

## Next Generation Program Waivers

Effective Date: 01/01/2018

### Policy

It is the policy of the ACO to abide by all rules and regulations set forth by the Centers for Medicare & Medicaid Services (CMS) and the Office of Inspector General (OIG) in regards to the Next Generation ACO Model Program Waivers available to the ACO.

- A. The ACO shall take all necessary steps to ensure compliance with the rules of any and all applicable waivers it opts to employ, including any applicable public reporting requirements.
- B. The ACO will record and memorialize all waivers and approvals of such by the Governing Body. The Compliance department (Compliance) will be responsible for housing all related documentation.

### 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. There are four (4) applicable ACO Next Generation Model Waivers available to ACOs. They are:
  - a. **ACO Participation Waiver** – waives the Physician Self-Referral Law (Stark Law), Federal anti-kickback statute (AKS), and the Gainsharing CMP that applies to ACO-related start up arrangements in anticipation of participating in the Shared Savings Program;
  - b. **Shared Savings Distribution Waiver** – waives the Stark Law, AKS, and Gainsharing CMP that applies to distributions and uses of shared savings payments earned under the Shared Savings program;
  - c. **Compliance with Physician Self-Referral Law Waiver** – waives the AKS, and Gainsharing CMP for ACO arrangements that would implicate Stark Law and meet an applicable exception;
  - d. **Patient/Beneficiary Incentives Waiver** – waives the Beneficiary Inducements CMP and AKS for medically related incentives offered by ACOs under the Shared Savings Program to encourage preventive care and compliance with treatment plans.
- B. Each of the outlined waivers functions to assist the ACO in navigating around the Stark Law, AKS, and CMP Law under certain circumstances, in order to promote the aim and purpose of Next Generation ACOs.

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- C. If the ACO wishes to engage in a new activity or initiative, such as referrals to Non-ACO participants or providers/suppliers or the provision of items/services to Beneficiaries at below market value, the ACO's Executive Director (ED) must discuss the applicability and scope of the proposed activity with the Compliance Officer. The Compliance Officer will determine whether or not the activity/initiative is appropriate and can be conducted compliantly.
  1. The Compliance Officer will determine the need for and scope of the waiver and decide which waiver would be most appropriate for the proposed activity.
  2. If it is determined that a waiver is needed, the Compliance Officer will work with the ED, or other designee, to draft a waiver proposal.
  3. The waiver proposal must be reviewed and approved by the Compliance Officer.
  4. Once approved by the Compliance Officer, the waiver must be reviewed and approved by the ACO's Governing Body.
    - a. The Governing Body may approve a waiver during the normal course of business at a general meeting, during a special meeting, or via Unanimous Written Consent (UWC).
  5. Waivers must be reviewed and approved by the Governing Body before any part of any activity covered by the waiver is started.
- D. The executed waiver must be sent back to Compliance, for record-keeping purposes. If the waiver is an ACO Participation Waiver, a version will be created which does not provide the financial details of the arrangement. This version will be sent to the Marketing-Operations liaison or designated Integration & Implementation Team (IIT) member for uploading to the ACO's website.
  1. The ED, or other designee, should send Compliance a copy of the signed waiver or UWC and a copy of the meeting minutes containing the approval vote (if applicable).

### Reporting

- A. If the ACO is utilizing the Participation Waiver, the ACO is required to publicly report this waiver.
- B. Once fully executed by the Governing Body, a version of the waiver without financial information should be sent by the Executive Director, or other designated person, to the Marketing-Operations liaison, or designated IIT member.
- C. The fully executed waiver will be added to the ACO's official public disclosure documentation by the Marketing-Operations liaison or IIT member and submitted to the Web Marketing Manager for upload to the ACO's public website.

### Related Documentation

- A. ACO Waiver Template

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### Additional Guidance

Should the ACO determine that the use of a waiver is implicated in an activity it wishes to pursue; the ACO Management Committee should discuss the activity with its Executive Director. The ACO should always discuss prospective partnerships or other arrangements with the Legal Department prior to initiating any such agreements with organizations outside of the ACO.