

**PERSPECTIVES ON**  
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**Post-Repeal and Replace: What's a Sponsor to Do?**by [Mark E. Lutes](#)

In the wake of the demise of recent Affordable Care Act “repeal and replace” efforts, both “skinny” and full boat, health care financial sponsors may wonder how they should be thinking about opportunities and threats related to their portfolio companies and targets. There are two things to bear in mind: (1) even during periods of congressional inaction, there is an inexorable cycle of Centers for Medicare & Medicaid Services (CMS) rulemaking relative to payment policy; and (2) there will be material opportunity for market changes pursuant to Medicaid waivers. These persistent and strong undercurrents guarantee sponsors public-policy opportunities to advance the position of their investments or quell threats to current market positions.

For example, every year, in June and July, CMS publishes proposed changes in the Medicare physician payment system, the increasingly important hospital outpatient prospective payment system, and the ambulatory surgery payment system. Tracking and responding to those proposals should always be considered. Of course, the best strategy is never to be solely reactive to CMS proposals but to have helped staff understand the case for change (or the maintenance of current policy) far in advance of a proposal being formulated. Before a proposed rule is published, staff is able to discuss issues and appreciate problems in a manner that is more fulsome than during the post-publication public comments period. As we head toward the fall and winter periods of the development of the hospital inpatient rule and the skilled nursing facility payment rule, among others, now

is the appropriate time for sponsors and portfolio companies to take stock of the possibilities and chart a course for being heard.

Though legislation of block grants and per capita caps now seems unlikely in the near term, the vast Medicaid marketplace will evolve, impacted by changes in CMS regulation and policy, in diverse ways. The Department of Health and Human Services has already called for governors to give it input into program changes that might become part of models or waivers. Sponsors whose portfolio companies are downstream of this, the nation's largest insurance program, will wish to consider whether there are program variations that their portfolio companies might benefit from. Many of these investments have a value-based purchasing thesis undergirding them, and it could be timely to maximize the opportunities for their health care models and tools in an increasingly cost-conscious environment. The framework of waivers worked on by the current Administrator and other opportunities within existing CMS discretion should be evaluated.

Yes, "repeal and replace" efforts will not be front and center in the months ahead. However, the cycle of Medicare payment rulemaking impacting each part of the delivery system remains strong. Moreover, Medicaid will be materially reshaped (eligibility, benefits, and delivery format) in many states in frameworks approved by CMS. In such an active, not deadlocked, regulatory environment, sponsors need not be passive.

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*For additional information about the issues discussed above, please contact the Epstein Becker Green attorney or EBG Advisors consultant who regularly assists you, or the author of this advisory:*



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