

# ACO Compliance Planning

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Suzy Kearns, Wilmington Health, PLLC  
Erin Roberts, Roberts Law Office, PA

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## Session Objectives

- ▶ Provide high-level overview of requirements an ACO must meet to participate in the Medicare Shared Savings Program (MSSP)
- ▶ Discuss practical solutions to implementing and maintaining an effective ACO compliance program
- ▶ Answer your questions

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## Accountable Care Organizations

- ▶ What is an ACO?
- ▶ What is the Medicare Shared Savings Program?
- ▶ What are the potential benefits?
  - ▶ Better overall care for individuals
  - ▶ Enhanced quality of care for the population
  - ▶ Lower growth in expenditures (generates shared savings)
- ▶ ACOs that advance the “Triple Aim” are rewarded

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## Organizational Requirements

- ▶ Must be a legal entity that is capable of:
  - ▶ receiving and distributing shared savings; and
  - ▶ establishing, reporting and ensuring that participating providers comply with the program requirements
- ▶ A new legal entity must be formed if the ACO has 2 or more independent ACO participants, which entity must have a TIN (but is not required to be a certified Medicare provider)

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## Participation Compliance

- ▶ ACO professionals in group practice arrangements
- ▶ Networks of individual practices of ACO professionals
- ▶ Partnerships or joint venture arrangements between hospitals and ACO professionals
- ▶ Hospitals employing ACO professionals
- ▶ Critical access hospitals (CAHs)
- ▶ Rural health clinics (RHCs)
- ▶ Federally qualified health centers (FQHCs)

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## Governance Requirements

- ▶ The ACO must provide for meaningful participation in the composition and control of the ACO's governing body for ACO participants or their designated representatives
- ▶ At least 75 percent control of the ACO's governing body must be held by ACO participants
- ▶ Ensure addressed not only in the planning phase, but also when there is a change of control or member substitution

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## Leadership & Management Requirements

- ▶ Operations must be managed by an executive (*i.e.* Executive Director or Chief Executive Officer) whose appointment and removal are under the control of the ACO's governing body
- ▶ Clinical management and oversight must be managed by a Medical Director (must be board-certified and present on a regular basis at a clinic, office or location that participates in the ACO's activities)

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## Program Integrity Requirements

- ▶ Compliance oversight is the responsibility of the Compliance Officer, who is responsible for assuring oversight of the ACO's Compliance Plan
- ▶ A Compliance Program specific to the ACO must be adopted and implemented
- ▶ The Compliance Officer must report directly to the ACO's Board
- ▶ CMS will screen each ACO and its ACO Participants for program integrity issues

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## Agreement with CMS

- ▶ ACO is required to enter into a written agreement with CMS
- ▶ ACO is agreeing to be accountable to Medicare FFS beneficiaries assigned to it
- ▶ ACO is prohibited from avoiding at-risk beneficiaries (CMS monitors trends and may impose penalties, including termination from the MSSP program, if it substantiates beneficiary avoidance)
- ▶ ACO is required to submit data that allows CMS to assess whether it has successfully promoted the Triple Aim, and is rewarded according to its performance and ACO Model/Track

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## Compliance Concerns for ACOs

- ▶ Participation Agreement between ACO and ACO Participants
- ▶ Conflicts of Interest
- ▶ Prohibition against ACO beneficiary inducements
- ▶ Data sharing and beneficiary opt-out
- ▶ MSSP compliance plan requirements

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## Participation Agreement

- ▶ ACO is ultimately responsible for satisfying all terms and conditions of its Agreement with CMS
- ▶ It is critical for ACO to have a robust Participation Agreement with its ACO Participant(s) which obligates the ACO Participant(s) to comply with the MSSP requirements
- ▶ Prudent to utilize Joinder Agreement or Acknowledgements that are signed by ACO providers and suppliers
- ▶ Authorized representative of the ACO must certify the accuracy, completeness, and truthfulness of:
  - ▶ The MSSP Application
  - ▶ The Agreement with CMS
  - ▶ Quality & other data submitted to CMS
- ▶ Each written request for shared savings must include a certification that the ACO is in compliance with all MSSP requirements and all information submitted directly or indirectly is accurate, complete, and truthful

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## ACO False Claims Act Exposure

- ▶ False reports or certifications
  - ▶ ACO certifying to the accuracy, completeness, and truthfulness of such information
  - ▶ Certification statement may state: “to the best of my knowledge or belief”
  - ▶ Incorrect information submitted during the performance year must be corrected before the recertification



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## Conflicts of Interest

- ▶ ACO must have a Conflicts of Interest Policy that applies to members of the ACO's Board and the disclosure of relevant financial interests
- ▶ The Policy should define what constitutes a "relevant financial interests" and remedial action that will be taken if a member of the Board fails to disclose
- ▶ Have all members of the Board complete Disclosure Statements

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## Beneficiary Inducements

- ▶ ACOs are generally prohibited from providing gifts, cash, or other remuneration as inducements for receiving services from or remaining in an ACO (or an ACO provider)
- ▶ Flexibility to offer beneficiary inducements for healthy behavior
  - ▶ There must be a reasonable connection between the item/service and the medical care of the beneficiary
  - ▶ Covers free or below FMV items/services (not cash)
  - ▶ Items/Services are in-kind and are for preventative care items or services that advance 1+ prescribed clinical goals
    - ▶ *Blood pressure cuff for a patient with a history of hypertension*
- ▶ Role of Beneficiary Incentive Program

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## Data Sharing and Beneficiary Opt-Out

- ▶ In addition to the Participation Agreement with CMS, the ACO will enter into a Data Use Agreement with CMS
  - ▶ Obligates the ACO to comply with HIPAA as well as applicable DUA and regulatory requirements of the MSSP
- ▶ Beneficiaries should be notified of and have control over who has access to their PHI for purposes of the MSSP
- ▶ Patient notifications must be sent providing the patient with the opportunity to decline having his/her claims information shared with the ACO
- ▶ ACOs should consider maintaining a list of all patients who have opted-out of data sharing

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## Mandatory ACO Compliance Plan Elements

- ▶ A designated Compliance Officer (who is not counsel to the ACO) reports directly to the ACO Board
  - ▶ Use job description or describe duties, eligibility and reporting obligations in ACO's organizational documents
- ▶ Mechanisms for identifying and addressing compliance problems related to the ACO's operations and performance
  - ▶ Internal risk assessments or audits
- ▶ A method for employees or contractors of the ACO, the ACO Participants, and/or the ACO providers/suppliers to report suspected problems related to the ACO
  - ▶ Compliance Hotline
- ▶ Compliance training for the ACO, the ACO participants, ACO providers/suppliers
  - ▶ Details on topics covered & responsible party
- ▶ Requirement for the ACO to report probable violations of law to an appropriate law enforcement agency
  - ▶ Detailed policy provisions

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## Building & Coordinating with Existing Programs

- ▶ If the ACO is the same entity as an existing provider, the compliance resources can be shared with the ACO (the Compliance Officer and Compliance Program), and supplemental information will need to be adopted and implemented, which targets unique ACO risk areas
- ▶ If the ACO is a new legal entity, the ACO can leverage the compliance resources of one or more of the ACO Participants; provided however, proper documentation is a must
  - ▶ Leasing the Hospital's Compliance hotline, audit staff;
  - ▶ Adoption of training materials

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## Developing an Effective Compliance Program

- ▶ No one size fits all
- ▶ Compliance coordination with ACO Participants as well as providers/suppliers
- ▶ Integration within a current compliance plan allowed
- ▶ Conduct a Compliance Gap Analysis/Assessment Early
- ▶ ACO maintains ultimate responsibility for ACO compliance

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## Compliance Gap Analysis/Assessment

- ▶ Is there alignment among the ACO Participants regarding culture and objectives?
- ▶ Is there appropriate investment in information technology (which allows data sharing, coordinating care & will satisfy the ACO's data requirements)?
- ▶ Does the ACO have the ability to leverage its current compliance program?
- ▶ Are the following in place or do they need to be implemented?
  - ▶ Organizational, governance , & leadership requirements
  - ▶ Proposed distribution plan to align incentives for all participating providers
  - ▶ Uniform Participation Agreement
  - ▶ Physician engagement
  - ▶ Beneficiary access to medical records

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## Core ACO Compliance Policies

- ▶ General ACO Compliance Plan and/or Policy
- ▶ Code of Conduct
- ▶ Conflicts of Interest
- ▶ Marketing Materials
- ▶ Patient Incentives
- ▶ Record Retention
- ▶ Reporting of Probable Violations of Law
- ▶ Prohibited Referrals /Ensuring Freedom of Choice
- ▶ Beneficiary Data Sharing Notification
- ▶ Data Access and Use
- ▶ Beneficiary Notification
- ▶ Exclusion Screening
- ▶ Compliance Training
- ▶ Compliance Risk Assessment and Work Plan
- ▶ Compliance Audit and Monitoring
- ▶ Responding to Government Audits, Inquiries and Investigations
- ▶ Investigations Process (including beneficiary and provider complaints)/Hotline
- ▶ ACO Management Compliance Committee Charter
- ▶ Disciplinary Policy/Guidelines



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## Monitoring Requirements

- ▶ Has the ACO satisfied the MSSP Application requirements?
- ▶ Are the data certifications accurate?
  - ▶ FCA violation for providing information known to be false
- ▶ Have the public reporting requirements been satisfied?
  - ▶ ACO fraud and abuse waivers

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## Avoiding Waiver Pitfalls

- ▶ Waiver compliance starts with Board compliance
- ▶ Imperative to know the requirements of each waiver
- ▶ Think in terms of what are the purposes of the MSSP and is the proposal going to advance the Triple Aim?
- ▶ Know the legal threshold that will protect the Board's decision making
- ▶ Document decision making and update website to include use of waivers

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## Monitoring ACO Performance

- ▶ CMS monitors through:
  - ▶ Analysis of financial and quality measurement data reported by ACO
  - ▶ Site visits
  - ▶ Beneficiary and provider complaints
  - ▶ Claims analysis, chart reviews, beneficiary surveys, and coding audits
- ▶ ACOs are required to maintain records for 10 years and to provide the government with the right to inspect all books, contracts, records, and documents

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## Documentation Check List

- ▶ Documentation of waiver compliance
- ▶ Organizational charts
- ▶ Background checks
- ▶ Compliance training
- ▶ Minutes and agendas of committee/leadership meetings
- ▶ Provider/supplier lists including removals
- ▶ Updated policies and procedures
- ▶ TIN/NPI lists
- ▶ Conflict of interest reviews and disclosure statements



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## Documentation Check List (cont.)

- ▶ Shared savings/loss distribution methodologies and changes
- ▶ Approved marketing materials/CMS submissions
- ▶ ACO website updates
- ▶ Copies of all provider/supplier agreements
- ▶ Root cause analysis to address identified compliance issues (CMS likes data)
- ▶ Corrective action plans including disciplinary documentation
- ▶ Beneficiary forms and signs (e.g., data opt-out, beneficiary notification requirement)

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## Compliance Tips

- ▶ Leverage existing efforts
- ▶ Involve critical team members (including the Compliance Officer) early on & on an ongoing basis
- ▶ Develop a culture of compliance immediately
- ▶ Build a strong governance model
- ▶ Coordinate among ACO Participants
- ▶ Establish a certification trail
- ▶ Develop a robust annual work plan
- ▶ Ensure necessary documentation is retained
- ▶ Proactively audit issues and address problem areas

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## Questions?

Suzy Kearns  
Chief Compliance Officer, Wilmington Health  
[SKearns@wilmingtonhealth.com](mailto:SKearns@wilmingtonhealth.com)  
(910)341-3331

Erin Roberts  
Attorney, Roberts Law Office  
[erin@robertslawnc.com](mailto:erin@robertslawnc.com)  
(919) 806-9710

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