

Centers for Medicare & Medicaid Services (CMS) Audit & Monitoring

Effective Date: 01/01/2018

Policy

- A. It is the policy of the ACO that the ACO and its Next Generation Participants, Preferred Providers, Next Generation Professionals, and other individuals or entities performing functions or services related to the ACO's activities will cooperate with all CMS monitoring and oversight requests and activities.

Applicability

This policy and procedure applies to all Next Generation Participants, Preferred Providers, Next Generation Professionals and other individuals or entities performing functions or services related to the ACO's activities.

Procedure

- A. The ACO agrees – and requires all Next Generation Participants, Preferred Providers, ACO Professionals, and other individuals or entities performing functions or services related to ACO activities to agree – that the Federal Government, including CMS, HHS, and the Comptroller General or their designees, has the right to audit, inspect, investigate, and evaluate any books, contracts, records, documents, and other evidence of the ACO, and its Next Generation Participants, Preferred Providers, Next Generation Professionals and other individuals or entities performing functions or services related to ACO activities that pertain to:
 1. The ACO's compliance with the Next Generation ACO Model Participation Agreement (the Agreement);
 2. The quality of services performed under the Agreement; and
 3. The ability of the ACO to bear the risk of potential losses and to repay any losses to CMS.
- B. The ACO, its Next Generation Participants, Preferred Providers, ACO Professionals and other individuals or entities providing functions or services related to ACO Activities shall participate and cooperate in any independent evaluation activities conduct by CMS and/or its designees aimed at assessing the impact of the Model on the goals of better health, better health care, and lower Medicare per capita costs for Beneficiaries.
 1. The ACO shall ensure that it has written agreements and/or legal relationships with any individuals and entities performing functions and services related to ACO Activities, that are necessary to ensure CMS or its designees can carry out evaluation activities.

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- C. The ACO shall participate in CMS-sponsored learning activities designed to strengthen results and share learning that emerges from participation in the Next Generation ACO Model. This may include periodic conference calls, site visits and virtual or in-person meetings where the ACO will actively share resources, tools and ideas as prescribed by CMS.
- D. Handling an Investigation or Site Visit:
1. Establish the identity of the government representative(s).
 - a. Request to see the photo identification, business card(s) or other credentials of the investigator(s) and make copies of the identification provided.
 - b. Be polite and let them know that the appropriate administrative personnel will arrive shortly to respond to their inquiry.
 2. If asked, staff should also politely advise the government investigators that the staff does not have the authority to disclose documents or consent to a search and then direct the government investigators to the appropriate personnel within the office, or the ACO Compliance Officer.
 3. If notice is provided prior to the site visit, the ACO shall ensure that personnel with the appropriate responsibilities and knowledge associated with the purpose of the site visit are available. If no notice is provided, the ACO will make a reasonable effort to ensure these individuals are available.
 4. Document the activity.
 - a. If possible, document exactly what the investigator(s) review, request copies of, or take with them.
 - b. You may follow the investigator(s) through your property as they execute the audit.
 - c. You are entitled to a written receipt for any property taken by the investigator(s) when they leave the premises.
 - d. Keep a record of all interactions between the government representative(s) and staff, and all documents exchanged.
 - i. This includes Beneficiary records or claims information that government representative(s) may view, even if they do not take the documents or copies with them.
 - a. The government representative(s) are not entitled to take original documents with them. If they wish to take documents, they will be provided copies of the originals.
 - ii. It is particularly critical that the ACO obtain a copy of the legal authority authorizing the release to the investigator(s) of Beneficiary Protected

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Health Information PHI and that the ACO maintain a record of all PHI that may be used or disclosed.

4. Cooperate with the investigator(s); do not obstruct the investigation.
 - a. Cooperate with the investigator(s) and be polite.
 - i. It is a crime to destroy or alter documents, falsely deny knowledge of requested information, or attempt to influence the testimony of staff.
 - b. Staff must respond to questions about the location of documents, but they are not required to answer other questions without the benefit of legal counsel.
 - c. Accordingly, if the government investigator(s) have properly identified themselves, presented written authorization, and assert that their audit must be immediate, do not attempt to block the search.
5. Comply with laws
 - a. The government representative(s) must comply with applicable laws and regulations (e.g., the Health Insurance Portability and Accountability Act of 1996 (HIPAA)) unless an exception applies.
 - b. If staff is unclear whether an exception applies, politely ask the government representative(s) to produce evidence of an exception to applicable law. Inform the government representative(s) that the center wishes to cooperate with the investigation, but also has a legal obligation to protect its Beneficiaries' PHI and must comply with other applicable laws and regulations.
6. Preserve documents; do not destroy or alter documents that are the subject of a government investigation.
 - a. Take affirmative steps, if necessary, to ensure the preservation of documents (including electronic data) that are the subject of any government inquiry.
 - b. Immediately halt any planned or routine destruction of relevant information.
 - c. Under certain circumstances CMS may determine there is a special need to retain a particular record or group of records for a longer period. In these cases CMS will notify the ACO at least 30 days before the normal disposition date. If there has been a termination, dispute, or allegation of fraud or similar fault against the ACO, its Participants, its Providers/Suppliers, or other individuals or entities performing functions or services related to the ACO's activities, the ACO must retain records for an additional six (6) years from the date of any resulting final resolution of the termination, dispute, or allegation of fraud or similar fault.
7. Staff may not communicate to anyone any matter related to a government investigation of the ACO without the express permission of the ACO's management staff or legal counsel.

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- a. Inquiries from the media should be directed to the Executive Director of the ACO and/or the Marketing department of Collaborative Health Systems (CHS).
 - b. Staff should not provide any comments to the press.
8. During the course of the government investigation, all correspondence related to the investigation should be directed through the ACO'S legal counsel or Compliance Officer.
- E. The ACO has ultimate responsibility for adhering to and complying with the terms and conditions of its agreement with CMS, notwithstanding any arrangements between or among an ACO, Next Generation Participants, Preferred Providers, Next Generation Professionals and other individuals or entities performing functions or services related to ACO activities.

Reporting

- A. N/A

Related Documentation

- A. Next Generation ACO Model Participation Agreement Sections XV, XVII.C, and XVIII.A
- B. ACO Terms & Definitions Policy