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CMS Tries to Breathe Life Back into ACO Program Through Three New ACO Initiatives

By: [Sarah E. Swank](#)

On May 17, 2011, CMS announced three new initiatives under the ACO Shared Savings Program less than two months after it released the ACO Proposed Rule. With the January 1, 2012 deadline for commencement of the ACO program looming in the not-so-distant future, CMS made several adjustments to the ACO program in hopes of spurring interest in the program again. Health care providers should take note of the following initiatives before deciding to move forward with any ACO: (1) Pioneer ACO Model, (2) Advanced Development Payment Initiative and (3) Accelerated Development Learning Sessions.

Pioneer ACO Model

The Center for Medicare and Medicaid Innovation Center (the Innovation Center) announced a new program for at least 30 “mature ACOs” called the [Pioneer ACO Model](#). CMS is focusing on providers that already coordinate care to enable them to quickly apply and participate in the ACO program. The Pioneer ACO Model is separate from the shared savings program under the ACO Proposed Rule. Providers interested in becoming part of the Pioneer ACO Model will need to submit a completed application and enter into an agreement with CMS.

Several provisions such as the quality measures, governance and health information technology requirements will mirror the requirements in the ACO rule once finalized, while other provisions appear to differ from the initially proposed ACO Shared Savings Program. Some of the key differences between the Pioneer ACO Model and the Shared Saving Program under the Proposed Rule are as follows:

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- *Letter of Intent.* Those providers that are interested in participating should submit a letter of intent (LOI) no later than **June 10, 2011** by email. A [LOI template \[PDF\]](#) can be found on the Innovation Center website.
- *Application.* All interested providers must submit an [application \[PDF\]](#) by mail postmarked no later than **July 18, 2011**.
- *Withdrawal.* Once in the Pioneer ACO Model, ACOs may opt to withdraw from the model in writing before January 1, 2012, the commencement of the ACO Shared Savings Program. Under the ACO Proposed Rule, ACOs that terminated their agreement with CMS before the end of the three-year term are required to forgo the 25% withholding to CMS.
- *Medical Beneficiaries.* ACOs under this new model will be required to have a minimum of 15,000 beneficiaries, rather than the 5,000 beneficiaries required under the ACO Proposed Rule.
- *Beneficiary Alignment.* Under the ACO Proposed Rule, the timing of beneficiary alignment is retrospective using claims within the one-year performance period with prospective sharing of data. In contrast, under the Pioneer ACO Model, the alignment can be either prospective or retrospective. If prospective, then the calculation uses three years of prior claims data with a lag in the first year of performance. Under the retrospective calculation, claims from the one-year performance period are used as well as potentially claims from the prior year.
- *Core Payment Arrangement.* Under the ACO Proposed Rule, CMS proposed a two-track system: (a) Track 1 being a one-side model for year 1 and year 2 and then the two sided model for year 3 and (b) Track 2 requires the two sided model for all three years. Under the Pioneer ACO Model, CMS is seeking suggestions for two new models and will allow the Pioneer ACO to choose between one of two models once developed and finalized.
- *Minimum Savings and Loss Percentage in Excess of Expenditure Benchmarks.* The minimum percentage will be a flat 1% rate rather than a flat 2% in the two-sided model.
- *Quality.* CMS did not modify the 65 quality scores under the Pioneer ACO Model, but did provide a cap on minimum loss in certain cases not provided in ACO Proposed Rule.

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- *Data Sharing and Reports.* The ACO will receive additional reports under the data sharing agreement entered into with CMS under the ACO Proposed Rule, such as monthly financial reports and historical claims data reports. Beneficiaries will have 30 days from the start of the annual performance period to opt-out before data sharing begins. Thereafter, until the start of the next performance period, beneficiaries can stop data sharing by opting out at any time.

Advance Payment Initiative

The Innovation Center is seeking comments for the idea of upfront sharing of savings under the [Advance Payment Initiative](#). This request for comments is in response to provider aversion to the requirement, under the ACO Proposed Rule, that ACO participants would only share savings after the ACO reported a year's worth of data to CMS and CMS determined if the ACO met the savings and quality requirements. The fact that ACO participants could not share such savings until over a year later (if at all) may not be enough incentive for some independent physicians and hospitals to apply to the ACO program. Under the Advance Payment Initiative, CMS proposed monthly payments of shared savings based on "aligned" beneficiaries and CMS will later recoup unearned savings. At this point, it is unclear how such savings will be recouped. Any suggestions or reactions may be submitted by email to the Innovation Center by June 17, 2011.

Accelerated Development Learning Sessions

The Innovation Center also is holding free educational sessions in Minneapolis, Minnesota for those providers interested in speaking with their peers about coordination of care across care settings. These [Accelerated Development Learning Sessions \[PDF\]](#) will include senior leaders of providers as faculty and will focus on four areas:

- Leadership and priority-setting
- Clinical and operating challenges of transforming care delivery (including health information technology)
- The managerial and financial challenge of assuming and managing risk
- Meeting patient needs while reducing the cost of care

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Providers interested in attending must register by **June 20, 2011**. These sessions are open to the public, but space is limited. The Innovation Center may hold additional session in the future.

Ober|Kaler's Comments

The ACO Proposed Rule was met with mixed reviews and concerns from providers. Smaller and less integrated providers worried that the infrastructure and start-up costs associated with forming an ACO, including the requirement to meet the EHR and meaningful use requirements, would outweigh any potential savings. Some providers saw the standards for cost savings and quality measures as hurdles not likely to be met. Even well established integrated systems expressed concern that the 65 quality measures in the ACO Proposed Rule were too numerous, noting quality reporting in the original demonstration project was not as robust.

That being said, under both the Pioneer ACO Model and the ACO Proposed Rule, one key area still under consideration relates to the core payment arrangement for ACOs. It appears that CMS favors a two-track payment approach in either case. In the end, CMS seeks to modify and educate about the ACO program through these three new initiatives in the hope that some providers now will join the program before the January 12, 2012 start date. CMS appears to have listened to some of the industry concerns about sharing of savings, while seeking comments and educating on others.

In addition, to the comments and suggestions under the three initiatives, CMS is still seeking comments on the [ACO Proposed Rule \[PDF\]](#) by **June 6, 2011**. For more information about ACOs and the ACO Proposed Rule, please see [Ober|Kaler's ACO Team](#).