

# State Laws and Accountable Care: Topics and Trends

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November 2013



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# Federal-State Authorities and the ACA

- The US Constitution confers a limited set of enumerated federal powers, for example:
  - Regulate interstate commerce
  - Tax and spend
- Federal government shapes state/local public health through funding
- 10<sup>th</sup> Amendment affirms other powers are reserved to the states



## The Role of Law in Accountable Care

- ❑ **ACA § 3022:** Medicare Shared Savings Program allows ACO-affiliated providers and suppliers to become eligible for additional payments upon meeting savings and quality requirements
- ❑ **42 CFR Part 425.20:** An ACO is a legal entity recognized and authorized under applicable state, federal, or tribal law, identified by a Taxpayer Identification Number, and formed by one or more eligible participants

# Why Talk About ACOs Under State Laws?

- ❑ **State law provisions define the role of**
  - Social service programs
  - State public health departments
  - State-local government relations
- ❑ **State laws incorporate the concept of ACOs into state Medicaid provisions through**
  - Express authorization
  - Pilot programs
  - State plan amendments or 1115 waivers
- ❑ **State laws are rapidly changing**

# State Law Domains

## □ Authority

- Broad authority to regulate
- Agency oversight
- Permissive or mandatory program

## □ Coverage

- Eligible population
- Specific health conditions

## □ Delivery system

- Specific providers
- Patient-centered medical home
- Unique licensure or certification

## □ Data management

- EHRs required of providers
- Patient consent to data collection
- Provision for multi-payer database

## □ Finances

- Payment structure
- Risk sharing structure

## □ Compliance and accountability

- Accountable for performance or customer satisfaction
- Quality or outcome measures
- Sanctions or ejection

## □ Checks and balances

- Consumer protections
- Evaluation required
- Rural/geographic dispersal issues

## □ Limitations

- Waiver of antitrust laws
- State funding mechanism

## Results of Legal Review: Number of States With Relevant Provisions

		States With	States Without
Agency Authority	Broad authority to regulate	15	8
	Specific agency oversight	20	3
	Mandatory inclusion	8	15
Coverage	Eligible population specified	18	5
	Certain conditions specified	8	15
Delivery System	Specific providers required	7	16
	Patient-centered medical home required	6	17
	Unique licensure/certification	1	22
Data Management	EHRs required of providers	2	21
	Patient consent to data collection	0	23
	Multi-payer databases	3	20

## Results of Legal Review: Number of States With Relevant Provisions

		States With	States Without
Finances	Payment structure specified	5	18
	Risk sharing structure	4	19
Compliance and Accountability	Accountable for performance or customer satisfaction	6	17
	Quality or outcomes measures	5	18
	Sanctions or ejection	2	21
Checks and Balances	Consumer protections	7	16
	Evaluations required	9	14
	Geographic issues addressed	4	19
Limitations	Waiver of state antitrust laws	3	20
	State funding mechanism specified	11	12



## Future Research Questions

- ❑ How should states prioritize population health concerns in Medicaid ACOs?
- ❑ Will state health agencies participate as providers in Medicaid ACOs?
- ❑ As some states consider merging health departments with social service agencies that run Medicaid, will ACOs prioritize population health activities differently?
- ❑ What happens if Medicaid ACOs cannot meet quality or cost benchmarks?

# Thank you!

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