agreement is entered, the recitals themselves may not be contractually binding on the parties and, thus, key substantive provisions related to the obligations and duties of the parties should be set forth in the body of the agreement and not the recitals.

Key questions: Recitals

There are substantive provisions related to the obligations and duties of the parties set forth in the recitals rather than the body of the agreement. Does that seem right? No, that could be problematic, depending on what jurisdiction you are in. It is recommended that the agreement be revised so that any substantive provisions are incorporated into the body of the agreement, rather than the recitals, to ensure that they will be binding upon both parties.

Model language: Recitals

Whereas, _____ is a _____ [insert specialty] physician practice ("Physician") that provides high quality medical care to its patients and seeks to establish programs and protocols to ensure that it delivers the most optimal care to its patients at a low cost.

Whereas, _____ is a health insurer ("Payer") that provides health insurance bene ts to its Members and seeks to establish programs and protocols to ensure that it provides coverage for the most optimal care for its Members at a low cost.

Whereas, Physician and Payer seek, through their mutual agreement forthwith and as described herein, to provide high quality care to those Member patients who may best bene t from the program and protocol as set forth in this Agreement.

Te f ag ee e

Many bundled or episode-based agreements require a three year term, although some use a ve year term. This extended term recognizes that it takes time for patient engagement in healthy behaviors to have an impact on quality outcome measures. Often payers develop models with a speci c term in mind based on their resource allocation for the model, and may not be exible in contract negotiations

Key questions: Term of agreement (continued)

My agreement has an "automatic renewal" clause—what is this? Automatic renewal clauses are common in agreements and not a cause for alarm if structured properly. Automatic renewal clauses can allow successfu arrangements to continue without additional negotiations. Often, from a contract administration perspective, neither the payer nor the physician want to spend time and resources re-executing an agreement that is otherw working for both parties. It is important, though, to make sure that the agreement has adequate termination language to allow the physician to exit the agreement if it is not working.

Model language: Term of agreement

Term: The term of this Agreement shall begin on _____, 20__ (the "Start Date") of this Agreement and shall expire three years following the Start Date of this Agreement (the "Initial Term"). This Agreement may automatically renew for additional twelve (12) month periods (each a "Renewal Term") unless either Party gives written notice of intent to terminate not less than ninety (90) days prior to the end of the then-current term, or in the event of termination per the termination clause of this agreement (collectively the Initial Term and each Renewal Term, the "Term"). The provisions of this Agreement shall continue for the Term of this Agreement, notwithstanding changes in the Payer's design or requirements of this or similar payment arrangement models, and shall only be altered with the signed express written agreement of both Parties, pursuant to Section __ [amendment section] herein.

C e a i a d c l lab a i

The payer and the physician should be engaged on an ongoing basis to ensure that the bundled or episode-based agreement is working for both parties. Some payers set this dialogue up formally, and others have touch points ta who communicate on a regular basis with the physician. Here physicians should consider whether they want to be contractually bound to participate in formal, recurring meetings or conference calls. At a minimum an expression in the agreement that both parties intend to collaborate and cooperate to ensure the physician's success in the model can set the right tone for the agreement or 1 (a ame.EMC /Sp

Model language: Covered services

Key questions: Performance determination (continued)

There is a provision here that says I can only refer to in-network providers to receive compensation under the model, but I sometimes send my patients to out-of-network colleagues. Should I sign that?

Not necessarily. Payers may include penalties in this section of the contract related to referrals to out-of-networ providers, or clauses that commit the physician to use in-network providers only. You should omit that language reconsider your participation if it will not work for your practice. Alternatively, you can include carve-out languag that gives you the right to refer, in your sole discretion, to out-of-network providers when medically necessary.

Model language: Performance determination

Performance Determination. For each Performance Year during the Term of this Agreement, Physician's performance will be determined based on the formula and metrics set forth in Exhibit __ attached hereto, including risk adjustment factors, and by reference incorporated herein. The method by which Physician's performance is determined, including factors governing risk adjustment, shall only be amended upon mutual agreement of the parties by execution of a written amendment to the agreement by the parties pursuant to Section __ [amendment provision] of the agreement.

Referrals. Physician shall make a good faith e ort to refer to participating providers in circumstances where medical necessity requires that a patient must be referred. Physician has sole discretion as to referrals and may make such decisions based solely on Physician's medical judgment, including, but not limited to, cases of emergency, situations where there is no accessible participating provider with the requisite training and skill for treatment, or when Physician determines that a non-participating provider would provide the optimal patient care for any reason.

Pa e a d ec cilia i

The terms of payment and reconciliation under the bundled or episode-based agreement, including remit11 (ed)11 (. P)4 (h)12 (y)4 (h4ncl)11 ((in unC uch)]p)4 (h)oduring to9 (y)40msc[r)10 (e,lg to ag) paclea

Model language: Payment and reconciliation

Payment and Reconciliation. Payer will remit payment pursuant to the performance determination and perform any necessary reconciliation within thirty (30) days of the end of each performance period. Physician may appeal the performance determination and payment within thirty (30) days of receipt of payment. Payer must respond to such appeal within fteen (15) days of receipt. Appeals that cannot be resolved within thirty (30) days of the date of Physician appeal shall be resolved pursuant to the dispute resolution process set forth in Section __ [dispute resolution section] of this Agreement. At the conclusion of the appeal, interest on the portion of the claim or the claim paid shall be calculated based on the date of submission of the claim and paid to the Physician.

Q ali ea e

Bundled or episode-based agreements often skate over the speci□cs of measure development and the calculation and determination of measure performance, but these terms should be outlined clearly in the agreement. First, the measures to be used should be de□ned to ensure they are relevant to the specialty of the physician; measures that are developed with physician input are optimal, particularly same-specialty physician input. Some payers use standard measure sets such as the Healthcare E□ectiveness Data and Information Set (HEDIS), while others develop their own measures.

Key questions: Quality measures

Model language: Quality measures

Quality Metrics. The pay-for-performance incentive payments shall be based upon the quality metrics set forth in Exhibit __ attached hereto and by reference incorporated herein. The quality metrics may be amended only by mutual agreement of the parties by execution of a written amendment to the agreement by the parties pursuant to Section __ [amendment provision] of the agreement. The quality metrics applicable to the Physician shall be relevant to the Physician's specialty, as applicable, and shall be based upon nationally accepted measure sets (e.g., HEDIS) related to clinical outcomes and developed clinical performance measures.

Unforeseen events

Uncontrollable, game-changing events, such as the introduction of a high-cost specialty drug or a national drug shortage, can adversely affect the financial benefit of participation in a bundled or episode-based model. Absent any language to protect the physician, in this situation the payer may take the position that these types of events are included in the financial and business risks taken on by the physician. It is therefore helpful to have some contractual language to shield the physician from such events.

Key questions: Unforeseen events

The payer I am working with does not want to include language on unforeseen events in our agreement. What else can I do to mitigate this risk? Some large providers and networks obtain independent actuarial advice or financial analysis to help understand risk upfront, but the costs for these services can be high. Talk with the p and your same-specialty colleagues about the incidence of unforeseen events in prior performance years. And sure your language in regard to contract termination is strong; if an unforeseen event does happen, you can us termination provisions as leverage to negotiate with the payer or terminate the agreement and exit the program

My colleague recommends that we obtain stop-loss insurance. Is this necessary? Maybe, depending on the level of risk you will assume by participating in the alternative payment model. The AMA has educational mater on stop-loss insurance that are a good resource. You can ask the payer about what stop-loss insurance they o or ask them to build a stop-loss provision into the agreement itself.

Model language: Unforeseen events

Immediate Termination Due to Unforeseen Events. In the event that, due to events outside of Physician's control, including, for example, the dramatic increase in the cost of a prescribed medication as part of the treatment plan of a patient, the cost of an episode of care substantially exceeds the calculated episode payment set forth on Exhibit __ attached hereto and by reference incorporated herein, Physician shall have the right to immediately terminate this Agreement. For purposes of this agreement "substantially exceeds" shall mean an increase of 100% or more of the stated episode payment.

Dispute resolution

Many physicians have some familiarity with standard dispute resolutions, as they are typically included in payer contracts. For bundled or episode-based agreements, payers may be more willing to include language to ensure that the parties have mechanisms in place to quickly, efficiently, and amicably resolve differences and unforeseen issues. These processes may include informal dispute resolution, mediation and/or arbitration. In the event of a dispute both parties stand to save time and resources by resolving such dispute through these alternatives to litigation. Outlined below in simple language is a timeline and procedures for the dispute resolution process which may need to be tailored to the parties' specific needs, including whether the individual physicians or group practice or network are parties to the agreement.

Te i a i

Data

- Does the agreement provide a process by which you will be able to obtain meaningful, timely performance data?
- Does the agreement provide adequate infrastructure for you to submit requested data to the payer?

Performance determination

- Are the terms of payment and reconciliation, including the time period for reconciliation, clearly set forth in the agreement?
- Are the performance metrics and calculation included by reference in the agreement, subject to change only upon your signed written agreement, and subject to appeal?

Payment and reconciliation

- Does the agreement clearly specify the timeframe for payment, reconciliation, and any deductions for case management or administrative fees?
- Does the agreement provide you with appeal rights to contest a payer's decision with regard to performance, payment, and reconciliation?
- Do you need to amend any existing physician employment agreements or compensation policies with your group's physicians to specify the method by which savings and/or incentive payments earned will be distributed?

Quality measures

- What metrics are being measured and do you have the opportunity to provide input on them?
- Are the metrics clearly set forth in the agreement? If they are contained in an exhibit or appendix to the agreement, does the agreement state that such exhibits, appendices, and attachments are fully incorporated into the agreement?
- Are the measures relevant to your particular specialty and/or practice?
- Does the agreement allow the payer to change the measures without your agreement?

Unforeseen events

- Does the agreement include provisions to mitigate the risk of unforeseen events such as a substantial increase in the cost of a drug or services provided as part of an episode of care?

Dispute resolution

- Does the agreement include disputoe(gTd(•)Tj/Span<ActualT2EtF<EFF000)T51EMC 3..>BDC ([, medi6 (7oo2r)9 23