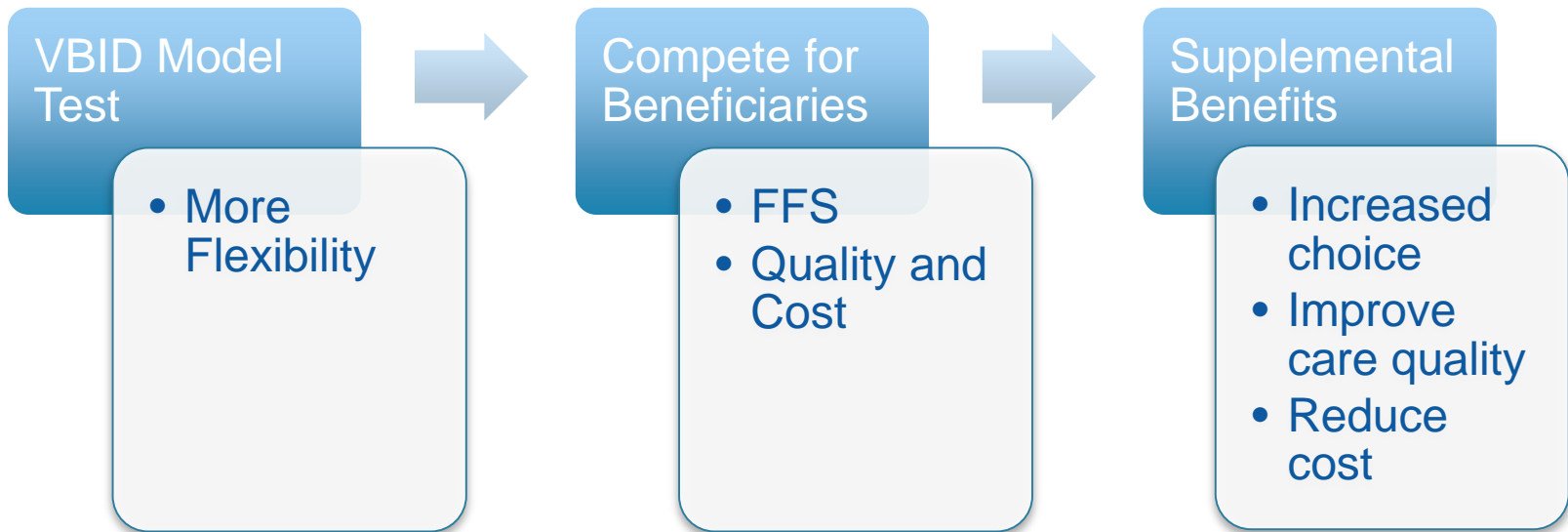
Program Integrity

# Prescription Drug Models





# MA Innovation Models



# OIG Safe Harbors and Advisory Opinions

- December 7, 2016: New Safe Harbors
  - Waiver of beneficiary copayments
  - Medicare Coverage Gap Discount Program
  - Retailer Rewards Program
  - Improved access to care
- September 7, 2017: OIG Advisory Opinion 17-05
  - Federal health care program beneficiaries allowed to participate in a retail pharmacy chain's paid membership program
    - Discounts on Rx and clinic services
    - Not submitted for payment by health or prescription plan
  - Medicare beneficiaries as "rational economic actors."

# Don't Forget the States

- NAIC Model Med. Supp.
- 80 drug pricing/transparency laws proposed in 30 states (this year):
  - California
  - Maryland
  - New York
  - Nevada
  - Vermont
- Health Care & Medicaid Reform

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