

## The “Pioneer” Model: CMS’s Alternative Shared Savings Program for ACOs

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In an apparent effort to encourage hesitant hospitals and providers to participate as Medicare accountable care organizations, CMS has designed an accelerated program for advanced organizations that are already clinically integrated to participate in a shared savings program as early as this fall.

Organizations that have already decided not to participate in the U.S. Center for Medicare & Medicaid Service’s (CMS) proposed Medicare Shared Savings Program (MSSP) as an accountable care organization (ACO) might want to reconsider. On May 17, 2011, CMS issued a request for applications for participants in an alternative ACO model, the Pioneer ACO model, designed to achieve the Institute for Healthcare Improvement’s Triple Aim of better care for individuals, better health for populations and lower expenditures in health care.

The Pioneer ACO model is an apparent response to many of the concerns that have been expressed by health care organizations and industry stakeholders regarding the MSSP ACO model reflected in CMS’s [proposed rule](#) issued on March 31, 2011. Although the Pioneer ACO model is predicated upon the MSSP ACO model, there are several significant operational and financial differences between the two models:

- The introduction of a competitive application process in the Pioneer ACO model
- Incorporation of a population-based payment
- The option to incur less down-side risk
- Prospective beneficiary assignment (termed “alignment” for purposes of the Pioneer ACO model)

The Pioneer ACO model is intended for organizations that are already highly integrated and capable of transitioning from fee-for-service (FFS) payments to payment for coordination of care and improved outcomes. Reflecting this difference, the Pioneer ACO payment model incorporates a population-based payment in the third year of the ACO’s Participation Agreement. This population-based payment will be a per-beneficiary per-month payment that will replace 50 percent of the FFS payments that

would otherwise be made to the ACO. The intent of the population-based payment is to permit Pioneer ACOs to offer services not currently covered by FFS payments.

Pioneer ACO applicants can select one of three Core Payment Arrangements that vary in the percentage of shared savings and shared losses depending on the performance period. The basic Core Payment Arrangement includes shared savings up to 60–70 percent and shared losses capped at 10–15 percent. Core Option A includes shared savings of up to 50–70 percent and shared losses capped at 5–15 percent. Core Option B includes shared saving of up to 70–75 percent and shared losses capped at 15 percent during all performance periods.

Regardless of the Core Payment Arrangement selected, each methodology includes a portion of the population-based payments discussed above, and all include first-dollar sharing of savings for Pioneer ACOs that meet a minimum savings rate of 1 percent. CMS also strongly encourages Pioneer ACO applicants to propose other payment models and will review the proposals to create an additional Alternative Payment Arrangement which will be offered to all approved Pioneer ACOs prior to the start of their participation agreements.

In addition, the Pioneer ACO model significantly differs from the MSSP ACO model by allowing participating Pioneer ACOs the option to select prospective beneficiary alignment, rather than requiring retrospective alignment. Under the prospective alignment option, a beneficiary will be aligned with a Pioneer ACO based on the group of primary care providers affiliated with the Pioneer ACO from whom the beneficiary received the plurality of his or her care according to the prior three years of FFS claims data. For purposes of the Pioneer ACO model, the definition of a “primary care provider” is expanded to include nurse practitioners and physician assistants. In addition, the Pioneer ACO model will allow beneficiary alignment based on services provided by certain specialists affiliated with the Pioneer ACO, if the beneficiary has primary care services totaling less than 10 percent of all evaluation and management services from a primary care provider. Finally, the Pioneer ACO model will allow beneficiaries who are newly eligible for Medicare or re-enrolled in FFS Medicare to have the option to become aligned with a Pioneer ACO through an affirmative attestation.

There are other significant factors that distinguish the Pioneer ACO model from the MSSP ACO model, including:

- Pioneer ACOs must derive at least 50 percent of total revenue from outcome-based contracts by the end of the second performance period (end of calendar year 2013)
- Pioneer ACOs must have at least 15,000 aligned beneficiaries (5,000 for rural Pioneer ACOs)
- Federally Qualified Health Centers may participate as a Pioneer ACO
- The definition of “hospital” for purposes of entities that may be a Pioneer ACO participants is expanded to include certain children’s hospitals, cancer hospital and critical access hospitals
- The governing body of the Pioneer ACO must include a consumer advocate (with limited exceptions)

Organizations interested in participating as Pioneer ACOs must submit a non-binding letter of intent to the CMS Innovation Center by June 10, 2011, and an application by July 18, 2011. CMS expects to select approximately 30 organizations to participate as Pioneer ACOs and begin participation in the third or fourth quarter of 2011. The initial participation agreements will be in effect for three performance periods (the first lasting slightly longer than one year) through 2014, with two optional additional one-year performance periods. [Click here](#) for detailed information about the Pioneer ACO model, the template letter of intent and request for applications.

In light of these new initiatives, organizations—especially ones with existing clinically integrated provider groups operating under shared-savings contracts—should understand the obligations to participate as a Pioneer ACO and the distinction between it and the MSSP model. CMS has structured the Pioneer ACO model in terms of variations from the MSSP ACO model, and will require Pioneer ACOs to comply with certain requirements for MSSP ACOs that will not be finalized until after they have been selected for participation as Pioneer ACOs. Thus, organizations considering to apply to become Pioneer ACOs should become familiar with the MSSP ACO model.

[Click here](#) for additional information about the Pioneer ACO model.

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McDermott Will & Emery's health care lawyers can assist in the submission of comments regarding the proposed waivers or any of the above topics.

Please contact your regular McDermott attorney or either author.

McDermott will be distributing additional newsletters on other issues related to the new accountable care organization regulations. Additionally, we will be releasing a White Paper that will serve as a key resource and reference document about the proposed regulations. Access our five-part webcast series, '[Accountable Care: Strategy & Structure](#)'.

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