Navigating Value-Based Contracts: Legal, Payer, and Physician Perspectives

AMA IPPS Interim Meeting - November 8th, 2024

What a law firm *should* be.

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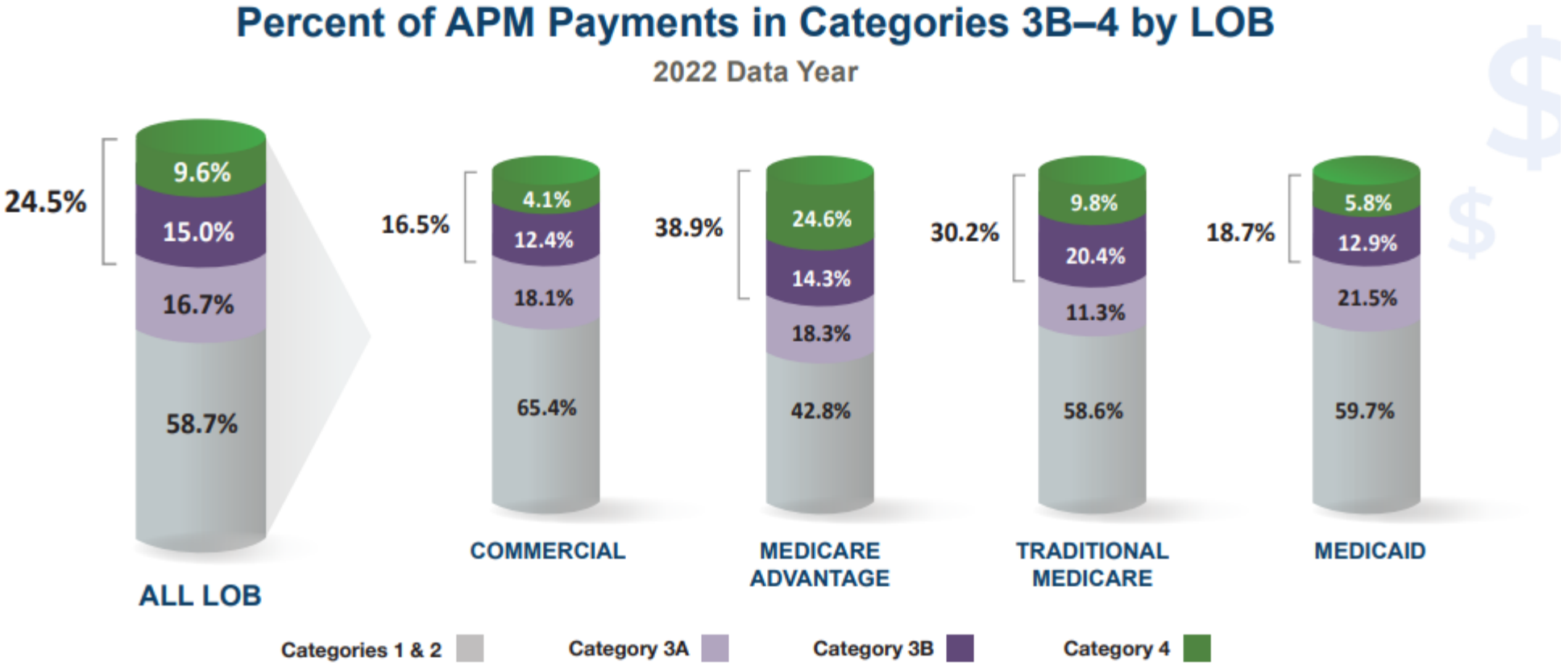
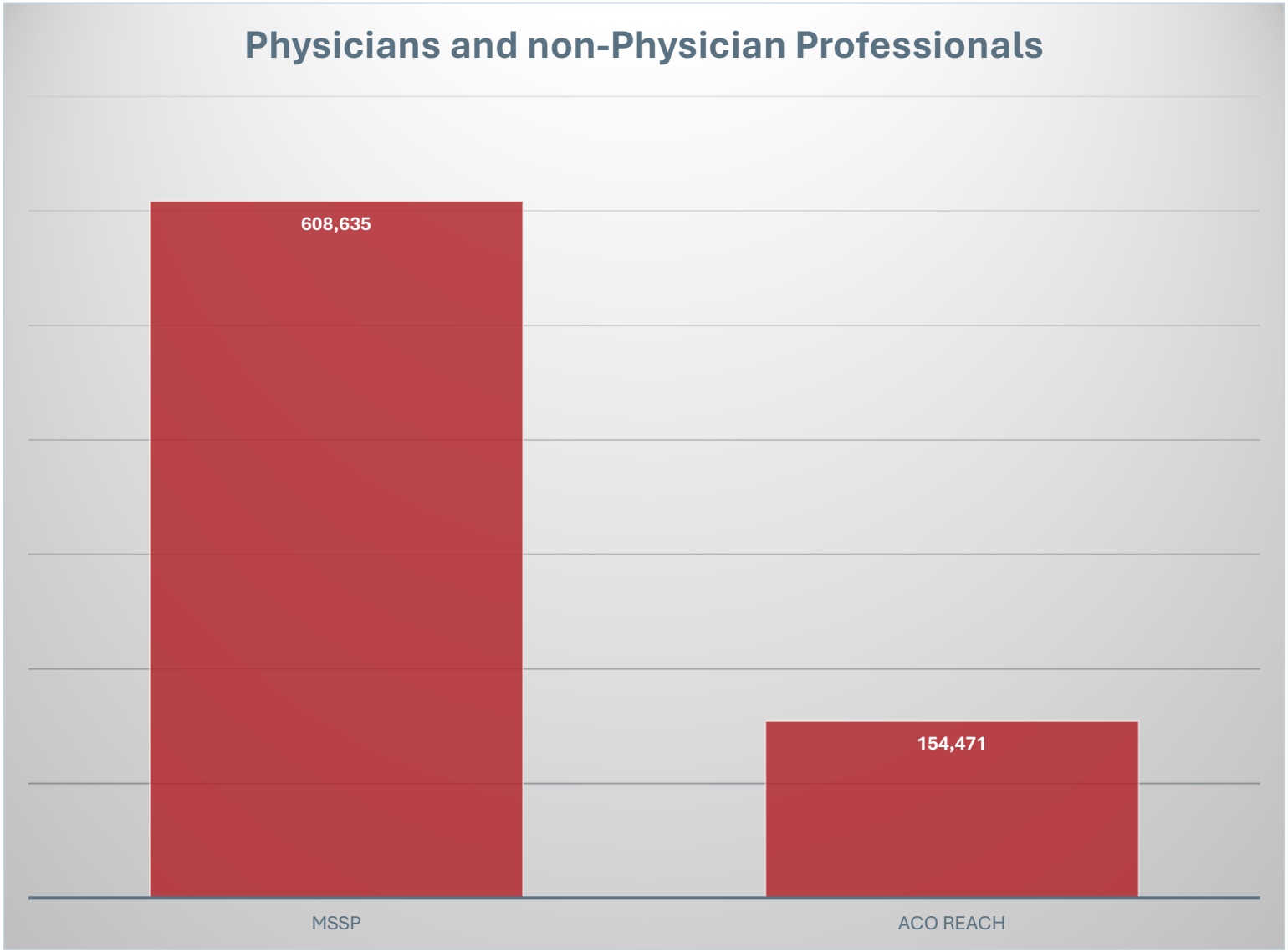
Most US Health Care Payments are Still FFS

In 2022, 24.5% of U.S. health care payments flowed through two-sided financial risk contracts (Categories 3B-4) across all Lines of Business (LOBs).



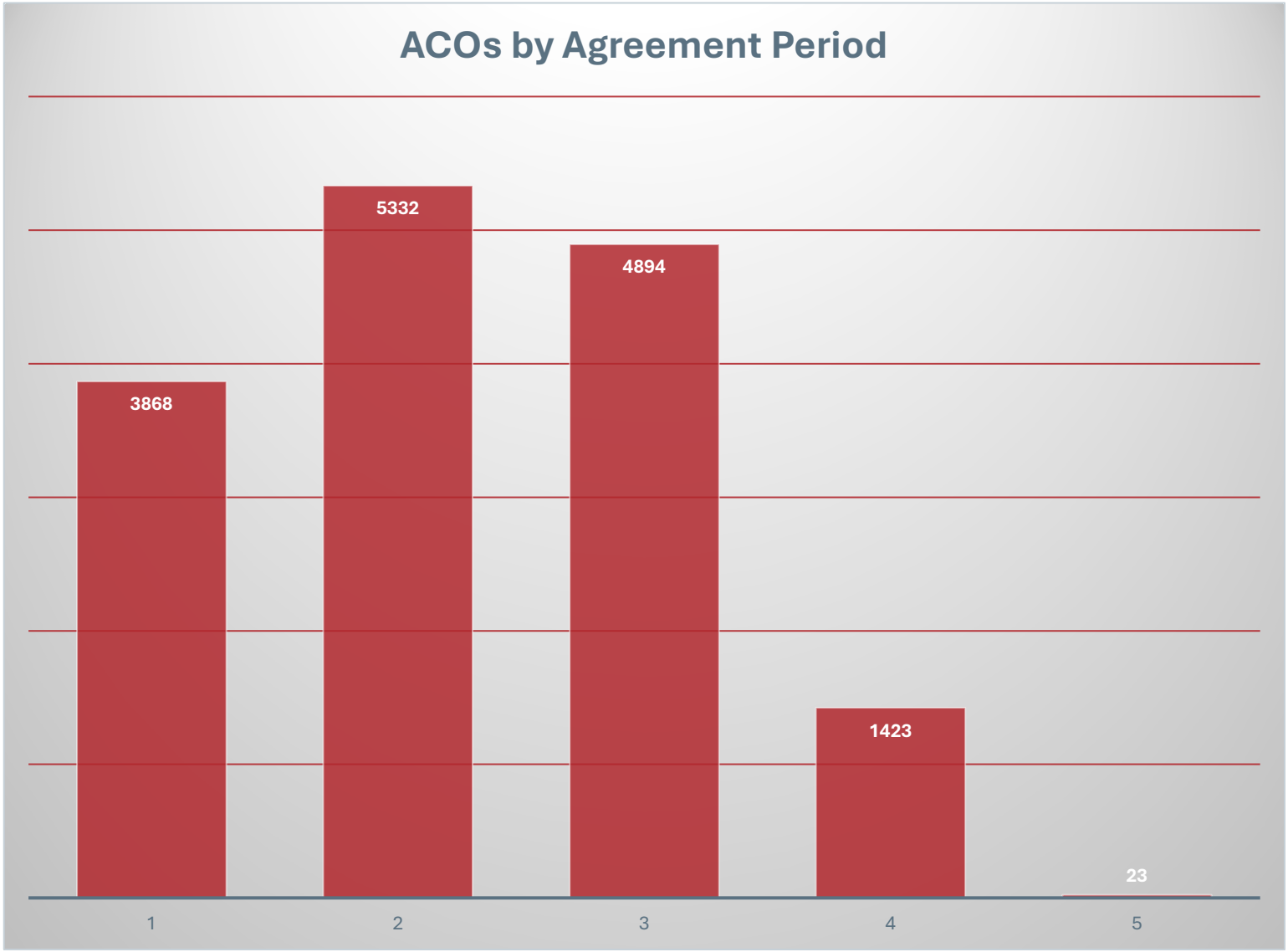
SOURCE: HCP-LAN, 2023 APM MEASUREMENT EFFORT, HTTPS://HCP-LAN.ORG/WORKPRODUCTS/APM-INFOGRAPHIC-2023.PDF

Participation in Medicare ACO Programs



SOURCE: CMS, 2024 ACCOUNTABLE CARE ORGANIZATION PARTICIPANTS, HTTPS://DATA.CMS.GOV/MEDICARE-SHARED-SAVINGS-PROGRAM/ACCOUNTABLE-CARE-ORGANIZATION-PARTICIPANTS/

MSSP Participation Maturity



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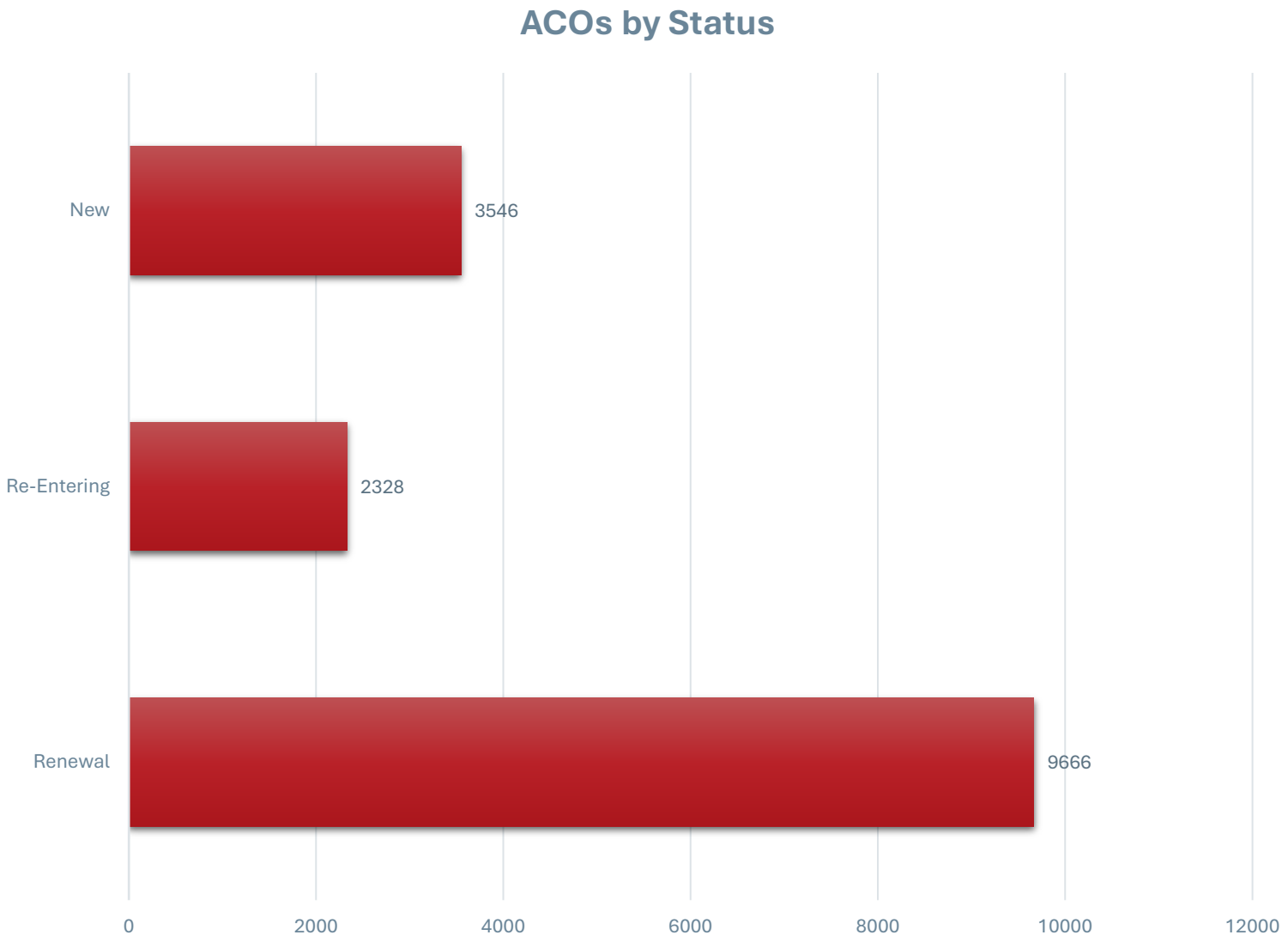

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Distinct Challenges

NEW / DEVELOPING VBP INITIATIVES

- Creating infrastructure
- Understanding spend
- Developing tools to manage / impact / incentivize changes in performance
- Understanding MSSP operational concepts like attribution, risk management, addressing outliers, planning for / managing potential for shared losses, developing compensation models, navigating governance

MATURE VBP INITIATIVES

- Maintaining improvements
- Navigating mandatory transition to risk
- Developing strategies to engage specialists and develop advanced interventions
- Operational governance challenges
- Using ACO experience to engage other payers

The “What’s Next” Challenge for Successful ACOs

Opportunity	Drawback
Continuing to participate in MSSP	Difficult to show continuous savings
Moving to ACO REACH	Limited application opportunities, new infrastructure expenses
MA opportunities	Changes to benchmark rates, star ratings, risk adjustment may make MA less attractive
Enablement entities	Integration into third party model can be challenging; independence questions
Private / commercial models	Payor value-based strategies, operational requirements, support tools can differ from CMS; payors vary in appetite for negotiation; part of larger payor strategy
Non-traditional models (e.g., employer direct contracting, retail partnerships)	Difficult to identify starting points for negotiation, value-based infrastructure may be developmental, certain high-profile retreats from VBP efforts

CMMI Priorities

- CMMI Strategic Refresh (2021)
  - Health equity focus
  - Streamline model portfolio and reduce complexity and overlap
  - Tools to support care delivery
  - Ensuring broad provider participation
  - Complexity of financial benchmarks
  - Lasting care delivery transformation
- Engaging specialists (CMMI Strategy to Support Person-centered, Value-based Specialty Care, Nov. 2022).
  - Additional data (e.g., shadow bundles, public reporting)
  - Episode-based payment models (inc. mandatory?)
  - Integrate specialty care into primary care delivery pathways (financial models to improve access & reduce wait times, possible “financial targets for high-volume, high-cost specialty care within population-based models”).
  - ACO incentives to reduce unnecessary hospital utilization and low-value ancillary services (“sub-population condition and procedure-based spending targets”)

Expanded Engagement

- Data opportunities
  - Lots of available data – but may not be easy to use.
- Shadow bundle strategies
  - Internal reporting / baselining
  - Bonus models and modification of shared savings models
  - Gainsharing or “bilateral” arrangements within the ACO
  - Tools to engage specialists outside the ACO
- Using data across different payor contexts
  - Substantial Medicare (and other) data may be used to “tell a story” in other contexts
  - Employer models
- SDoH Interventions and Community Partnerships
- Investing in infrastructure outside “core” practices
  - Behavioral health
  - Dental alignment

Innovative Arrangements

- Anti-Kicbkack Statute and Stark Law:
  - Federal fraud and abuse laws that limit financial relationships with referral sources.
  - Value-based safe harbors/exceptions published by HHS OIG and CMS in 2020
  - Not widely used early on because they are complicated and had certain limitations
- CMS has not issued additional fraud, waste, and abuse waivers for newer models
- Increasing use of these flexibilities
- Common use cases:
  - Intensive care coordination (including directed referral requirements)
  - Infrastructure investment and ongoing support
  - Compensation support payments (most common in at-risk arrangements)

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