

New Year's Resolution

Prepping for Shared Savings Program Compliance in
PY24





Housekeeping

- Speakers will present for approximately 45 minutes
- Q&A will take the remainder of time
- Webinar is being recorded
- Slides and recording will be available on the NAACOS website within 24 hours.

Kimberly Busenbark

- After beginning her career in Medicare Advantage compliance, Kimberly began working with ACOs during the first wave of the Medicare Shared Savings Program and spent the first three years of the program as the ACO Compliance Officer for Collaborative Health Systems' 35 Shared Savings Program ACOs. During this time, she was responsible for the implementation and oversight of the compliance program for each of the ACOs. Kimberly started Wilems Resource Group in 2015. Since then, WRG has continued to grow, and has helped ACOs across the country remain compliant and be successful within CMS value-based models and programs.
- Kimberly is a graduate of Texas A&M University, where she received a Bachelor's of Business Administration in Marketing and Management, and of The University of Houston Law Center, where she received her Juris Doctorate before being admitted to the State Bar of Texas.
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Questions & Answers



- To ask a question:

- To submit a written questions, you can write in the Questions tab on your dashboard at any time.
- To ask a live question, you can use the “raise hand” feature on your dashboard. Please make sure you are dialed in on a telephone and have connected using the audio pin so that we can unmute your line. Your name will be called when it is your turn to ask a question.

How to Survive a Virtual Compliance Session

- Find your comfy pants and refill your coffee
- Put your favorite show on in the background, be sure to mute your mic
- Laugh if Kimberly makes a joke, be sure to unmute your mic
- Please ask questions or make comments
- Doodle on your checklist
- **Help us! Join the discussion!**

BEFORE



AFTER



Shared Savings Program Compliance Program Requirements

Medicare Shared Savings Program ACOs are required to have a Compliance Program containing the following 5 elements:

Compliance
Official

Mechanisms for
Identifying Issues

Compliance
Training

Method for
Anonymous
Reporting

Requirement for
Reporting
Violations of Law

Element 1: Compliance Official

- Compliance Officer may be an attorney, but may not be legal counsel to the ACO
 - Third Party vs In-House (and everything in between)
- Reporting Structure matters
 - Compliance Officer must have a dotted line to Governing Body
 - 'Regular reporting'
- Level of Integration with Operations
- Enforcement vs. Police Force
- Top-Down Support
 - Governing Body
 - Executive and Medical Director



Element 2: Mechanisms for Identifying Issues

CHECK COMPLIANCE BOXES

- Creation of a Formal Compliance Plan
- Adoption of Compliance and Operations Policies & Procedures
- Effective Annual Compliance Training for Related Individuals
- Anonymous Reporting – Hotline or Online Tool
- Data Use Requirements
- Marketing Material Compliance
- Development of a Monitoring and Oversight Program
- Annual Reviews and Updates

ACO Real World Compliance Checklist **WILEMS**
resource group

This checklist can serve as a guide for your organization as you work through the implementation and maintenance of your ACO's Compliance Program. However, no reference tool can ever be completely comprehensive and use of this tool can never take the place of reading all relevant guidance and regulations.

GOVERNANCE

- Develop Governing Body
 - Medical Director
 - Medicare Beneficiary Representative
 - 75% Voting Control by ACO Participants
 - "Meaningful Representation" from each Participant
- Create Organizational Chart
 - ACO Executive, Medical Director, & Compliance Officer report directly to Gov. Body
 - Clear reporting lines from individuals and Sub-Committees to Governing Body
- Create Conflict of Interest Policy & Collect Acknowledgement forms
- Create & Approve Committee Charters
- Conduct & Document Quarterly Sub-Committee & Governing Body Meetings
- Retain ACO Operating Agreement, Executed Participation Agreements, and BAAs
- Define, Update, & Manage ACO-MS Contacts (e.g., Compliance Contact)

GENERAL COMPLIANCE

- Create & Approve Compliance P&Ps and Compliance Plan
- Create, Distribute, & Audit New Hire and Annual Compliance Training
- Create, Document, & Conduct Monitoring and Oversight Activities
- Determine & Launch a Method for Anonymous Reporting (i.e. hotline, web form)
- Review & Document Utilization of FWA Waivers and Benefit Enhancements

MARKETING/NOTIFICATIONS

- Create, Document, & Implement a Marketing Material Review Process
- File Marketing Materials with CMS for Approval
- Update & Launch the Public Reporting Webpage
- Document & Distribute Beneficiary Notifications and ACO Office Posters
- Document & Distribute Benefit Enhancement Communications; if applicable

OPERATIONS

- Create & Approve Operations P&Ps required under § 425.112
- Create, Document, & Implement an OIG/GSA Screening Process
- Track Annual and New Hire Compliance Training
- Submit & Maintain DUA Addenda
- Document & Manage ACO-MS User Access

Review of Compliance Documents



- ❑ Compliance Plan – Summary Document approved by Governing Body Annually
- ❑ Committee Charters
- ❑ Data Use Documentation
- ❑ Compliance Work Plan – deliverables and due dates
- ❑ Compliance Monitoring Plan – detailed plan for the ACO's Monitoring Program
- ❑ Policies & Procedures – Detailed documents demonstrating compliance with each required element
 - Key Policy Updates for PY24:
 - Governance
 - Removal of ability to request exception to 75% rules
 - Learnings from REACH Audit
 - Public Disclosure
 - New MIPS Promoting Interoperability Performance reporting (begins in PY25)
 - Additional details for reporting use of AIP
 - Advance Investment Payments – additional public reporting requirements

Building a PY24 Monitoring Program



- Beneficiary Notification & Follow-Up Process
- Governance & Leadership Requirements
- Beneficiary Communications & Follow-Up
- Compliance with Policies & Procedures
- Compliance Training
- Data Compliance
- Marketing Material Compliance
- Public Reporting
- Waivers and/or AIP if applicable
- Testing Anonymous Reporting Tool
- CEHRT Usage

Element 3: Compliance Training



❑ Who?

- ACO, ACO Participants and ACO Providers/Suppliers
- "ACO" would normally cover employees and directors of the entity. Most ACOs do not have employees, so who should be trained?
- "ACO Related Individuals" those individuals or entities providing functions or services related to ACO activities.

❑ What?

- HIPAA and FWA
- ACO Specific Content: ACO Compliance Program, Marketing, Voluntary Alignment, Waivers, Benefit Enhancements, ACO Data Requirements

❑ When?

- "Effective training" - Upon hire or contracting and annually thereafter

❑ Where?

- In-person and online are most common, but not the only options
- Documentation is key

Element 4: Anonymous Reporting

- ❑ Determine Method
 - Hotline or online tool are most common
 - Caution: hotline shared across multiple lines of business
- ❑ Determine Availability
- ❑ Determine How to Communicate
 - Beneficiary outreach
 - New hire and annual training
 - Compliance Plan
 - ACO Website



Element 5: Reporting to Law Enforcement

The ACO must have an “obligation to report ***probable violations of law*** to an appropriate law enforcement agency”

- Determine who will be responsible for determining whether a report should be made
- Determine course of action if legal and compliance disagree
- Determine how to communicate this requirement to ACO-Related Individuals
 - New hire and annual training
 - Compliance Plan
 - Newsletters

Red Flags for 2024

- Governance & Leadership
- Beneficiary Notifications
- CEHRT Usage

Red Flag: Governance & Leadership

Ensure the Governing Body meets all requirements:

- ❑ 75% control by Participants
 - Meaningful Participation
 - Duty of Loyalty
- ❑ Medicare Beneficiary Representative
 - Voting is not required but recommended
 - Is not included in the percentage calculations
 - May not be a Provider/Supplier and must not have a Conflict of Interest
- ❑ Conflict of Interest policy, including resolution process
 - Annual attestation of conflicts
- ❑ Medical Director and Executive with experience and authority with no conflicts of interest
 - Governing Body must have authority for approval/removal of Executive
 - Medical Director does not have to be a Provider/Supplier in the ACO but must be a:
 - Board Certified and Licensed in a State in which the ACO operates
 - Physically present in a clinic or office of the ACO

Cover Your Audit: Governance and Leadership

- CMS has increased oversight of Governance and Leadership in MSSP and ACO REACH for PY2024
- Policies and Procedures can help ensure requirements are not forgotten when changes are made
 - Include requirements to update ACO-MS within 30 days
 - Cannot send a change request if one is open, so collect and submit all at once
- Do not forget Governing Body members when setting up exclusion screening process
- Monitor for training and COI completions in Q1 each year
- Ensure Bylaws and P&Ps clearly document authority and reporting requirements
- Ensure minutes are kept for each meeting to prove compliance with the following:
 - Beneficiary involvement
 - “Ultimate Authority” requirement
 - Reporting by Compliance Officer
 - Meaningful representation

Red Flag: Beneficiary Notifications

- ❑ Office poster on display
 - Must be placed in “all facilities” not just those where “beneficiaries receive primary care services”
- ❑ Written Notification
 - CMS expects the ACO to make at least two attempts to send the notification if the first attempt fails for any reason
 - Alignment methodology matters: Preliminary Prospective (at or before 1st visit) vs. Prospective (during the PY)
 - Gap notifications for newly aligned
- ❑ Follow-up Communication
 - Verbal or written communication
 - Must occur **no later than the *earlier*** of:
 - The next primary care visit or
 - 180 days from the date the standardized written notice was provided
 - Must retain record of beneficiaries receiving the follow-up communication, and the form and manner in which the communication was made.

Cover Your Audit: Beneficiary Notifications

- Prepare and train ACO-Related Individuals on frequently asked questions before Beneficiary Notifications are distributed
- Build record keeping at the individual-level for notifications and follow-up
 - Initial attempt methodology and date
 - Second attempt methodology and date
- Be particularly careful with in-office processes
- Monitor offices for posters on display
- Monitor the initial Notification and Follow-Up requirements regularly in the ACO's quarterly monitoring plan

Red Flag: CEHRT Usage

- ❑ CMS has increased oversight of CEHRT Usage in REACH and regulatory updates require reporting of Participants who meet the MIPS Interoperability Standard beginning in PY25.

- ❑ How to Monitor – Request Screenshots of:
 - Product and Version Number in Use
 - Provider Name shown in system (select sample from provider/supplier list)
 - Tie in with Roster Management Oversight
 - The product ONC Number which can be found here: <https://chpl.healthit.gov/#/search>

Feeling Overwhelmed?

There are several resources available to help you navigate compliance.

- ❑ **NAACOs Compliance Manual:** template policies & procedures covering requirements specific to the Shared Savings Program
- ❑ **CMS Communications**
 - Spotlights are a great way to avoid missing deadlines and identifying holes in P&Ps
 - Utilize your CMS
 - FAQs and other communications – usually released in the Spotlights/Newsletters
- ❑ **NAACOS Online Library**



- ❑ **Wilems Resource Group:**
 - Free resources online at wilemsrg.com
 - Quarterly newsletter
 - LinkedIn

Final Comments

The webinar recording and slides will be available at <https://www.naacos.com/on-demand-webinars> within 24-hours. THANK YOU!

Kimberly is ready to answer your questions!



Disclaimer: This is not Kimberly Busenbark of Wilems Resource Group. This is Leslie Knope of Parks & Rec who we like to believe was speaking about compliance when she eloquently said, “one person’s annoying is another’s inspiring and heroic”.

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