



Value Based Care

Frier Levitt has been at the forefront of many of the latest cutting-edge developments in the value based care space and understands the potential opportunities and pitfalls for the multiple and diverse stakeholders involved. We have promoted novel arrangements among providers, manufacturers, payors and Plan Sponsors. We have litigated groundbreaking cases in the Medicare Advantage risk adjustment space relating to alleged payor data mismanagement, in addition to pressing various payors to favorably reassess shared savings payment determinations on behalf of physician practices and ACOs through strategic and targeted pre-litigation negotiation tactics. Providers seeking fresh, sophisticated and unique approaches to evaluating new value based care opportunities or to resolving ongoing value based care-based disputes should consider consulting our value based care team.

Background

In recent years, the transition from traditional fee-for-service or volume-based care to value based care has sped up exponentially. Value based care payment models are diverse and constantly evolving, and with each new model comes distinct legal challenges – negotiating reasonable and provider-friendly metrics in a given value based care contract, pressing payors for data and methodological transparency, ensuring compliance with newly emerging regulations and regulatory guidance within the space, and litigating, as needed, claims against commercial carriers, Medicare Advantage Organizations and even Medicare (or Medicaid) itself, to vindicate a practice's rights under a value based care agreement, among many other issues. Further, under these new metrics-driven payment models, data scientists and actuaries are, along with experienced healthcare counsel, essential allies for providers operating in the value based care space, as these disciplines are critical to intelligently addressing challenges at every level of the value based care contracting process – from assessing the feasibility/advisability of a particular shared savings calculation methodology in a new shared savings contract, to assisting as experts in litigating a breach – and Frier Levitt has built strategic relationships with such professionals with proven track records of success.

Value Based Care Payment Models

Frier Levitt is equipped to advise providers of all stripes and sizes, including CINs, IPAs, ACOs, manufacturers and self-funded health plans, in connection with a multitude of different value based care payment models, including but not limited to:

- Two-sided risk shared savings/risk arrangements, in both the managed Medicare/Medicaid and the commercial insurance spaces
- Bundled payment arrangements
- Episodes of care with or without downside risk
- Patient Centered Medical Homes
- Gainsharing agreements
- Global capitation payment models

What We Do

Frier Levitt can assist your practice at every stage of the value based care contracting process.

Services include but are not limited to:

Establishing Compliant Legal Framework for Value Based Care-centric Provider Entities:

- Creation of clinically integrated networks (CINs)
- Creation of accountable care organizations (ACOs) and independent physician associations (IPAs)
- Creation of Organized Delivery Systems (ODS)

What We Do continued

Negotiating Value Based Care Contracts that are Fair and Equitable for the Provider

- Negotiate terms and conditions for new shared savings, bundled payment, and global capitated risk agreements with payors that contain, among other things, payor data/methodological transparency, robust provider-side auditing rights of payor data, fair and efficient dispute resolution procedures in connection with valuating shared savings/risk
- Negotiate directly with employers and other Plan Sponsors to create/tailor provider-side-favorable value based contracts

Keeping Payors Honest

- Work with data scientists and actuaries to determine payor compliance with value based care contract payment provisions (e.g., evaluating accuracy of payor-assigned patient risk scores in a globally capitated payment model, assessing the accuracy of a shared savings/risk determination)
- Pre-litigation dispute resolution with payors – both private and governmental – to leverage appropriate financial compensation in cases where payors underpay shared savings owed or have assessed too much shared risk against a provider
- Litigate breach of value based care contracts against commercial carriers, Medicare Advantage Organizations, Managed Medicaid Organizations, State Medicaid Plans, and Medicare

Keeping Your Practice Compliant in Light of Value Based Care Specific Regulations and Guidance

- Draft standard operating procedures and provide compliance training to ensure a practice's compliance with regulations prohibiting receipt of payments in exchange for the reduction or limitation of medically necessary services, when shared savings arrangements may incentivize such misconduct
- Evaluation of whether a practice is at "substantial financial risk" pursuant to Provider Incentive Plan regulations requiring stop-loss protection or evaluate preexisting stop-loss protection for legal sufficiency

Defending Providers in White Collar Criminal and/or Civil Investigations or Prosecutions Matters Arising Out of a Value Based Agreement

- Defend providers accused of False Claims Act violations for, e.g., alleged risk adjustment upcoding
- Defend providers accused of violating the Civil Monetary Penalties Law in connection with shared savings arrangement
- Defend providers sued by payors for breach of value based care contracts

Who Do We Represent?

Frier Levitt has represented a diverse range of provider entities or their subcontractors in value based care related matters, including:

- Hospitals
- Self-funded Health Plans
- Independent medical practices
- Hospital-based medical practices
- Private Equity-based medical practices
- Clinically Integrated Networks (CINs)
- Accountable Care Organizations (ACOs)
- Independent Physician Associations (IPAs)
- Patient Centered Medical Homes (PCMHs)
- Provider vendors and consultants, such as healthcare data analytics firms, with provider gainsharing agreements
- Drug manufacturers

Questions?

Jonathan Levitt, Esq., Daniel Frier, Esq., and Jason Silberberg, Esq. currently head Frier Levitt's value based care group. **Contact Us today** to speak with one of our attorneys specializing in value based care.