

# “What keeps you up at night?”

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## Will ACOs gain traction in 2012? Take these steps to be prepared

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### SUMMARY

**The Centers for Medicare & Medicaid Systems has selected 32 health systems to participate in its Pioneer Accountable Care Organization initiative. Other parties interested in participating in an ACO must meet certain application deadlines and should consider some fundamental principles before participating.**

In December 2011, the Centers for Medicare & Medicaid Systems (CMS) announced it had selected 32 health care systems to participate in its Pioneer Accountable Care Organization (ACO) initiative. The Pioneer program is an initiative designed by the CMS Innovation Center to test the effectiveness of certain ACO payment arrangements. These Pioneer ACOs were chosen from a pool of eighty (80) applicants based upon their significant experience operating in ACO-like arrangements and, according to CMS, represent 18 states and the opportunity to improve care for approximately 860,000 beneficiaries.

Saul Ewing's Health Practice has provided several updates regarding the regulations that created ACOs and they can be viewed at:

[http://www.saul.com/media/site\\_files/2625\\_Health%20111711.pdf](http://www.saul.com/media/site_files/2625_Health%20111711.pdf)

[http://www.saul.com/media/site\\_files/2629\\_Health%20110111\\_v2.pdf](http://www.saul.com/media/site_files/2629_Health%20110111_v2.pdf)

[http://www.saul.com/media/site\\_files/2620\\_Health%20102511\\_v7.pdf](http://www.saul.com/media/site_files/2620_Health%20102511_v7.pdf) and

[http://www.saul.com/media/site\\_files/2615\\_Health%20102111\\_v4.pdf](http://www.saul.com/media/site_files/2615_Health%20102111_v4.pdf)

The release of the names of the Pioneer ACOs is a small, but important, step for the introduction of ACOs in the health care delivery system. However, there are many parties who may be interested in participating in an ACO — academic medical centers; community hospitals; physician groups; physicians; and health care entrepreneurs — that are not part of the Pioneer ACO initiative who are able to develop the resources required to participate in the CMS Medicare Shared Savings Program for ACOs (“MSSP”).

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Anyone interested in a participating in the MSSP effective April 1, 2012 must submit their application to CMS by January 20, 2012. For those unable to meet that deadline, CMS has extended a second application deadline of March 30, 2012 for parties interested in participating in the MSSP effective July 1, 2012, although applicants must submit a non-binding notice of intent (NOI) (<https://vovici.com/wsb.dll/s/11dc4g4c52d>) by February 17 and obtain a CMS user ID by February 23.

The MSSP initiative is not the entire universe of the ACO initiative. Commercial third party payors have the same goals as CMS – coordination that maintains or improves the quality of care while reducing expenditures.

There are several fundamental principles that every provider should consider before participating in an MSSP or commercial ACO. Participants in an MSSP ACO will need to ensure compliance with the CMS regulations, and many commercial ACOs may adopt many if not all of these CMS provisions for ease of administration.

Some of the important questions that all potential ACO providers must consider are:

- Who are each of the prospective participants in the ACO, and are our respective visions complementary?
- Why do we think it is important to participate in an ACO, and what benefits do we expect to achieve?
- Are we committed to providing care consistent with required quality measures, and can we implement meaningful changes to address any shortcomings?
- How will we govern ourselves, and what protections do I need to be adequately protected?
- What infrastructure capabilities are needed, and what will it cost to implement?
- Who will provide the day-to-day management resources, and how will long range goals be implemented?

- How will any shared savings that result from the ACO be distributed, and over what time period?
- What is the process to stop participating in an ACO?
- What do we know about our likely beneficiary assignees, and how do we involve them to ensure an effective care process?

Providers considering participating in the MSSP effective April 1 or July 1 or thereafter, or who have been approached by a commercial third party payor or other provider, must carefully identify short-term and long-term objectives and legal compliance before entering into any formal ACO arrangement. Providers considering participating in a commercial ACO should also be mindful that they are likely to encounter a more restrictive regulatory landscape than MSSP ACOs.

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