

Accountable Care Organization Waivers: The Evolution of Different ACO Models

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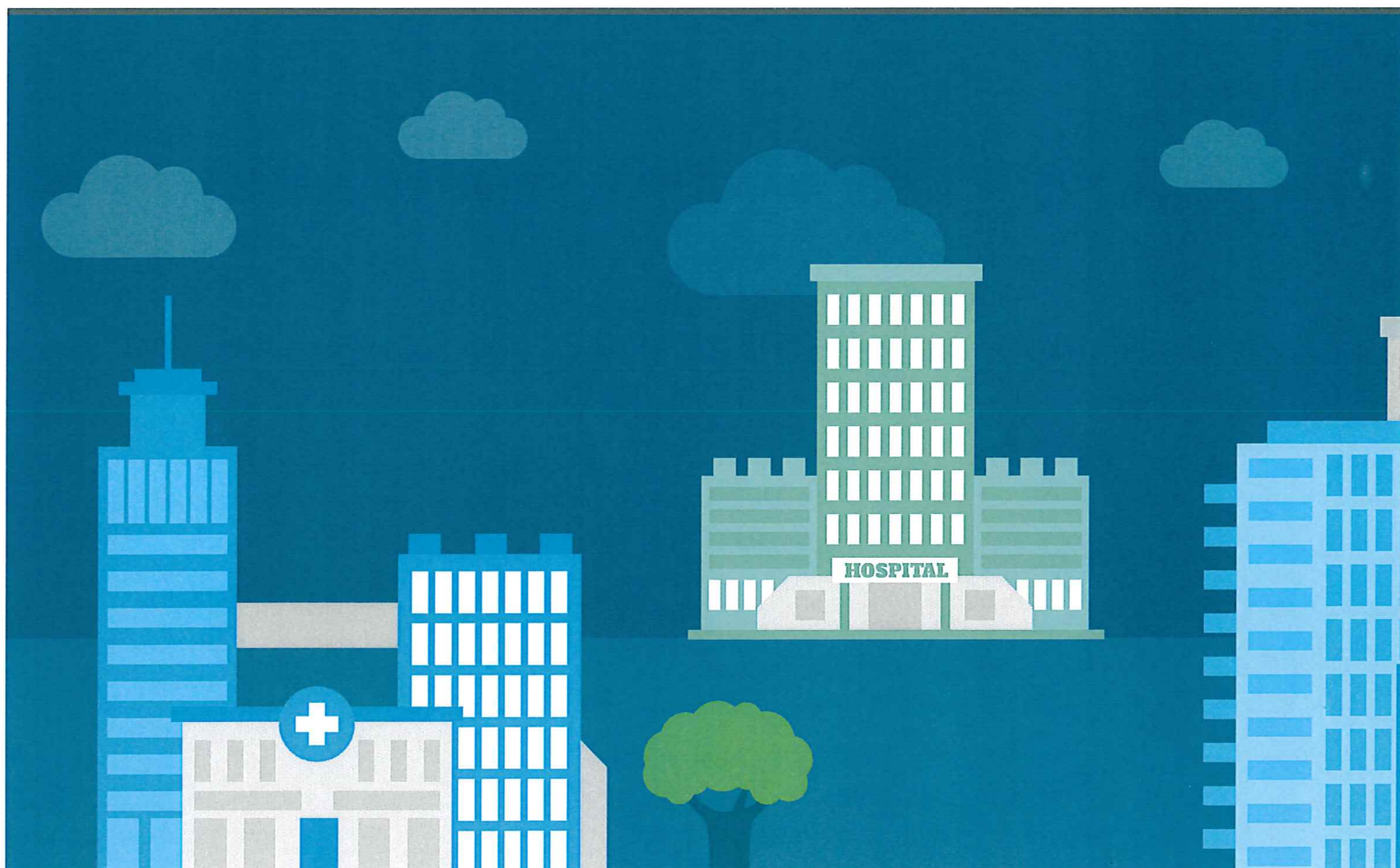
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The delivery of health care has seen a dramatic shift in the methodology of rendering patient care since the passage of the Affordable Care Act (ACA) (as amended by the Health Care Education Reconciliation Act of 2010).¹ One of the goals of the ACA is to improve the coordination of care between the various health care providers involved in a Medicare beneficiary's care. The intent of the ACA in this goal may be met by providing better care to the individual resulting in the person being in better health, which in turn results in less expenditures for such care.² This three-part effort has been referred to as the "three part aim"³ or the "triple aim."⁴ The ACA required the Secretary of the U.S. Department of Health and Human Services (HHS) to establish the Medicare Shared Savings Program (MSSP) to incentivize providers to develop such delivery models through what is defined as an Accountable Care Organization (ACO).⁵ An ACO is a legal entity formed by one or more ACO participants⁶ under applicable state, federal, or Tribal law, and is identified with a Taxpayer Identification

Number.⁷ It is comprised of physicians, hospitals, and other individuals and entities who come together to provide coordinated care to ensure that patients receive the appropriate care at the appropriate time to prevent medical errors while not duplicating services.⁸ If savings are generated from such efforts, the ACO participants have the ability to share in any savings achieved by the Medicare program for those Medicare beneficiaries that have voluntarily agreed to participate and be assigned to that ACO.⁹

There have been a number of ACO initiatives authorized by HHS since the passage of the ACA. While there has been some attrition in the number of participants who originally were certified as an ACO, all of the models are still operating at different levels of service. Furthermore, some have chosen to move into new models in light of their experience with their original model. However, some of the models are not available to be utilized since the application period to enroll in some of the models has closed. The following are the various ACO models been established by HHS:¹⁰

- Pioneer ACO model
- Advance Payment ACO model
- Shared Savings Program model
- ACO Investment model
- Comprehensive End-Stage Renal Disease (ESRD) Care model



- Next Generation ACO model

Each of the models requires an application and the satisfaction of differing required elements to be eligible for certification for a particular model. These requirements include organizational and operational standards that must be met, along with having a minimum number of Medicare beneficiaries enrolled in traditional Medicare assigned to the ACO by the Centers for Medicare & Medicaid Services (CMS). Individuals who are enrolled in Medicare Advantage plans are not eligible to participate in the models and are not counted in meeting the minimum number of Medicare beneficiaries that must be met.

Pioneer ACO Model

The Pioneer ACO model was one of the first ACO models launched to improve quality of care and generate savings as well as test alternative programs that would provide guidance for the MSSP and its supporting regulations.¹¹ It was designed for providers who were already experienced in addressing the coordination of patient care in multiple care settings.¹² It is different from the Shared Savings Program Model and the alternative ACO models set forth herein.¹³ The first performance period of the Pioneer ACO model started January 1, 2012, with the initial agreement with CMS lasting three years.¹⁴ CMS and the ACO had the option of extending their agreement for an additional two years based upon the success of the program.¹⁵ As an

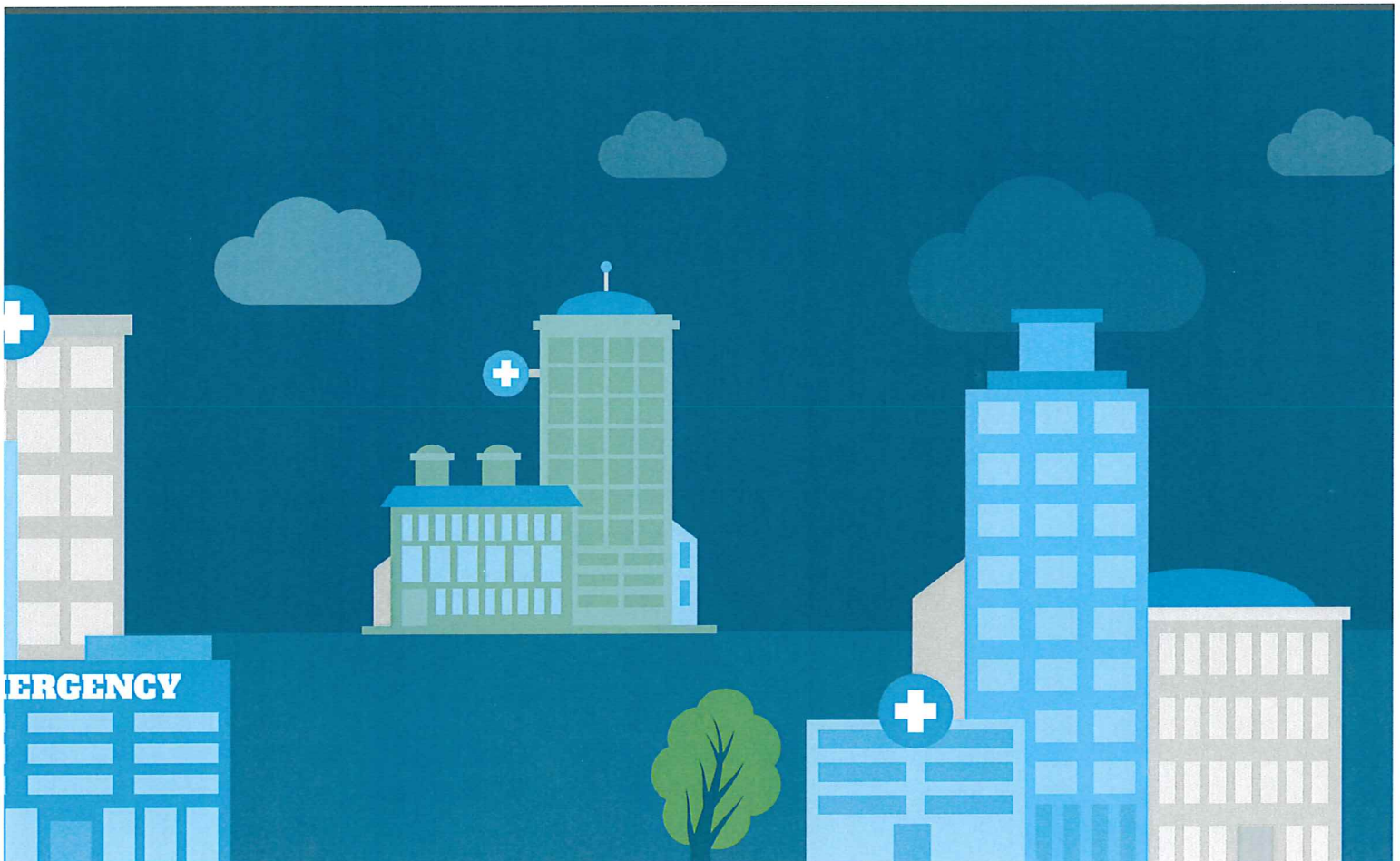
additional requirement for participating in this model, the ACO was required to contract with commercial and other payers to provide a similar arrangement to the one it had with Medicare.¹⁶

Pioneer Model ACOs had two separate payment arrangements that the ACO could choose from depending upon the level of risk it wished to assume.¹⁷ The first alternative limited shared savings, but also provided significantly less risk because it limited losses in the first two years.¹⁸ In the third year, the Pioneer ACO model would receive a population-based payment that would be reconciled at the end of the third year against a benchmark that served as a budget for that year.¹⁹ The second alternative would provide for more risk but also a greater share of savings.²⁰ This alternative closely resembles full-risk capitation.²¹

The first performance year of the Pioneer ACO model witnessed 32 organizations participating in the program.²² There are currently nine ACOs participating in the program.²³ The model is closed for those wishing to make an application to participate.

Advance Payment ACO Model

The Advance Payment ACO model closely followed the Pioneer ACO model, and was designed for those providers who wished to participate in the MSSP but needed financial support to create the infrastructure and refine care



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processes.²⁴ In addition to the ACO being able to participate in the shared savings generated by the ACO operations, it also allowed the ACO to receive: (1) an upfront fixed payment; (2) an upfront variable payment; and (3) a monthly payment that would be determined based upon the number of preliminarily prospective-assigned Medicare beneficiaries.²⁵ CMS offset the monies advanced from the ACO's earned shared savings or pursued recoupment where appropriate until the advanced amount was repaid.²⁶

Like the Pioneer ACO model, the Advanced Payment ACO model had a limited time for ACOs to apply to participate.²⁷ An ACO must have begun participation in the MSSP as of April 1, 2012; July 1, 2012; or January 1, 2013. Thirty-five ACOs participated in the Advanced Payment ACO model.²⁸ It concluded as of December 31, 2015.

Shared Savings Program Model

The Shared Savings Program model was designed to share savings with those providers who improved the quality of care for Medicare fee-for-service beneficiaries while reducing the unnecessary costs related to those beneficiaries' care.²⁹ The ACOs who participate in the Shared Savings Program are able to pick one of two tracks related to participation in the shared savings, if any, resulting from the ACO's efforts.³⁰ Track One, or what is referred to as the "one-sided" track, entitles the ACO to a portion of the shared savings generated during the ACO's first initial agreement but does not hold the ACO responsible for any shared losses.³¹ Track Two, or the "two-sided" track, provides for a higher percentage of the shared savings during both the initial agreement and any subsequent agreement, but the ACO must share in the losses as well.³² Similar to the previous models discussed, a benchmark is established for the first year and updated

each performance year thereafter. The ACO's yearly performance in meeting quality standards and achieving savings is compared to the benchmark set for that performance year to determine if the ACO is entitled to any savings.³³

As of April 2015, there were 404 ACOs participating in the Shared Savings Program.³⁴ Of those participating ACOs, 401 were "one-sided" and three were "two-sided." There were 7.3 million assigned beneficiaries in 49 states, the District of Columbia, and Puerto Rico.³⁵

ACO Investment Model

The ACO Investment model is similar to the Advance Payment ACO model. Its purpose is to encourage new ACOs in rural and underserved areas as well as to incentivize current Shared Savings Program ACOs to move towards taking on greater risk.³⁶ To be able to participate in the ACO Investment model, the ACO must either be a new Shared Savings Program ACO starting in 2015 or 2016 or have joined the Shared Savings Program in 2012, 2013, or 2014. For those ACOs starting in 2015 or 2016, they will receive advance payments similar to the Advance Payment model ACO through: (1) an upfront, fixed payment; (2) an upfront, variable payment based upon the number of preliminary prospective-assigned beneficiaries; and (3) a monthly payment of varying amount depending upon the size of the ACO.³⁷ For those ACOs that joined the Shared Savings Program during 2012 through 2014, they receive an upfront, variable payment and monthly payment in variable amount based upon the similar criteria as those ACOs starting in 2015 and 2016.

There are additional requirements for an ACO to be eligible to participate in this model:

- The ACO must have completely and accurately reported its quality measures to the Shared Savings Program if it operated in that program prior to 2015;
- The preliminary prospective beneficiary assignment must be 10,000 or fewer for the most recent quarter; provided that the ACO is starting in 2015 or 2016, it must be determined that it is located in a rural area;
- The ACO does not include a hospital as an ACO participant or an ACO provider/supplier unless it is a critical access hospital with 100 or fewer beds; and
- The ACO was not a participant in the Advance Payment model.³⁸

The ACO Investment model currently has 45 participating ACOs. This number includes two that were previously selected and 43 selected to begin in 2016. Based upon these participants in the ACO Investment model, they serve over 434,000 beneficiaries.

Comprehensive ESRD Model

The Comprehensive ESRD model is an ACO initiative that focuses on ESRD and is the first to focus on a disease-specific treatment.³⁹ The model will work with a group of health care providers, dialysis facilities, and other suppliers involved in the care of ESRD beneficiaries known as ESRD Seamless Care Organizations (ESCOs). It will have a two-sided payment track like the Shared Savings Program model: the “two-sided” payment track for ESCOs that contain a large dialysis organization (LDO) participant owner; and the “one-sided” track for those ESCOs that do not have an LDO participant owner.⁴⁰

The Comprehensive ESRD model started on October 1, 2015 with 13 participating ESCOs.⁴¹ The initial agreement to participate in the model runs for three years with the ability for CMS and the ESCO to extend the agreement another two years.⁴²

Next Generation ACO Model

The Next Generation ACO model is the newest initiative by HHS to offer the opportunity of ACOs.⁴³ This model utilizes the experiences from the Pioneer ACO model and the Shared Savings Program model to set more predictable financial targets. By utilizing such information, this program allows for ACOs to assume higher levels of risk and receive higher levels of reward. It focuses on providing the ACO with opportunities to allow for better patient engagement and care management in exchange for higher financial incentives. The participation agreement is three performance years with two one-year optional extensions. From the financial perspective, the ACOs participating in this Model will have a benchmark set for determining performance. However, they

will have four different payment mechanisms to choose from for determining entitlement to a portion of the savings.⁴⁴

The Next Generation ACO model has 21 ACOs operational in 2016. Currently, HHS is taking applications for the 2017 performance year.

Conclusion

ACOs are intended to satisfy the “triple aim” of better care, better health, and reduction in expenditures. However, many have judged their success on whether there are shared savings available to be distributed within the ACO, rather than consideration of the patient care component. Models that have made shared savings available to ACOs and the ACO Participants have seen varying degrees of financial success. There are various reasons for such inconsistent results. ACO participants may not have achieved the quality measures they desired. Another factor is the ACO’s inability to accurately address financial concerns related to providing care. Beneficiaries may not have cooperated with the efforts related to trying to achieve better health. Finally, some may attribute financial benchmarks set by the programs to be unrealistic. However, HHS has moved toward ACOs being more realistic in dealing with these issues. By doing so, it allows ACOs to achieve the financial success that both CMS and the ACO wish to achieve.

1 Pub. L. 111-148.

2 Medicare Program; Medicare Shared Savings Program: Accountable Care Organizations, 76 Fed. Reg., 67801, 67803 (Nov. 2, 2011) (Final Rule Implementing Section 3022 of the Affordable Care Act related to Accountable Care Organizations).

3 *Id.*

4 *Id.*

5 Section 3022 of the ACA.

6 According to 42 C.F.R. § 425.10, an ACO participant means an individual or group of ACO providers/suppliers, identified by a Medicare-enrolled tax ID number, that alone or together with one or more other ACO participants comprises an ACO, and that is included on the list of ACO participants submitted to in its application to participate in the program.

7 42 C.F.R. § 425.10.

8 Centers for Medicare & Medicaid Services, Accountable Care Organizations (ACOs): General Information, available at <https://innovation.cms.gov/initiatives/aco/>.

9 *Id.*

10 *Id.*

11 Centers for Medicare & Medicaid Services, Pioneer ACO Model Frequently Asked Questions, available at <https://innovation.cms.gov/initiatives/Pioneer-ACO-Model/Pioneer-ACO-FAQs.html>.

12 Centers for Medicare & Medicaid Services, Pioneer ACO Model, available at <https://innovation.cms.gov/initiatives/Pioneer-ACO-Model/index.html>.

13 *Id.*

14 *Id.*

15 *Id.*

16 *Id.*

- 17 Centers for Medicare & Medicaid Services, Alternative Payment Arrangements for the Pioneer ACO Model, *available at* <https://innovation.cms.gov/Files/x/Pioneer-ACO-Model-Alternative-Payment-Arrangements-document.pdf>.
- 18 *Id.*
- 19 *Id.*
- 20 *Id.*
- 21 *Id.*
- 22 *See supra*, note 8, *Accountable Care Organizations (ACOs): General Information*.
- 23 *Id.*
- 24 Centers for Medicare & Medicaid Services, Advance Payment ACO Model, *available at* <https://innovation.cms.gov/initiatives/Advance-Payment-ACO-Model/index.html>.
- 25 *Id.*
- 26 *Id.*
- 27 *Id.*
- 28 *Id.*
- 29 Centers for Medicare & Medicaid Services, Shared Savings Program, *available at* www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/sharedsavingsprogram/index.html?redirect=/sharedsavingsprogram/.
- 30 Centers for Medicare & Medicaid Services, Methodology for Determining Shared Savings and Losses under the Medicare Shared Savings Program, pp. 2-3 (Apr. 2014), *available at* www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/sharedsavingsprogram/Downloads/ACO_Methodology_Factsheet_ICN907405.pdf.
- 31 *Id.*
- 32 *Id.*
- 33 *Id.*
- 34 Centers for Medicare & Medicaid Services, *Fast Facts: All Medicare Shared Savings Programs (Shared Savings Program) ACOs*, *available at* www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/sharedsavingsprogram/Downloads/All-Starts-MSSP-ACO.pdf.
- 35 Centers for Medicare & Medicaid Services, ACO Investment Model, *available at* <https://innovation.cms.gov/initiatives/ACO-Investment-Model/index.html>.
- 36 *Id.*
- 37 *Id.*
- 38 *Id.*
- 39 Centers for Medicare & Medicaid Services, Comprehensive ESRD Care Model Fact Sheet, *available at* www.cms.gov/Newsroom/MediaRelease-Database/Fact-sheets/2014-Fact-sheets-items/2014-04-15.html.
- 40 *Id.*
- 41 Centers for Medicare & Medicaid Services, Comprehensive ESRD Care Initiative: Frequently Asked Questions, *available at* <https://innovation.cms.gov/initiatives/comprehensive-ESRD-care/faq.html>.
- 42 *Id.*
- 43 Centers for Medicare & Medicaid Services, Next Generation ACO Model, *available at* <https://innovation.cms.gov/initiatives/Next-Generation-ACO-Model/index.html>.
- 44 Centers for Medicare & Medicaid Services, Next Generation ACO Model - Financial & Alignment Frequently Asked Questions, *available at* <https://innovation.cms.gov/initiatives/Next-Generation-ACO-Model/nextgenaco-fnclalgnfaqs.html>.

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