Accountable Care Organizations: Legal and Organizational Structures; Governance

The National Accountable Care Organization Congress
October 25-27, 2010
Los Angeles, CA
ACOs: Statutory Requirements

- Accountability for cost, quality and overall care of the assigned Medicare fee for service beneficiaries
- Formal legal structure to receive and distribute shared savings payments
- Sufficient number of primary care physicians
- Minimum of 5,000 beneficiaries
- Patient-centered criteria
- Process for reporting quality and cost-savings payments and measures
- Three-year agreement with DHHS
Eligibility to Participate as an ACO

- Physicians in group practices
- Networks of individual physicians
- Joint ventures between hospitals and physicians
- Hospitals employing physicians
- Other providers and suppliers approved by DHHS
Creating Provider Alignment

- Alignment strategies/function drives form of legal/organizational structure
- Alignment strategies/functions
  - Physician organization
  - Foundation or other type of clinic
  - Shared risk payments
  - Bonuses (quality and/or cost savings)
  - Joint marketing / branding
  - Shared / integrated IT
Legal Form of ACO Structure

- Legal form of ACO structure will follow from alignment of financial, services, IT and data, and governance relationships among participants.
- Legal form
  - LLC
  - Partnership (general or limited)
  - C corporation
  - S corporation
  - Non profit taxable
  - Tax exempt corporation
ACOs: Macro View

- Hospital
- PCP Groups
- Specialist Groups
- Multi-Specialty Groups
- Other Providers

ACO

Services

Medicare & Other Payors

FFS

Shared Savings

- Other Providers
- Mental Health
- Home Health
- Long Term Care / Hospice

Davis Wright Tremaine LLP
ACOs: Physician Organization Model

What Creates the Relationships Among the Providers and Suppliers?

Physician Organization
Clinically Integrated Physicians

Suppliers
Services/
$

Medical Group(s)
Services/
$

IPA(s)
Services/
$

Ancillary Providers
Services/
$

Hospitals(s)
Services/
$

Full Continuum of Care

Medicare & Other Payors
Full Range of Services

Full Range of Services
ACOs: Physician Organization – Hospital Models

What Creates the Relationships Among the Physicians?

What Creates the Relationships Between the Hospital and Physicians?
Creating Alignment – Physician-Hospital Model (Friendly Physician Organization)

- Company - LLC MSO
- Accountability - Management Agreement
- Assignment Option
- Medicare & Other Payors
- Physician Organization (ACO)
  - Service Agreements
    - Suppliers
    - Hospital(s)
    - IPA(s)
    - Professional Services
    - Medical Groups
    - Independents

- Assignable Option
- IPA(s)
- Medical Groups
- Hospital(s)
- Independents
Creating Alignment – Physician Hospital Model (Non-Provider ACO)

- Medicare & Other Payors
- Management and Service Agreements/$
  - Suppliers
  - Hospital(s)
  - IPA(s)
  - Medical Groups
  - Independents

- LLC MSO (Non-Provider ACO)
- Medical Group(s)
- IPA(s)
- Hospital(s)
- Independents

Shared Risk Agreement?
Creating Alignment – Foundation Model

One or more professional services agreements

IPA

Foundation provides:
• Administrative infrastructure/IT
• Holds payor contracts/bills for services
• Ancillaries

Hospital = Sole Member

Outpatient Clinic

Outpatient Clinic

1 or More Medical Groups

Foundation 1206(l)
Creating Alignment – Hospital Clinic Model
Creating Alignment – Co-Management Model

Hospital & Physician Co-Owned Management Company

Physicians

Hospital

Professional Services Agreements

Inpatient & Outpatient Service Line Management

Outpatient Clinic

Outpatient Clinic
Creating Alignment – Shared Risk

Payors

Physician Organization
Clinically Integrated
Independent Physicians

Medical Group
Medical Group
Medical Group

Risk Pool
Foundation
Clinic

Bonuses or
Gainsharing

Hospital

Outpatient
Clinic
Outpatient
Clinic

Payors

$
What It May Look Like

~ $11 million

Claims ~$9.35M
MDs        Hospital

Admin ~$200k
Acctg Legal Ops  Marketing

Withhold ~ $1.65M

Risk Sharing Performance Incentives ~$1.45M

Combined Hospital/Physician FFS/Cap/Per Diem Payment (2 separate payor contracts)
or
FFS Payment + Bonus
or
Bundled/EOC Payment

MDs        Hospital
Example: Risk Pool / Bonus and Incentive Payments Arrangement

<table>
<thead>
<tr>
<th>Performance System Allocation Percentages</th>
<th>% of Pool</th>
<th>Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost</td>
<td>30</td>
<td>Individual</td>
</tr>
<tr>
<td>Quality</td>
<td>30</td>
<td>Network</td>
</tr>
<tr>
<td>Satisfaction</td>
<td>20</td>
<td>Network</td>
</tr>
<tr>
<td>Participation</td>
<td>20</td>
<td>Individual</td>
</tr>
</tbody>
</table>
Example: Risk Pool / Bonus Arrangement

Network Performance Incentives Measures

Financial: Individual case mix adjusted cost per case

Clinical: Mortality, morbidity, clinical process measures

Satisfaction: Patient satisfaction, member satisfaction

Participation: Clinical education forums, performance improvement committees, educational presentations, charity care cases
Creating Alignment – Coordination of Care

Clinical and administrative systems capable of:

- Promoting evidence-based medicine and patient engagement
- Reporting on quality and cost measures
- Coordinating care (through telehealth, remote patient monitoring and other technology)
Hospital and physician organization share risk for bonus (or payment)

Physicians receive money for achieving certain metrics

Hospital receives money for achieving certain metrics
Creating Alignment – Joint IT/Branding

- What IT is currently in place?
- What will be needed to:
  - Coordinate Care
  - Measure Outcomes (Quality and Cost)
  - Report to Payors

Who Will Pay?

Physician Organization
Clinically Integrated
Independent Physicians

Hospital

Meaningful Use $$$?
Legal Issues

- Stark Law
- Anti-Kickback Statute
- Reduction in Services (CMP)
- Antitrust Law
- Insurance Law
- Corporate Practice of Medicine
- Tax Exemption
Statute requires:

- Mechanism for “Shared Governance”
- “Leadership and Management” structure including “Administrative and Clinical Systems”
Governance

- Board composition; representation of ACO participants
- Size of board; quorum
- Overlapping boards among ACO participants
  - Access
  - Consistency
  - Coordination
    - Clinical; quality
    - Cost savings
    - IT
Governance

- Board committees
  - Clinical; quality
  - Finance
  - IT
  - Compliance
  - Governance
  - Audit? SOX
- Conflicts of interest; disclosure of material
  Financial Interest
- Conflicting loyalties; fiduciary duties
Governance: Tax Exempt Providers

- Considerations for tax-exempt entities participating in non-exempt ACOs
  - Furtherance of tax-exempt participant’s charitable purpose
  - In joint venture between a tax-exempt hospital and physician, benefits flow to hospital (not physicians) consistent with hospital’s tax exempt status
  - Tax-exempt hospital representation on ACO board commensurate with level of hospital investment; veto power; control over charity care and community benefit, community needs assessments, participation in Medicare and Medicaid