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ACO Legal Issues
Mail Stop C5-15-12
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244-1850

RE: CMS-1356-N, Workshop Regarding Accountable Care Organizations

To Whom it May Concern:

This letter is submitted in response to CMS' Notice of Meeting for the October 5, 2010 Workshop Regarding Accountable Care Organizations. The Notice indicates the interest of CMS and HHS in receiving comments or statements to be considered for the discussion.

We believe that it is necessary for the Department of Health and Human Services to clarify the extent to which a health insurance plan can participate in or serve as an Accountable Care Organization (ACO) under the shared savings program authorized by Section 3022 of the Affordable Care Act.

The statutory language makes clear that an "eligible ACO" consists of one of several "groups of providers of services and suppliers which have established a mechanism for shared governance". The allowed groups include: 1) group practice arrangements; 2) networks of individual practices; 3) partnerships or joint venture arrangements between hospitals and professionals; 4) hospitals employing professionals; and 5) such other groups of providers of services and suppliers as the Secretary may determine appropriate. The ACO must also have in place a "formal legal structure that would allow the organization to receive and distribute payments for shared savings" as well as "a leadership and management structure that includes clinical and administrative systems".

There could be a number of scenarios under which a health insurance plan could be integrally involved in the operation of an ACO in a manner that would appear consistent with the statutory language. For example, a single corporate entity might have a CMS Certification Number (CCN) assigned to it and the entity might include a health insurance plan as a wholly owned subsidiary. A question might then arise as to whether the entity holding the CCN could partner or execute a

joint venture with physician groups and other professionals and utilize the health plan as the administrative entity to receive and distribute payments on behalf of the partnership or joint venture. To take another example, a health plan, by virtue of its existing contractual arrangements with a variety of providers, could bring together a group of providers to work as an ACO under an arrangement where the health plan itself is considered the ACO. Similarly, a group of hospitals and professionals might enter into a partnership or joint venture to serve an ACO and execute an agreement with a health plan to serve as the fiscal agent for the project. While these types of arrangements would appear consistent with the statutory language, it would be useful for CMS and HHS to clarify their understanding of Section 3022 with respect to health insurance plan involvement.

We appreciate the opportunity to have these comments considered.

Sincerely,

Robert Bradner
Partner