Accountable Care Organizations: Update and Beyond

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Accountable Care Organizations: Update and Beyond

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ACOs: Legal Background

The Patient Protection and Affordable Care Act:

The Affordable Care Act authorized CMS to create the Medicare Shared Savings Program ("MSSP") and to establish contracts with Accountable Care Organizations ("ACOs") beginning January 2012.

- There are currently 337 organizations participating in the MSSP.
- There are 18 approved ACOs participating in the MSSP in New Jersey.

ACOs: Legal Background

ACO Defined:

- A formal legal entity with shared governance and one tax ID number
- Composed of health care providers
- Working together to manage and coordinate health care for Medicare fee-for-service ("FFS") beneficiaries

An ACO is required to demonstrate both improved quality of care and cost savings in order to be eligible for payments under the MSSP.

ACOs: Legal Background

Basic Elements of the MSSP:

- Agreement with CMS must be for no less than 3 years
- No change in Medicare FFS payments
- Opportunity to share in overall cost savings in addition to regular FFS payments
- Must meet quality standards
- Must realize savings compared to an expenditure benchmark
- An ACO may not participate in another shared savings program while it is in the MSSP

ACOs: Legal Background

Two Payment Models:

One-sided:

- no risk for 3 years
- Minimum Savings Rate ("MSR") based on a sliding scale from 2% to 3.9%
- maximum share = 50%

Two-sided:

- shares savings and losses
- MSR of 2%
- maximum share = 60%

If MSR is satisfied, the ACO shares in the first dollar of savings.

ACOs: Legal Background

CMS Benchmarks:

- Incentive payments are based on annual incurred costs for ACO Medicare beneficiary participants compared to CMS benchmarks.
- CMS benchmarks are based on a 3 year weighted average for beneficiaries that would have been assigned.
- CMS benchmarks are adjusted for ESRD, disabled population, dual eligibles, national growth rate, severity and case mix.

ACOs: Legal Background

Assignment of Medicare Beneficiaries:

- first, based on primary care services by PCPs
- second, based on primary care services by specialists, PAs and NPs

Beneficiaries are assigned prospectively, updated quarterly and finalized annually.

ACOs: Legal Background

Establishing Quality Performance:

ACO Regulations Contain 33 Quality Measures in 4 domains:

- Patient/care giver experience
- Care coordination/patient safety
- Preventative health
- At-risk population

The ACO must report all measures. If the ACO fails to achieve the minimum attainment level in 70 percent of the measures, CMS may take action.

ACOs: Preliminary Experience

Pioneer ACOs (Year 2 Results):

- Year 2 results demonstrated improvements in 3 key areas:
  - financial
  - quality of care
  - patient experience
- 11 Pioneer ACOs earned shared savings
- 3 Pioneer ACOs generated losses
- 3 Pioneer ACOs deferring reconciliation
- Qualified for shared saving payments of $68M
- Showed improvement in 28 of 33 quality measures

ACOs: Preliminary Experience

MSSP ACOs (Year 1 Results):

- 337 MSSP ACOs in 47 states, plus District of Columbia and Puerto Rico
- 18 MSSP ACOs in New Jersey
- 53 MSSP ACOs earned shared savings
- 1 Track 2 MSSP ACO overspent target and owes $4M
- Additional 52 MSSP ACOs reduced healthcare costs but failed to meet MSR
- Qualified for shared savings payments > $300M
- Showed improvement in 30 of 33 quality measures
- 125,000 eligible, qualified professionals will avoid PQRS payment adjustment in 2015 by demonstrating the ability to report quality measure through their ACO

ACOs: Preliminary Experience

New Jersey MSSP ACOs (Year 1 Results):

- 3 of 11 NJ MSSP ACOs will share savings
  - Optimus Healthcare Partners
  - Meridian ACO
  - Hackensack Physician – Hospital Alliance ACO
- Total shared savings payments of approximately $21M

ACOs: Preliminary Experience

Commercial "ACOs":

- Movement away from fee-for-service to performance-based reimbursement
  - Aetna
  - Blue Cross Blue Shield
  - CIGNA
  - United Healthcare

ACOs: Benefits and Challenges

Potential Benefits:

- Opportunity to participate in shared savings
- Potential for quality improvement
- Potential for business growth and protection

Potential Challenges:

- Start-up costs – staffing and infrastructure
- Subject to quality and cost monitoring and controls
- Physician buy-in
  - compliance with policies and procedures
  - performance vs. volume-based compensation
- Beneficiaries obtaining services outside of the ACO

Beyond ACOs: Alternatives to the Shared Savings Model

- Performance Incentive Arrangements
- Financial Risk-Sharing Contracts
  - capitation
  - percentage of premium
  - global fees
  - case rates/episode of care rates
  - bundled payments

Beyond ACOs: Alternatives to the Shared Savings Model

Clinically Integrated Networks:

- Independent healthcare providers brought under a common legal structure
- Focus on quality and efficiency
- Common care guidelines
- Data sharing
- Performance tracking
- Antitrust considerations

Beyond ACOs: Alternatives to the Shared Savings Model

Patient Centered Medical Homes:

- Comprehensive model of primary care
- Team-based care includes ancillary services (e.g., nurses, pharmacists, nutritionists, social workers, etc.)
- Coordinated care/tracking and follow-up
- Accessible care/extended hours/electronic access
- NCQA accreditation

Beyond ACOs: Legal Considerations

Licensure and/or Registration:

- Organized Delivery Systems ("ODS")
  - An ODS is a legal entity that contracts with a carrier for the purpose of providing or arranging for the provision of health care services to persons covered under a carrier's health benefits plan, but which is not a licensed care facility or other health care provider.

Beyond ACOs: Legal Considerations

Antitrust Considerations for Provider Networks:

- Naked agreements among competitors that fix prices or allocate markets are *per se* illegal.
- Law is concerned with reductions in competition and harm to consumers through higher prices and/or lower quality.
- Network arrangements can be procompetitive by encouraging providers to practice collaboratively and efficiently.

Beyond ACOs: Legal Considerations

Federal Guidance Regarding Antitrust:

- 1993 and 1994 Statements of Antitrust Enforcement Policy in Health Care: USDOJ and FTC established "safety zones"
- 1996 Statements of Antitrust Enforcement Policy in Health Care: USDOJ and FTC addressed multiprovider networks and elaborated on the Rule of Reason
- FTC Advisory Opinions
- 2011 Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations Participating in the Medicare Shared Savings Program: USDOJ and FTC established "safety zone" for ACOs

Beyond ACOs: Legal Considerations

Antitrust Analysis:

- "Safety Zones"
- Rule of Reason
  - Market share
  - Impact on competition
  - Efficiencies/quality enhancement result from the arrangement
- Antitrust analysis is inherently fact sensitive

Beyond ACOs: Legal Considerations

Alternative Approaches:

- Messenger Model/Opt-Out Model
- Minimum Requirements/First Opportunity
- Clinical/Financial Integration
  - Law requires an active and ongoing program to evaluate and modify the clinical practice patterns of the health care providers who participate in a network so as to create a high degree of interdependence and cooperation among the network's providers to control costs and ensure quality

QUESTIONS

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