



Five Things to Know About ACOs



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- What is an ACO?
- Who can form an ACO?
- How is quality measured?
- How are savings measured and shared?
- Are there other legal issues I need to know about?

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What is an ACO?

- An ACO is a consortium of health care providers and suppliers that work together to achieve the “three-part aim”:
 - Improved quality for Medicare beneficiaries
 - Improved health for populations
 - Reduced growth in health care expenditures
- Providers and suppliers wishing to form an ACO apply to CMS; CMS will accept as many applicants as meet the qualifications
 - Three year contract term
 - ACOs are not mandatory, nor is it likely that most Medicare providers and suppliers will be ACOs.
 - Recent evidence suggests great reluctance to participate; widespread dissatisfaction with the proposed rule.
- ACOs have the opportunity to share savings with the Medicare program

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Who can form an ACO?

- ACO Professionals in group practice arrangements
 - Primary care physicians
 - Note: not nephrologists
 - Also NPs, PAs
- Networks of individual practices of ACO professionals
- Partnerships or JVs between hospitals and ACO professionals
 - “Hospitals” means subsection (d) hospitals – PPS hospitals only
 - But non-acute hospitals can participate
- Hospitals employing ACO professionals
- Other providers and suppliers as the Secretary deems appropriate
 - Regulation says will include FQHCs, RHCs

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How is quality measured?

- Quality measured by 65 standards listed in proposed rule
- Relies heavily on existing quality measures (physician quality reporting initiative, hospital quality reporting initiative).
- 50% of ACO professionals must be meaningful Health IT users under meaningful user rule.

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How are savings measured and shared?

- Regulation contemplates a “two-track” model
 - Track one: ACO shares savings only (50/50) in years one and two; losses shared with CMS in year three.
 - Track two: for more sophisticated entities; ACO shares savings and losses (60/40) in all three years.
- Each ACO is assigned a benchmark based on ACO participants. If predicted expenditures come in below benchmark, ACO is eligible for shared savings.
 - Participants assigned by CMS – random assignment of beneficiaries.

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Are there other legal concerns that I should be aware of?

- Yes. There are three.
 - Antitrust
 - Tax
 - Anti-Kickback statute/physician self-referral law
- Antitrust
 - ACO participants are often competitors in the same market. The ACO statute is not intended to allow anti-competitive behavior.
 - FTC and DOJ issued joint guidelines on March 31.
- Tax
 - When a non-profit, tax exempt organization is paying something of value to “insiders” of the entity, the anti-inurement rules of § 501(c)(3) of the Internal Revenue Code can be triggered.
 - Payments must be made in accordance with the goals of the shared savings program.

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Are there other legal concerns that I should be aware of? (continued)

- Stark/AKS
 - Similar to tax rules, when a hospital enters into a financial relationship with physicians that are in a position to refer patients to it, and when payments are made potentially as an inducement to withhold care, the AKS/Stark/CMP statutes are triggered
 - Payments must be made in accordance with the goals of the shared savings program.

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- 60 days of public comment, expires June 6 for CMS; May 31 for FTC, DOJ and IRS.
- Interested parties should feel free to comment; CMS, OIG, DoJ, FTC, IRS have all specifically invited comment.
- Remains to be seen whether ACOs can truly arrest growth in health care expenditures, but it is clear that the Administration intends to use its best efforts to try.