

# 8 tips for engaging ACO boards to meet requirements in the Final Waivers

In the Final Waivers for the Medicare Shared Savings Program (MSSP) issued by the CMS and the OIG, the regulators modified the requirements for the ACO governing body, stating that it must provide “the basis for the determination that an arrangement is reasonably related to the purposes of the Shared Savings Program.” The regulators’ modification in the Final Waivers signals a couple of important points: (i) the ACO Board has significant responsibility to ensure that financial arrangements operate to promote the purposes of the MSSP, and (ii) meaningful engagement of the ACO Board, with detailed documentation, is necessary to ensure compliance with the requirements of the waivers program.

The waivers require that approved financial arrangements with ACO participants be “reasonably related to the purposes of the” MSSP, which are described as:

- Promoting accountability for the cost and overall care for a Medicare population;
- Managing and coordinating care for Medicare fee-for-service beneficiaries through an ACO; and
- Encouraging investment in infrastructure and redesigned care processes for high-quality and efficient service delivery.

The ACO Board is responsible for thoughtfully examining a proposed arrangement to ensure it connects with the broad purposes described above.

Given the increased emphasis on the ACO governing body’s work in the Final Waivers, it is paramount that ACO Boards work thoughtfully through this evaluative process, documenting its consideration, analysis, and conclusions in formal Board minutes. Often, ACO Boards work through subcommittees to detail planning, consideration, and recommendations that will ultimately be discussed and potentially approved by the ACO Board members. ACOs have already learned that innovative financial arrangements are necessary to modify care delivery successfully as organizations continue to navigate the path from fee-for-service to fee-for-value.

To assist in planning and preparing ACO Boards for the work ahead, here are eight practical suggestions for meaningful Board engagement, consistent with the intent and requirements of the ACO Final Waivers.

1. Use the MSSP purposes (or more generally the purposes of the triple aim) as a mechanism for governance discussion and planning.
2. Provide education and information to ACO Board members on the MSSP and current population health initiatives, both locally and in the health care marketplace.
3. Understand the details of any proposed financial arrangement with ACO participants, including how it operates, what it is intended to accomplish, and how payments are to be calculated and made.
4. Use the expertise and focus of subcommittees and their reporting to the ACO Board especially for finance and compliance matters.
5. Provide detailed background materials to the ACO Board in preparation for meetings.
6. Adopt a detailed policy governing the approval of financial arrangements, providing a thorough process for consideration, evaluation, and approval of financial arrangements.
7. Follow the policy.



8. Document the deliberations and considerations of the ACO Board in making decisions in meeting minutes and/or board resolutions.

These practical guideposts should allow the ACO Board to engage in thoughtful deliberation related to its governance of ACO activities and financial arrangements under consideration by the ACO. The commentary for the Final Waivers makes clear that documentation provided by the ACO Board should allow “the government or another third party reviewing the documentation [to be] able to ascertain the material terms of the arrangement ... and the corresponding basis or bases for [the Board’s] determination that a particular arrangement is reasonably related to the purposes of the Shared Savings Program.”

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