State Laws and Accountable Care: Topics and Trends

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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
• 10th 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 ejectment

- **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

<table>
<thead>
<tr>
<th>Category</th>
<th>Provision</th>
<th>States With</th>
<th>States Without</th>
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<tr>
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<td>Specific agency oversight</td>
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<td>Mandatory inclusion</td>
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<td>Certain conditions specified</td>
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<td>Multi-payer databases</td>
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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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For more information, please contact CDC’s Office for State, Tribal, Local and Territorial Support

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