

The Accountable Care Organization & Compliance

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Creation of Medicare Accountable Care

- ACA Healthcare Reform & Medicare Shared Savings Program (MSSP):
 - ACA Title III (Section 3022) codified at 42 U.S.C. 1399 (2010)—ACO concept established to protect and preserve Medicare and to facilitate coordination and cooperation among providers
 - Envisioned as a move from rewarding providers by performing more services to increase revenue toward providers focusing on meeting quality (focus on prevention and managing chronic diseases) and cost outcomes for an ultimate reward—SHARED SAVINGS—or an ultimate penalty for failing to reach the quality and cost benchmarks
 - Formal legal structure created by groups of providers (*e.g.*, hospital, skilled nursing facility, hospice, home health agency) or suppliers (*e.g.*, physician, nurse practitioner, physician assistant)

A Few Definitions:

- **ACO Provider/Supplier:** An individual or entity that is a Medicare provider or supplier and bills under an ACO participant Taxpayer Identification Number (TIN)
- **ACO Participant:** An individual or group of ACO providers or suppliers that enter into a participant agreement with **one** ACO
- **ACO:** A legal entity that is recognized and authorized under applicable State and Federal law, identified by a TIN and formed by one or more ACO participants that signs a participation agreement with CMS
- **Medicare Fee-For-Service (FFS) Beneficiaries:** Only individuals enrolled in the original Medicare FFS program (Parts A&B) are included, while individuals in Medicare Advantage Programs (Part C) and PACE **cannot** be attributed to an ACO
- **Attribution:** Alignment of a Medicare FFS beneficiary to an ACO, based on the utilization of primary care services by an ACO physician (Provider/Supplier)

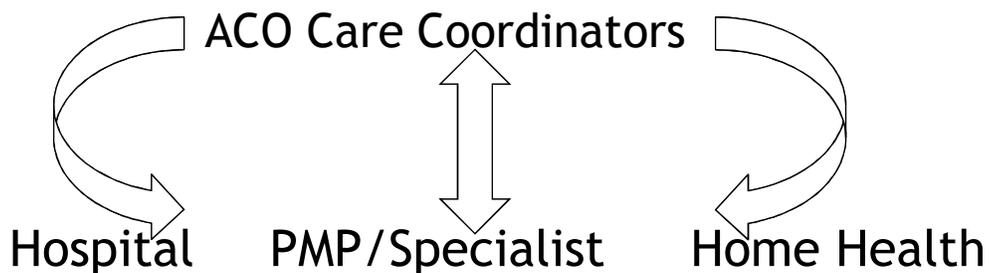
What Is Accountable Care?

- **The Three-part Aim Through:**

Better Population Health

Higher Quality Care

Lower Cost of Care



3 Tracks of the Medicare Shared Savings Program (MSSP/SSP) + the Next Gen

- **Track 1**
 - Shared savings rate of up to 50% with no risk
- **Tracks 2&3**
 - Shared savings rate of between 60% and 75% with varying downside risks
- **All three tracks**
 - Medicare Fee-for-Service Attributed Beneficiaries only
 - Three-year contracts—Track 1 can continue for up to a total of six years
- **Next Generation ACO Model**
 - Increased potential rewards and downside risk compared to the MSSP
 - Transitioning to capitation under outcome-based contracts
 - Three-year contracts with option for two additional years



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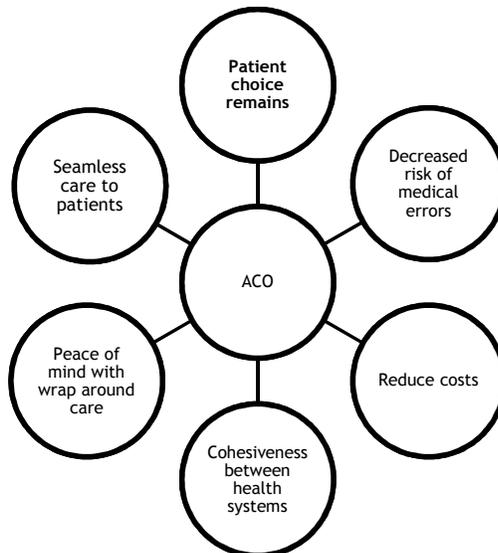
Governance Requirements of an ACO

- There must be a unique ACO governing body that:
 - Is different than governing body of any ACO participant
 - Has a fiduciary duty to the ACO to act in its best interest
 - Has ultimate authority to execute ACO functions
 - **Has continual shared governance—75% control of governing body held by ACO participants**
 - **Must include a Medicare beneficiary**
 - Not a provider/supplier
 - No conflict of interest of the beneficiary or immediate family member

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ACOs Connecting . . .



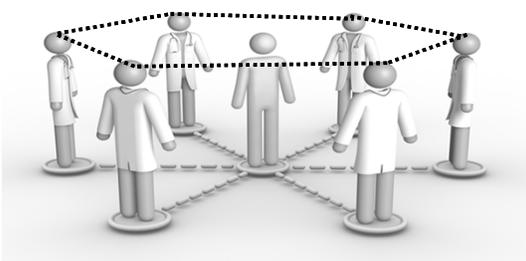
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Goals in Care of ACO Beneficiaries

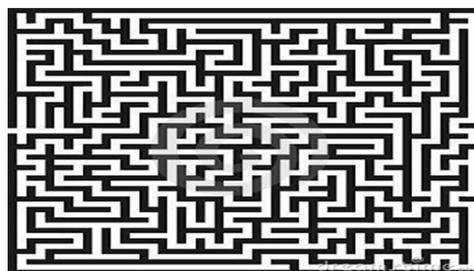
- ACOs coordinate entire picture of a person’s medical needs to ensure that all **necessary** parts work well together and are not fragmented and disconnected
- Imagine having to purchase a television by going to various places for the parts to make a whole item

ACO strives for—Care Coordination:



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Not—a maze of “by the piece” healthcare:



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How Does the Shared Savings Process Work?

- Prospective ACO submits MSSP application to CMS
- If CMS approves the ACO application, agreement must be executed with CMS
- ACO obtains participating provider agreements from the participants
- ACO submits a provider/supplier list to CMS
- ACO is accepted by CMS to participate as a Shared Savings Program ACO
- ACO coordinates care and provides outreach
 - 4 domains that include 34 quality measures
 - patient experience
 - preventive health
 - care coordination and patient safety
 - ability to care for at-risk population
- Year-end reconciliation on the measures and costs: spend less than benchmark to achieve savings

ACO Current Landscape:

- As of 1/1/2016:
 - 434 ACOs participating in the Medicare Shared Savings Program (22 ACOs opting for either Track 2 or Track 3)
 - Over 180,000 providers
 - 7.7 million Medicare beneficiaries served in the U.S.
 - 21 Next Generation ACOs beginning in 2016
- In 2015:
 - 400 ACOs saved over \$466 million
 - 125 ACOs qualified for shared savings payments of a set percentage payment from CMS as the ACOs' bonuses
 - Met quality benchmark and exceeded minimum savings rate (MSR) benchmarks



Franciscan ACO, Inc. Experience

- In 2015, Franciscan ACO's first year in MSSP:
 - Achieved a savings of approximately \$400,000, but did not meet the MSR requirement, in order to receive a portion of the savings that we generated (**SHARED SAVINGS**)
- Approximately 240,000 Franciscan ACO beneficiaries served in 2015
 - 60,000 in MSSP
 - 10,000 in Medicare Advantage ACOs
 - 70,000 in commercial ACOs



Why Compliance?

- A compliance program minimizes risk by increasing the likelihood of identifying and preventing unlawful and unethical conduct
- **In order to promote a culture of compliance to:**
 - Prevent, detect, and correct instances of non-compliance, fraud, waste, abuse, privacy, and security issues
 - Create an environment that encourages compliance and reporting potential issues without fear of retribution

"If you think compliance is expensive,
try non-compliance."

Former Deputy U.S. Attorney General Paul McNulty

Do the 7 Elements of an Effective Compliance Plan Apply to ACOs?

- Yes, absolutely!
 - No one size fits all—coordination with ACO providers/suppliers and partners
 - Existing entities that form an ACO can utilize a currently-existing compliance plan
 - A couple ACO compliance tips:
 - Coordinate among participants
 - Leverage existing compliance efforts



Applicability of Federal Fraud, Waste, and Abuse Laws

- ACO must generally comply with:
 - Anti-Kickback Statute
 - Stark Law
 - Antitrust Laws
 - Civil Monetary Penalties
 - False Claims Act
 - HIPAA
- Tax Exemption issues for a tax exempt entity participating in an ACO:
 - No private benefit (private inurement)
 - All transactions among participants must be at fair market value

Five Available MSSP Waivers of the Application of Certain Fraud, Waste & Abuse Laws (80 Fed. Reg. 66726 (Oct. 29, 2015))

1. Pre-participation Waivers
2. Participation Waiver
3. Shared Savings Distributions Waiver
4. Compliance with Physician Self-referral Law Waiver
5. Patient Incentive Waiver

Interesting fun facts:

- These waivers are self-implementing
- No need to submit a request to CMS for waiver



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My Favorite Waiver: Patient/Beneficiary Incentives (Gifts)

- The broad purpose of the ACO to coordinate care for Medicare beneficiaries or prospective beneficiaries is met
- The ACO, ACO participants, providers, and suppliers may all use this waiver
- The waiver requires that the gifts be free or below fair-market value
- Generally underused by MSSP ACOs



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Inducements Generally Prohibited 42 C.F.R. § 425.304(a)(1)

- “ACOs, ACO participants, and ACO providers/suppliers are prohibited from providing gifts or other remuneration to beneficiaries as inducements for receiving items or services from or remaining in, an ACO or with ACO providers/suppliers in a particular ACO or receiving items or services from ACO participants or ACO providers/suppliers.”

Patient Incentives Waiver—4 Conditions

1. ACO has entered into a participation agreement
2. Reasonable connection between the gift (item or service) and the **medical care** of the beneficiary
3. The gift is **in-kind**
4. The gift is:
 - a. For preventive care, or
 - b. To advance one or more of the clinical goals:
 - i. Adherence to a treatment regime
 - ii. Adherence to a drug regime
 - iii. Adherence to a follow-up care plan
 - iv. Management of chronic diseases or conditions.



Commercial Insurers—Joining In . . .

- The MSSP model has led commercial payers to enter into similar “ACO-like” agreements with providers
- Two Big Differences:
 - The ACO Fraud and Abuse Waivers do not apply!
 - Difficult to keep the beneficiary incentives/gifts waiver distinct between the Shared Saving Program and the commercial ACOs
 - If an MSSP ACO enters into a commercial agreement the ACO is still prohibited from incenting beneficiaries through cash, gift cards, entertainment . . . but commercial ACOs can
 - The reason that the ACO cannot and the insurer can is that the described rubric of compliance is the federal law that applies to Medicare and other federally supported healthcare programs (e.g., Medicaid)

Questions



- Contact me with further questions:
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