Accountable Care Organizations
Under the Patient Protection and Affordable Care Act

VBA Health Law Section
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These materials and associated remarks are intended as a general discussion of the subject matter addressed. They are not intended to be comprehensive or as legal advice, and they should not be relied upon as such. Attorneys will need to draw their own conclusions relative to any particular case and take into account all applicable laws when formulating advice.
Accountable Care Organizations
Under the Patient Protection and Affordable Care Act
Agenda

- Context
- Nuts & Bolts
- Challenges
Republicans have promised to repeal PPACA or block its implementation.
"I believe that the healthcare bill that was enacted by the current Congress will kill jobs in America, ruin the best healthcare system in the world, and bankrupt our country," Boehner, an Ohio Republican, told a news conference. "That means we have to do everything we can to try to repeal this bill and replace it with common sense reforms to bring down the cost of health care." (Reuters, Nov. 3, 2010)
"Our new Republican majority will move to repeal ObamaCare and replace it with commonsense alternatives that lower costs while protecting those with pre-existing conditions. Of course, even if our repeal bill makes it through the Senate, we can expect that President Obama will veto it. But that doesn’t mean the fight is over."
"If all of ObamaCare cannot be immediately repealed, then it is my intention to begin repealing it piece by piece, blocking funding for its implementation, and blocking the issuance of the regulations necessary to implement it. In short, it is my intention to use every tool at our disposal to achieve full repeal of ObamaCare." (Delivering on Our Commitment: A Majority to Limit Government and Create Jobs at 8 (Nov. 3, 2010))
Your New Health Care System

IRS

Essential Health Benefits Package

Government Health Benefit Exchanges

Health Industry

Physicians

Patients

New Government
- Raising Potential
- Involvement in Health Insurance Market
- Other Expenditures
- Mandates

Expanded Government
- Governmental Authority
- Responsibility
- Government Financial Entity
- Expanded Authority/Responsibility

Private
- Exchange
- Private Entity
- New Mandates/Regulations

New Relationships
- Regulations/Requirements
- Reporting Requirements
- Overreach
- Money Flows
- Consolidation/Advisory
- Info Sharing
- Structural Connections

Patient Protection & Affordable Care Act, P.L. 111-148
Prepared by: Joint Economic Committee, Republican Staff
Congressman Kevin Brady, Senior House Republican
Senator Sam Brownback, Ranking Member
The Patient Protection and Affordable Care Act (PPACA) expands access while seeking to contain the growth in health care spending.

These goals are not consistent:

- 32 million people added to the ranks of the insured (public and private)
- New public programs established
- New coverage mandates imposed

This is not a recipe for cost containment.

Revenue provisions help, but are not enough.
Cutting rates is not the answer
- Past efforts to cut rates have largely failed

The problem is more basic than rates
- We get what we pay for; but
- We pay for the wrong things
Transforming the Delivery System

- The success of health reform depends on transforming the health care payment and delivery systems
- PPACA sets the stage for these fundamental changes
Transforming the Delivery System

- Accountable Care Organizations (ACO)
- Many other approaches
  - Pilot program on payment bundling for episodes of care
  - Patient-centered medical home
  - Center for Medicare & Medicaid Innovation
Payment change is highly dependent on detailed, timely and crunchable data

- Electronic Medical Records (EMRs) are essential
Accountable Care Organizations

- Another government contractor
  - Minimum contract term = three-year “agreement period”
- Eligible to receive payments under the new Medicare Shared Savings Program (PPACA § 3022)
- Statute is light on specifics and gives the Secretary of HHS broad discretion
- Proposed rules expected in December 2010
Accountable Care Organizations

- The Shared Savings Program must
  - Promote accountability for a patient population
  - Coordinate items and services under parts A and B; and
  - Encourage investment in infrastructure and redesigned care processes for high quality and efficient service delivery
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- Who may form an ACO?
  - ACO professionals (ACOPs) in group practices
  - Networks of individual practices of ACOPs
  - J/Vs between hospitals and ACOPs
  - Hospitals employing ACOPs
  - Other groups as approved by the Secretary

- Participation in certain other projects or models bars participation in an ACO
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- An ACO must
  - Be “willing to become accountable for the quality, cost, and overall care of the Medicare fee-for-service beneficiaries assigned to it”
  - Have a “formal legal structure that would allow the organization to receive and distribute payments for shared savings to participating providers and suppliers”
    - Have an established mechanism for shared governance
An ACO must

- “Include primary care ACO professionals that are sufficient for the number of Medicare fee-for-service beneficiaries assigned to the ACO”
  - Minimum number of assigned beneficiaries = 5,000
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- An ACO must
  - “Have in place a leadership and management structure that includes clinical and administrative systems”
  - Define processes to promote evidence-based medicine and patient engagement, report on quality and cost measures, and coordinate care
    - (e.g., using telehealth, remote patient monitoring, and other enabling technologies)
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- An ACO must
  - “Demonstrate to the Secretary that it meets patient-centeredness criteria specified by the Secretary, such as the use of patient and caregiver assessments or the use of individualized care plans”
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- An ACO must
  - Make required reports, including
    - Information about the ACO’s ACOPs
    - Quality
      - Measures of clinical processes and outcomes
      - Patient and caregiver experience of care
      - Utilization
    - Information needed to calculate shared savings payments
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- Shared Savings Payments
  - Relate to FFS beneficiaries assigned to the ACO only
  - Doctors and hospitals continue to receive FFS payments
  - If savings are generated and if the ACO satisfies the quality standards established by the Secretary, the ACO is eligible to receive a portion of the savings
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- **Shared Savings Payment Calculation**
  - The Secretary estimates a benchmark for each agreement period for each ACO using the most recent available three years of per-beneficiary expenditures for parts A and B services for beneficiaries assigned to the ACO.
  - The Secretary also establishes
    - a target savings percentage, and
    - a savings sharing percentage.
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- **Shared Savings Payment Calculation**
  - The benchmark is
    - Adjusted for beneficiary characteristics and such other factors as the Secretary determines appropriate
    - Updated by the projected absolute amount of growth in national per capita expenditures for parts A and B services under the original Medicare fee-for-service program, as estimated by the Secretary
    - Reset at the start of each agreement period
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- Shared Savings Payment Calculation
  
  If the estimated average per capita Medicare expenditure under the ACO for Part A and B services, adjusted for beneficiary characteristics, is below the applicable benchmark by at least the target percentage, (and all other requirements are satisfied) the ACO will receive a payment equal to:
  
  \[(\text{the amount of savings generated}) \times (\text{savings sharing percentage})\]
Secretary is required to “establish limits” on the amount of shared savings payments that may be made to an ACO.

If an ACO takes steps to avoid patients at risk to reduce the likelihood of increased costs to the ACO, the Secretary may impose an “appropriate sanction,” including termination from the program.
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- Secretary has discretion to make partial capitation payments or other types of payments in lieu of shared savings payments
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- ACO Challenges
  - Assignment of beneficiaries
  - Leakage
  - Physician exclusivity
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- **ACO Challenges**
  - State insurance regulation
  - Is the shared savings payment large enough to influence behavior?
  - Disproportionate adverse effect on acute care hospitals?
Questions?