CKCC Model Updates Seek to Mitigate RTA Effects

By Lauren Ahearn

Following several calls for action by ASN, the Renal Physicians Association (RPA), and other community organizations, the Center for Medicare and Medicaid Innovation (CMMI) announced policy changes and updates on April 16, 2024, pertinent to the Comprehensive Kidney Care Contracting (CKCC) model, including changes to address the effect of the Retrospective Trend Adjustment (RTA) on the model and associated program modifications.

In the CKCC model, CMMI provides nephrologists with a "benchmark" (or baseline funding number) that is the government's projection for what the total health care spending is expected to be during that year for an individual patient with kidney disease. Nephrologists invest in services and staff to enhance patient care and outcomes, comparing their expenditures against this benchmark to determine their performance in the model. Participants can benefit from savings if spending is lower than what is set in the benchmark.

Last year, CMMI announced an RTA for benchmark years 2022 and 2023 due to inaccurate projections on its part, resulting in reduced reimbursement or paybacks for participants in the model long after care is provided. Alarmed by the idea of a retroactive change to the benchmark after investment in care, nephrologists, dialysis facilities, and value-based care organizations raised concerns that the unforeseen financial risk could cause some participants to drop out of the model.

In response to these concerns, ASN and RPA sent a letter to the Department of Health and Human Services and CMMI urging the Centers for Medicare & Medicaid Services (CMS) to narrow the risk corridors within the model or consider other proposals to ensure continued participation in the CKCC by nephrologists and other participants (1). In addition, ASN and RPA urged Congress to request that CMMI address the RTA's potential impact on model participation (2). ASN was concerned that the RTA decision would unfairly hurt participants and could potentially reduce enrollment in innovative care models, inhibiting access to care focused on delaying the progression of kidney diseases and expanding patient choice.

CMS announced that it plans to make two policy changes for performance year (PY)2024 for Kidney Contracting Entities (KCEs) (3):

1. There will be no changes to the financial methodology for payment years 2022 and 2023. However, after reviewing updated data, CMMI intends to update the CKCC model risk corridors by making them narrower for both the chronic kidney disease and end stage renal disease benchmark. These updates include:
   - o KCEs are now responsible for absorbing the first 3% of any RTA adjustment.
   - o KCE's responsibility decreases incrementally for adjustments between 3% and 6%, with CMS shouldering 50% of the adjustment.
   - o The exposure for KCE's shared losses in a PY are capped at 4.5%.
2. KCEs will also be permitted to switch from the Global to the Professional option for the 2024 period, an option that was not available prior to this change. This change allows KCEs to project a shared loss in PY2024 based on the new RTA adjustments to mitigate its losses and share any potential savings or losses with CMMI.

ASN will continue to monitor the impact of these policy changes on CKCC model participants and advocate for the adoption of policies to promote access to kidney care that emphasizes earlier intervention, access to transplant care, and care coordination. ■

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ASN Advocates for Increased Funding for US Transplant System

By Killian Gause

On April 18, 2024, volunteer leaders of ASN met with their congressional delegations to discuss the need to provide $67 million in fiscal year 2025 for the Health Resources and Services Administration Organ Transplantation Program to implement the Securing the US Organ Procurement and Transplantation Network (OPTN) Act, included as part of Health Resources and Services Administration's OPTN Modernization Initiative.

Currently, more than 100,000 people are waiting for an organ transplant, including more than 90,000 people waiting for a kidney. Although approximately 27,000 kidney transplants were performed in the United States in 2023, this accomplishment is far short of the need of the tens of thousands of people who were waiting for a life-saving kidney transplant that same year.

In 2023, Congress passed the Securing the US OPTN Act, which aims to improve the performance, transparency, and efficiency of our transplant system by modernizing the information technology infrastructure, establishing independent governance, enabling competition, and revitalizing core functions of the OPTN. This legislation includes some of the most significant improvements to the OPTN in its 40-year history.

As Congress begins to draft funding legislation for fiscal year 2025, ASN members urged their members of Congress to continue their commitment to implementing the Securing the US OPTN Act and provide funding to support these vital patient-centered improvements. ASN will continue to advocate for funding of the transplant network as Congress continues its funding process so that people seeking a kidney transplant can benefit from increased transparency, accountability, and best-in-class services. ■

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FTC Bans Noncompete Clauses, Court Challenges Loom

By Lauren Ahearn

On April 23, 2024, the Federal Trade Commission (FTC) voted 3 to 2 in favor of a near-total ban on noncompete clauses (1), which limit the ability of workers to change employers within an industry. FTC projects that this rule could reduce health care costs by up to $194 billion in the next decade. In both the proposed and final rule, it cited evidence that noncompete agreements encourage consolidation and drive-up health care prices (2). The American Medical Association estimates that between 37% and 45% of physicians are affected by "noncompetes" (3).

ASN expressed support for this ban when it was first proposed by FTC in April 2023 (4). At the forefront of ASN's response was a desire, above all else, to preserve the patient-doctor relationship. ASN argued that noncompetes have the potential to disrupt these relationships when noncompetes force health care professionals to relocate, thus forcing some patients (especially those in rural communities) to travel long distances to access care.

In addition to voicing support for the ban, ASN expressed concern over the unsolved question of how it will apply to not-for-profit health care employers. In the proposed rule, it was suggested that not-for-profit organizations would be exempt from the ban. ASN asked FTC to clarify this issue and expand the proposed rule by including not-for-profit health care employers, as doing such would level the playing field for all health care employers, including nephrologists. In the final rule, FTC recognized that although it does not have jurisdiction over not-for-profit entities, it reserved the right to evaluate an entity's nonprofit status and noted that "entities that claim tax-exempt status may in fact fall under the Commission's jurisdiction" (5).

The ban is set to take effect 120 days after its publication in the *Federal Register*; however, it is already being challenged in court. Business groups led by the U.S. Chamber of Commerce announced in May that they are suing FTC and will seek a block to the ban (6). In a complaint filed in a Texas federal court, the nation's largest business lobby argued that FTC lacks the authority to issue rules that define unfair methods of competition. This question over FTC's jurisdiction is political and will likely become a growing topic of debate as we near the upcoming November election. This case will likely reach the Supreme Court, in which the conservative majority has shown deep skepticism toward what it views as agency overreach. ■

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