Medicare Shared Saving Program ACO Compliance Training

2023

Training Introduction

Why are you completing this training?

- Your practice, hospital, or health system is participating in a Medicare Shared Savings Program (MSSP) Accountable Care Organization (ACO)
- The Center for Medicare and Medicaid Services (CMS) requires all ACOs, individuals, and entities providing services to the ACO to meet the requirements of the program
- This training ensures your understanding of those requirements
- This program is unique and specific to the ACO and ACO Activities

Training Overview

1. Introduction to MSSP ACOs
2. Compliance Program for MSSP ACOs: 5 Components
3. ACO Specific Requirements Beyond the Compliance Program
4. Privacy: HIPAA, HITECH, and Specific Requirements for ACOs
5. Fraud, Waste and Abuse (FWA) Laws and Waivers available to ACOs

1 Introduction to MSSP ACOs

1 What is an ACO?

1. ACOs are groups of doctors, hospitals, and other health care providers **who voluntarily come together** to give **coordinated high-quality care** for Original Medicare patients

2. The goal of coordinated care is to ensure that patients **get the right care at the right time and right place** to avoid unnecessary duplication of services and prevent medical errors

3. An ACO succeeds when it **delivers high-quality care** and **spends health care dollars wisely**

1 ACO Benefits

Beneficiary Benefits

- Increased access to affordable and innovative care
- Beneficiaries receive improved coordinated care as healthcare teams increase communication and collaboration through ACO participation
- Beneficiaries receive high quality care as quality standards are closely regulated by Medicare

Provider Benefits

- Through ACO participation, providers receive access to tools, data, and resources to improve patient outcomes and practice operations
- Providers can receive greater access to financial incentives for meeting cost and quality targets

1 Other ACO Details

- An ACO is a program that practices directly contract and participate in with CMS
  - An ACO is not a Medicare Advantage Plan or HMO
  - An ACO does not have patients (e.g., no care is provided through the ACO)
  - Practices *contract* with CMS to participate in an ACO, providers *do not contract* directly with CMS
- Beneficiaries are not "participants" in the ACO
  - Thus, beneficiaries **cannot** "opt out" of ACO participation
  - CMS shares data with ACOs on "aligned" beneficiaries to better coordinate their care
  - Beneficiaries **can** "opt out" of this data sharing at any time
- Beneficiaries' Medicare benefits are unchanged, and beneficiaries can continue to see any provider who accepts Medicare

2 Compliance Program for MSSP ACOs

2 5 Components of an ACO Compliance Program

- Compliance Official
- Mechanisms for Identifying Issues
- Compliance Training
- Method for Anonymous Reporting
- Requirement for Reporting Violations of Law

2 Compliance Official

- **The ACO's compliance Official is Liza Star (lstar@mainstreetruralhealth.com). You can contact her for any compliance questions**

- The Compliance Official reports to the ACO Governing body and is responsible for the compliance program

- Please contact the Compliance Official:

  - If you have questions about ACO policies and procedures

  - If you are starting to implement new initiatives related to the ACO

  - If you have concerns over actions of an individual or entity providing services related to the ACO activities

2 Mechanisms for Identifying Issues

- **The Compliance official utilizes the following mechanisms for identifying issues:**

- **Prevention:** Utilize documented policies and procedures to help guarantee regulatory requirement are met

- **Detection:** Ongoing and comprehensive Monitoring & Oversight program to ensure the ACO is meeting standards set forth in the policies and procedures and any additional requirements

- **Correction:** Correctly identify issues in a timely manner and with the appropriate business counterparts

2 Compliance Training

- **The Compliance Official implements the CMS-required compliance training annually**

- Individuals who must complete the training program:
  - Members of ACO's Governing Body and sub-committees
  - All Providers that bill under the ACO’s contracted TIN
  - Other individuals that help the ACO coordinate care

2 Method for Anonymous Reporting

- **There is an established method for individuals to anonymously report compliance concerns without retaliation**
- The ACO has a Non-Retaliation Policy if the report is made in good faith
- There is a zero tolerance for any retaliatory action
- Please report any concerns at any time through the anonymous **compliance hotline** administered by Safe Hotline Inc.: **1-855-662-7233** (Enter Company # **3380666747)**

2 Requirements for Reporting Violations of Law

- **You are responsible for reporting ANY compliance concerns**
- The ACO is required to report probably violations of law to the appropriate law enforcement agency
- The Compliance Official works with legal counsel and the ACO Governing Body to determine the action plan for any reported violation of law
- Ways to Report Violations of Law:

Compliance Hotline/ Webform	Compliance Official	Your Supervisor
• Submit a report	• Email ACO Compliance Official Directly	• Express your concerns to your supervisor

3 ACO Specific Requirements Beyond the Compliance Program

3 ACO Specific Requirements

Beneficiary Notifications	• ACOs are required to distribute a notification letter to Medicare beneficiaries that informs them of their providers participation in an MSSP ACO
Conflict of Interest	• ACOs are required to have processes to ensure individuals are free from Conflict of Interest
ACO Marketing Materials	• Any patient-facing materials that are ACO-related are reviewed/approved by the ACO compliance officer and must include accurate information
Voluntary Alignment	• Staff may answer questions from beneficiaries regarding Voluntary Alignment but may not complete the online form on their behalf
Red Flag Compliance Issues	• **Cherry Picking –** Groups cannot encourage "low-cost" beneficiaries to remain in the ACO or discourage "high cost" beneficiaries from receiving care • **Managed Care/Networks** - Avoid language suggesting that beneficiaries **must** receive services from the ACO; beneficiaries retain freedom of choice • **Medical Liability –** The ACO does not provide care and suggesting otherwise can create unnecessary risk and liability for the ACO

4 Privacy: HIPAA, HITECH, and Specific Requirements for ACOs

4 HIPAA – Privacy Rule and Protection of PHI

- **ACO activities are covered by the HIPAA Privacy Rule**

- ACOs are required to ensure appropriate safeguards are in place to protect PII and PHI

- PHI is protected when it relates to:
  - Individual's past, present, or future physical or mental health or condition
  - Provisioning of health care to the individual,
  - OR, the past, present or future payment for the provision of health care to the individual

- You should always try to verify a requesting person's identity and authority

- Contact your Compliance Official immediately if you believe there has been a disclosure of ACO related data

4 Patients' Rights Regarding their Medical Records

Patients have the right to:

- Receive an accounting of certain disclosures of PHI
- View and obtain copies of their medical records
- Request an amendment to their medical records
- Request that any communication related to PHI be directed to a specific location
- Request restrictions on the use or sharing of their information
- Receive the “Notice of Privacy Practices” outlining these rights

4 Sharing PHI Without Authorization

- **To access, use, or share PHI without a signed patient authorization, the purpose must generally be related to:**
- The provision, coordination, or management of health care and related services
- The payment for treatment
- Administrative, financial, legal, and quality improvements

4 Minimum Necessary Rule

- **Except for treatment purposes, you should limit access, use, or disclosure of PHI to the minimum necessary to accomplish the intended purpose**

- Access, use, or disclose:
  - Only PHI needed to complete an assigned task; and
  - Only when the specific PHI is necessary to perform that task

- Unless you need certain PHI to carry out your responsibilities, do not access that information

- If you do not have a legitimate work purpose for accessing a patient's PHI, you are not allowed to view that information

4 Securing PHI

- The ACO ensures the following safeguards are in place:
- **Administrative Safeguards**
  - Prevent, detect, contain, and correct violations through security risk analysis
- **Physical Safeguards**
  - Physical measures and technology used to protect electronic information systems and related buildings and equipment
- **Organizational Safeguards**
  - Requiring a covered entity to have agreements in place prior to sharing PHI with outside entities
- **Policies and Procedures**
  - Entities must adopt policies and procedures to ensure compliance with HIPAA Security Rules

4 Sending PHI

- **Try to avoid sharing PHI/PII via Email and never text PHI/PII**
- The following are best practices for email:
  - Encrypt the file
  - Do not click to open a link or attachment until verifying with the sender
  - Keep sensitive data out of the subject line
- It is okay for members of a healthcare team to text amongst themselves through a **secure platform**
- It is **NOT okay** to text patient orders, no matter the platform

4 Managing ePHI

- Workforce members are responsible for the appropriate use and security of ePHI when using any IT resource
- Using any unauthorized IT resources or IT resources that could disrupt operations or compromise security is prohibited
- To protect from unauthorized access, IT resources must be physically secured
- Never leave computers or laptops unattended or unsecured in public areas
- Where feasible, authentication to systems or devices containing ePHI must:
  - Include a unique login or password
  - Be encrypted

4 Recognizing Potential Threats: Email, Texts, Phone Calls

- **Unusual messages** often look like they come from a sender you know
  - Don't respond and report the email through email platform
- **Urgent demands** (Text/Email/Phone) often direct you to act immediately with negative consequences if you do not
  - Do not act and report to the appropriate authorities
- **Sneaky links** (Email) are often requests to open an unexpected attachment or link
  - Do not click and report the email or verify with the sender before opening

4 Recognizing Potential Threats – Phishing Attempts

- **Phishing is the most common form of social engineering**
- **Watch for these red flags:**
  - Content
    - Sender is asking you to click a link or open attachment
    - Seems odd or illogical
  - Attachments
    - Any attachment you receive that you are expecting
  - Hyperlinks
    - Misspellings in the link
    - Hyperlink asks you to take action
  - Sender (From)
    - An email coming from an unknown address
    - You know the sender's name, but the email is unexpected or out of character
  - Recipients (To)
    - You were copied on an email, and you don't know the other recipients
  - Date/Time
    - You receive an email that you would receive, but it was sent at 3:00am
  - Subject
    - Irrelevant or doesn't match message content
    - Email about something you never requested or a receipt for something you never purchased

5 Fraud, Waste and Abuse Laws and Waiver Available to ACOs

5 What is Fraud, Waste, and Abuse ("FWA")?

1: Introduction on FWA

This lesson describes fraud, waste, and abuse (FWA) and the laws that prohibit it. Upon completing the lesson, you should be able to correctly:

- Recognize FWA in the Medicare Program
- Identify the major laws and regulations pertaining to FWA
- Recognize potential consequences and penalties associated with violations

2: Fraud

- The Health Care Fraud Statute makes it a criminal offense to knowingly and willfully execute a scheme to defraud a health care benefit program. Health care fraud is punishable by imprisonment up to 10 years. It is also subject to criminal fines up to $250,000
- Fraud is knowingly and willfully executing, or attempting to execute, a scheme or artifice to defraud any health care benefit program or to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health care benefit program

3: Examples of FWA

- Examples of actions that may constitute Medicare fraud include:
  - Knowingly billing for services not furnished or supplies not provided, including billing Medicare for appointments the patient failed to keep
  - Billing for nonexistent prescriptions
  - Knowingly altering claim forms, medical records, or receipts to receive a higher payment
- Examples of actions that may constitute Medicare waste include:
  - Conducting excessive office visits or writing excessive prescriptions
  - Prescribing more medications than necessary for treating a specific condition
  - Ordering excessive laboratory tests

5 What is FWA? (cont'd)

4: Differences Among Fraud, Waste, and Abuse

- There are differences among fraud, waste, and abuse. One of the primary differences is intent and knowledge. Fraud requires intent to obtain payment and the knowledge the actions are wrong. Waste and abuse may involve obtaining an improper payment or creating an unnecessary cost to the Medicare Program but do not require the same intent and knowledge

5: Understanding FWA

- To detect FWA, you need to know the law.
- The following pages provide high-level information about the following laws:
  - Civil False Claims Act, Health Care Fraud Statute, and Criminal Fraud
  - Anti-Kickback Statute
  - Stark Statute (Physician Self-Referral Law)
  - Exclusion from all Federal health care programs
  - Health Insurance Portability and Accountability Act (HIPAA)
- For details about specific laws, such as safe harbor provisions, consult the applicable statute and regulations

6: Civil False Claims Act ("FCA")

- The civil provisions of the FCA make a person liable to pay damages to the Government if he or she knowingly:
  - Conspires to violate the FCA
  - Carries out other acts to obtain property from the Government by misrepresentation
  - Conceals or improperly avoids or decreases an obligation to pay the Government
  - Makes or uses a false record or statement supporting a false claim
  - Presents a false claim for payment or approval

5 What is FWA? (cont'd)

7: Civil FCA - Whistleblowers

- A whistleblower is a person who exposes information or activity that is deemed illegal, dishonest, or violates professional or clinical standards
  - Protected: Persons who report false claims or bring legal actions to recover money paid on false claims are protected from retaliation
  - Rewarded: Persons who bring a successful whistleblower lawsuit receive at least 15 percent, but not more than 30 percent, of the money collected

8: Health Care Fraud Statute

- The Health Care Fraud Statute states, require proof "Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice to defraud any health care benefit program … shall be fined under this title or imprisoned not more than 10 years, or both."
- Conviction under the statute does not the violator had knowledge of the law or specific intent to violate the law.

9: Criminal Health Care Fraud

- Persons who knowingly make a false claim may be subject to:
  - Criminal fines up to $250,000
  - Imprisonment for up to 20 years
- If the violations resulted in death, the individual may be imprisoned for any term of years or for life

10: Exclusion

- No Federal health care program payment may be made for any item or service furnished, ordered, or prescribed by an individual or entity excluded by the OIG. The OIG has authority to exclude individuals and entities from federally funded health care programs and maintains the List of Excluded Individuals and Entities (LEIE)
- The U.S. General Services Administration (GSA) administers the Excluded Parties List System (EPLS), which contains debarment actions taken by various Federal agencies, including the OIG. You may access the EPLS on the System for Award Management (SAM) website
- When looking for excluded individuals or entities, check both the LEIE and the EPLS since the lists are not the same

5 What is FWA? (cont'd)

11: Anti-Kickback Statute

- The Anti-Kickback Statute prohibits knowingly and willfully soliciting, receiving, offering, or paying remuneration (including any kickback, bribe, or rebate) for referrals for services that are paid, in whole or in part, under a Federal health care program (including the Medicare Program)
- Violations are punishable by:
  - A fine up to $25,000
  - Imprisonment up to 5 years

12: Stark Statute (Physician Self-Referral Law)

- The Stark Statute prohibits a physician from making referrals for certain designated health services to an entity when the physician (or a member of his or her family) has:
  - An ownership/investment interest or
  - A compensation arrangement

13: Civil Monetary Penalties ("CMP") Law

- The Office of Inspector General ("OIG") may impose civil penalties for several reasons, including:
  - Arranging for services or items from an excluded individual or entity
  - Providing services or items while excluded
  - Failing to grant OIG timely access to records
  - Knowing of and failing to report and return an overpayment
  - Making false claims
  - Paying to influence referrals

5 Medicare FWA Waivers

- **The MSSP ACOs are allowed to utilize four waivers of the Fraud, Waste, and Abuse Laws**

- The four waivers are:
  - ACO Participation Waiver
  - Shared Savings Distribution Waiver
  - Compliance with Stark Law Waiver
  - Patient Incentives Waiver

5 Medicare FWA Waivers (cont'd)

ACO Participation Waiver

- Allows ACO to waive Stark Law, Federal Anti-Kickback Statue, and the Gainsharing CMP so long as the following are met:
  - Participation Agreement with CMS remains in good standing
  - ACO meets governance, leadership and management requirements
  - Arrangement is reasonably related to purpose of the Program
  - Documentation and public disclosure requirements met

Shared Savings Distribution Waiver

- Protects ACO from Stark Law, Federal Anti-Kickback Statue, and the Gainsharing CMP so long as the following are met:
  - Participation Agreement with CMS remains in good standing
  - Payments are not made to knowingly induce a physician to reduce or limit medically necessary items or services to patients under direct care of physician
  - Payments are earned by ACO during the term
  - Payments are distributed to ACO providers or used for activities related to purposes of the Program

5 Medicare FWA Waivers (cont'd)

Compliance with Stark Law

- ACO can waive Federal Anti-Kickback Statue and the Gainsharing CMP for ACO arrangements that implicate the Stark Law and meet an existing Stark Law Exception, so long as the following are met:
  - Participation Agreement with CMS remains in good standing
  - The relationship fully complies with one of the existing exceptions to the Stark Law
  - The financial relationship involved is reasonably related to the purposes of the Program

Patient Incentives Waiver

- This allows ACOs to waive the Beneficiary Inducements CMP and the Federal Anti-Kickback Statue for medically related incentives offered by ACOs
- Waiver prohibits incentives for the beneficiary to receive services from, or remain in, the ACO
- Incentives cannot be cash or cash equivalent
- Must be offered to encourage preventive care and compliance with treatment regimes

Report Your Concerns

- **If you have a concern related to ACO activities or initiatives, please report it.**
- Contact the **ACO Compliance Official** Directly:
  - Lstar@mainstreetruralhealth.com
- Submit a report through the anonymous **compliance hotline** administered by Safe Hotline Inc.: **1-855-662-7233** (Enter Company # **3380666747)**
- Express your concerns to **your supervisor**