



*Advising the Congress on Medicare issues*

# Medicare's statutory authority to support delivery system reform

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# Overview

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- Pace of delivery system reform is slow
- Statutory authority affects Medicare's flexibility to adopt new strategies
- Medicare has had mixed experiences in trying to implement value-based policies
- Some policy experts have concluded that Medicare needs more flexibility to become a more active payer

# Medicare lacks flexibility to adopt value-based payment policies

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- P4P
- Competitive bidding
- Centers of excellence
- Prior authorization
- Shared savings
- Reference pricing
- Payment with evidence

# Challenges in adopting value-based policies

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- Court ruled that specific statutory provisions take precedence over broader authority
- Detailed legislation is difficult to implement and does not give Medicare much latitude to exercise discretion

# Case study 1: Least costly alternative policy (LCA)

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- Medicare's contractors set the payment rate of a service based on the payment rate of a less costly, clinically comparable service
- Recent court ruling may affect Medicare's flexibility to carry out LCA policies
- Lesson learned: Medicare's statutory authority to use LCA policies is not clear

## Case study 2: Functional equivalence policy

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- Similar to LCA policies but administered on a national level for two biologics—payment rate of products that are close substitutes is based on least costly product
- Medicare adopted policy in 2003
- Subsequently MMA limited its use
- Lessons learned:
  - Authority to use functional equivalence is not clear
  - Legislative guidance is conflicting

## Case study 3: Inherent reasonableness (IR) policy

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- Medicare has the authority to deviate from a payment method if its use would result in a payment rate that is too high or too low
- Long legislative history
- Limited use of IR authority in recent years
- Lessons learned:
  - Authority is sometimes difficult to exercise
  - Legislative guidance is conflicting

# Case study 4: DME competitive bidding program

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- Long legislative history
  - BBA mandated demonstration
  - MMA replaced the DME fee schedule with a competitive bidding program
  - MIPPA delayed competitive bidding program
- Lessons learned:
  - Medicare needs explicit authority to adopt competitive bidding program
  - Statutory requirements very detailed
  - Legislative guidance is conflicting
  - Influence of stakeholders

# For discussion

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- Summary points
  - Medicare's existing authority difficult to use
  - Medicare does not have clear authority to adopt many policies that encourage efficiency and value
- Pros/cons of increasing Medicare's flexibility to adopt value-based policies