

SUMMARY OF THE JUNE 24, 2010 CMS SPECIAL OPEN DOOR FORUM ON ACCOUNTABLE CARE ORGANIZATIONS (ACOs)

The June 2010 Special Open Door Forum (the Forum) elicited comments from industry groups and associations.¹ Following a brief introduction by the Deputy Administrator of CMS regarding the concept of ACOs and their planned implementation under the Patient Protection and Affordable Care Act, numerous participants offered comments and concerns. In response to the comments, the Deputy Administrator stated that nothing beyond the text of the statute had been decided, but that all comments would be taken into consideration and that proposed regulations would likely be released this Fall.²

Common themes and shared concerns of the participants - who ranged from large industry groups like the American Medical Association and the American Hospital Association to individual physicians - can be gleaned from the Forum. Given the diversity among the speaking participants, we would hope that the weight of these shared concerns may be persuasive to CMS in shaping the Medicare Shared Savings Program and its related regulations.

Among the concerns voiced, the following were mentioned by multiple participants:

1. **Legal and Compliance Issues:** Many requested explicit exemption, waiver, or safe harbor from Anti-kickback, Antitrust, and Stark enforcement.
2. **Flexibility:** There cannot be a one-size-fits-all approach; rather flexibility is needed in the creation, organization, governance, and regulation of ACOs. ACOs may include the full spectrum of care, from birth to death.
3. **Incentives to Encourage Participation:** Providers and beneficiaries need to be encouraged to participate in an ACO. CMS must think in terms of attainable incentives, setting realistic savings goals that progress over time.
4. **Distinctions from Current Programs:** Speakers raised problems with several earlier Medicare Demonstration Programs (from Physician Group Practice to Medicare Advantage) that CMS should address for ACOs to be successful under the Shared Savings Program. Problems included:
 - o **Timely reporting of data**, a problem with several CMS Demonstration Projects, so that physicians can track functionality of their system and make adjustments accordingly.
 - o **Easing of data reporting burdens** on physicians, else ACO creation will be cost-prohibitive for small groups and individuals.
 - o **Prospective assignment of beneficiaries** to know the precise makeup and health of patient populations at a point in which real progress and changes can be made to reduce overall health care (retrospective assignment and populations that grew significantly less healthy prior to assignment to providers were issues in the past).
 - o **Appropriate and prompt distribution of incentives** and reduction of too many middlemen (and insurance companies); shared savings must be given out quickly to offset large start up costs.
5. **Beneficiary Notice, Choice, Protections, and Health Disparity:** CMS must clarify freedom of choice for beneficiaries, notice and appeals rights, impact of specialists/members of care team not being in a particular ACO, as well as collection of race, gender, and ethnicity data to measure health disparities.

In conclusion, it is clear that the medical community and the federal government agree various organizational models meet the requirements of an ACO (IPAs, Multispecialty Groups, Hospital Medical Staff Organizations, PHOs, Organized/Integrated Delivery Systems, among others). It seems that the “only” requirement for the composition of an ACO is having an adequate number of primary care providers. Other specific health care providers (hospital, post-acute care, specialists) will be needed, but primary care will be fundamental.

¹ Prior to the Forum, CMS posted ACO basic information online:

<https://www.cms.gov/OfficeofLegislation/Downloads/AccountableCareOrganization.pdf>

² A transcript and audio recording of the call should be posted by CMS on or about July 7, 2010:

http://www.cms.gov/OpenDoorForums/05_ODF_SpecialODF.asp