

Casualty Actuarial Society Loss Reserve Seminar

Healthcare Reform: ACOs & Emerging Changes in Healthcare Delivery



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The Patient Protection and Affordable Care Act ("PPACA")

Public Law 111 -148, signed March 23, 2010



Overview of PPACA

- Sweeping 2,000+ page overhaul of U.S. health care system (not including the implementing regulations, some of which remain to be issued/finalized)
- Aims to reform health care:
 - delivery
 - financing
 - insurance



Key PPACA Objectives

- **Access** to health care for all Americans
 - Improve **quality** of health care
 - Lower **cost** of health care



Title III – Improving The Quality and Efficiency of Health Care

- Strives to transform the U.S. health care delivery system:
 - links payment to quality outcomes under Medicare
 - creates Center for Medicare and Medicaid Innovation (CMI)
 - Accountable Care Organization (“ACO”) initiatives



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ACOs



Three Letter Acronym
of the Year



Hot Topic in American
Health Policy



ACOs Defined



A group of physicians, hospitals and other healthcare providers who assume responsibility for the **quality** and **cost of healthcare** for a defined population attributed to them on the basis of patients' use of healthcare services. If the ACO meets quality benchmarks and reduces per-beneficiary spending below what would otherwise have been expected, it will receive a share of the savings



Impetus for ACOs

America's Broken Health System

- US health expenditures - \$2.6 trillion in 2010, over ten times the \$256 billion spent in 1980
- Health care accounts for 16% of the US GDP, the highest among the world's industrialized nations without improved outcome

Ineffective System for Paying Healthcare Providers

- Payment for volume on a fee for service basis rather than for value on a fee for outcome basis.



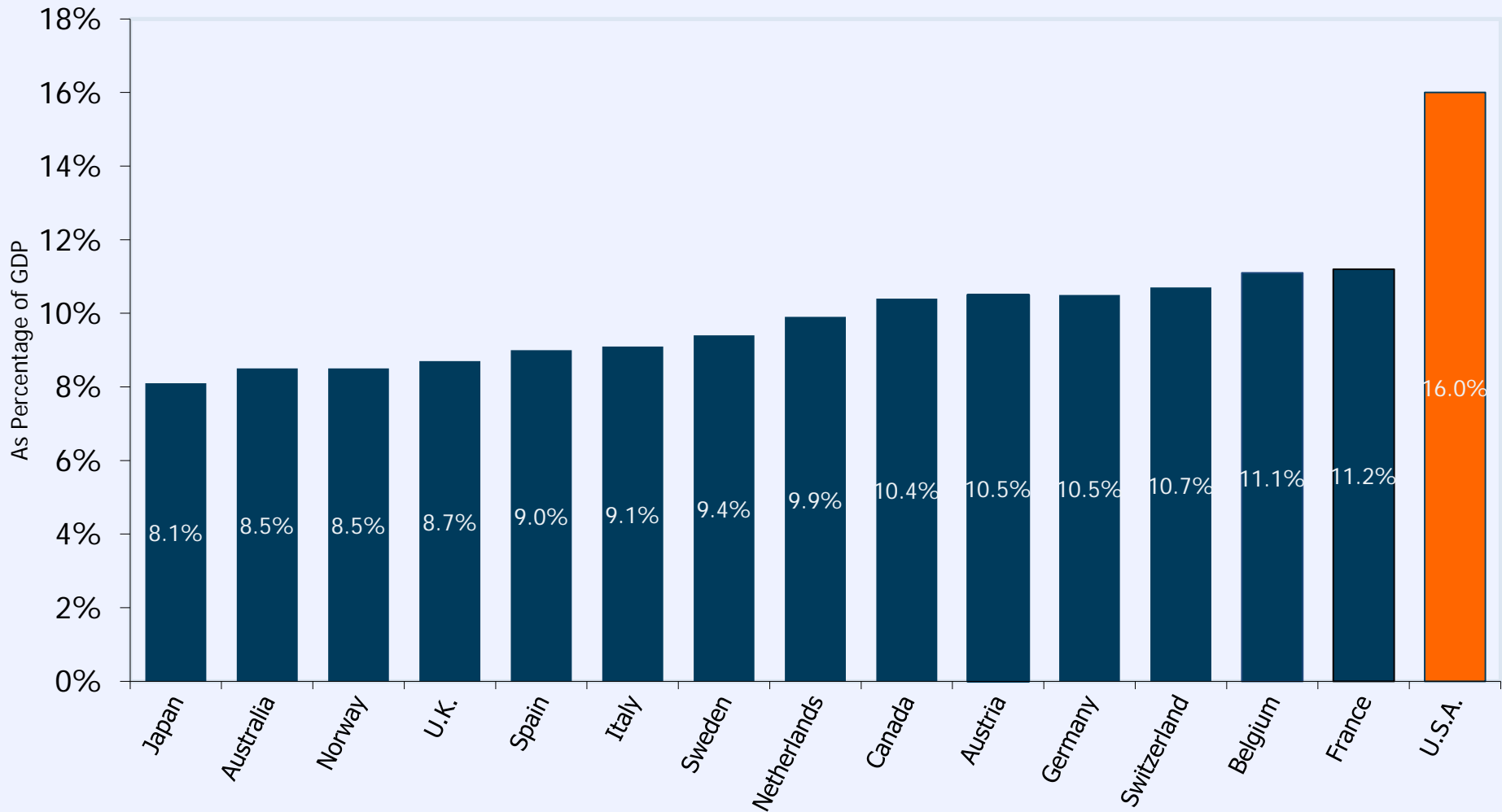
Impetus for ACOs (cont'd)

“In the US, we hold no one accountable for our problems. Accountability is as fragmented as care, itself; each separate piece tries to craft excellence, but only within its own walls. Meanwhile, patients and carriers wander among the fragments. No one manages their journey, and they are too often lost, forgotten, bewildered.”

- Dr. Donald Berwick, former CMS Administrator

Source: Donald M. Berwick, “A Transatlantic Review of the NHS at 60,” <http://www.pnhp.org/news/2010/may/a-transatlantic-review-of-the-nhs-at-60>, July 1, 2008.

Total Health Expenditure as a Share of GDP, U.S. and Selected Countries, 2008



Source: Organization for Economic Co-operation and Development (2010), "OECD Health Data", OECD Health Statistics (database). [doi: 10.1787/data-00350-en](https://doi.org/10.1787/data-00350-en) (Accessed on 14 February 2011).

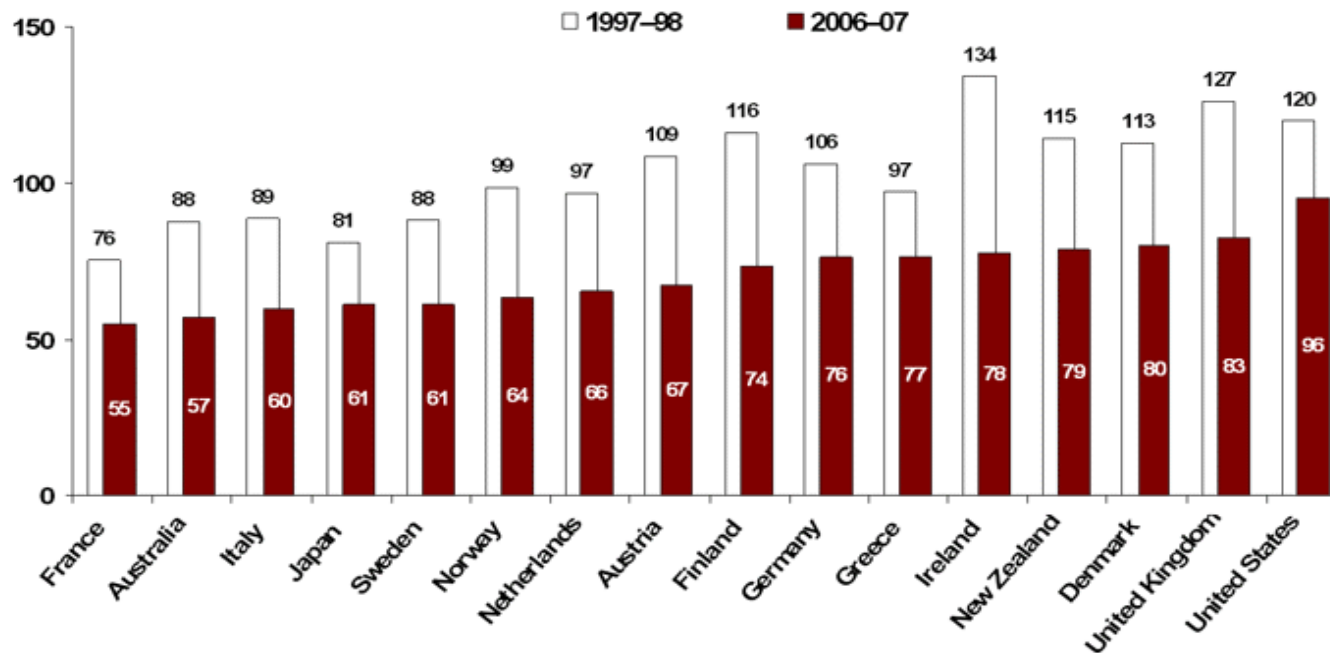
Notes: Data from Australia and Japan are 2007 data. Figures for Belgium, Canada, Netherlands, Norway and Switzerland, are OECD estimates. Numbers are PPP adjusted.



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U.S. Lags Other Countries: Mortality Amenable to Health Care

Deaths per 100,000 population*



* Countries' age-standardized death rates before age 75; including ischemic heart disease, diabetes, stroke, and bacterial infections. Analysis of World Health Organization mortality files and CDC mortality data for U.S.
Source: Adapted from E. Nolte and M. McKee, "Variations in Amenable Mortality—Trends in 16 High-Income Nations," *Health Policy*, published online Sept. 12, 2011.





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The current system cannot sustain itself without a focus on cost management and lowering

Hospitals and Specialists

- Improved Patient Care Efficiency
- Use of Lower-Cost Treatments
- Reduction in Adverse Events
- Reduction in Preventable Readmissions

Primary Care Practices

- Improved Prevention & Early Diagnosis
- Improved Practice Efficiency
- Reduction in Unnecessary Testing and Referrals
- Reduction in Preventable ER Visits and Admissions

All Providers

- Improved Management of Complex Patients
- Use of Lower Cost Settings & Providers



**Lower Total Health
Care Cost**



THE PURPOSE OF ACOs

“The creation of ACOs is one of the first delivery-reform initiatives that will be implemented under the ACA. Its purpose is to foster change in patient care so as to accelerate progress towards a three part aim: better care for individuals, better health for populations, and slower growth in costs through improvement in care.”

-Dr. Donald Berwick



Types of ACOs

- Medicare
 1. Medicare Shared Savings Program (MSSP)
 2. Advanced Payment Model
- Commercial (Private Insurers/Payers Health Systems)
- Pioneer – Hybrid Advanced Model



Medicare Shared Savings Program (MSSP)

- MSSP ACOs must meet HHS/CMS eligibility criteria, including:
 - assume responsibility for Medicare patient population of 5000 or more beneficiaries for at least three years
 - adequate primary care physician participation
 - a formal legal structure for receipt/distribution of shared savings
 - shared governance over clinical and administrative processes; and
 - processes to promote evidence-based medicine, coordinated care and patient engagement



Medicare Shared Savings Program (MSSP) (cont'd)

- If the ACO's costs are lower than the benchmark set by the MSSP, it receives (in addition to normal fee for service payment amounts) an additional payment that reflects a portion of the savings
 - Track I Model: Shared Savings Only
 - Track II Model: Shared Savings and Shared Losses



The Shared Savings Proposed Rule

- Issued March 31, 2011
- 65 Quality Measures
- 2 alternative tracks (one-sided, shifting to two-sided in year 3 and two-sided)
- 2% threshold above minimum savings rate of 2%-3.9%
- Maximum Shared Savings Cap: 7.5% or 10%
- 25% withhold by CMS for years 1 and 2



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Response to the Medicare Shared Savings Proposed Rule





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The Shared Program Final Issued October 20, 2011

- 33 quality measures
- 2 alternative tracks (one sided for all 3 years and two sided)
- No 2% threshold above minimum savings rate of 2 to 3.9% (i.e., First dollars savings)
- Increase in maximum sharing rate: 50-60%
- Maximum Shared Savings Cap: 10-15%
- No 25% withhold by CMS



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Advanced Payment Model

- Part of the MSSP
- Provide additional support to physician-owned and rural providers who would benefit from added start-up capital to establish the needed infrastructure in the form of additional staff or information technology
- Upfront funding by CMS' Innovation Center of \$170M to support up to 50 ACOs
- Eligible participants must be:
 - ACOs that do not include any inpatient facilities and have less than \$50 million in total annual revenue; or
 - ACOs in which inpatient facilities are critical access hospitals and/or Medicare low-volume rural hospitals and have less than \$80 million in total annual revenue



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Medicare ACOs

- More than 2.4M beneficiaries are receiving care from providers participating in Medicare ACOs.
- 148 Medicare ACOs in 45 states.
- Medicare ACO initiatives are projected to save the program \$940M over 4 years.

Accountable Care
Organizations
(ACOs)





Commercially/Privately Sponsored Accountable Care Collaborations

- Private Payors including BCBS Plans, large for profit health insurance carriers (e.g., CIGNA, AETNA) and health care systems launching pilot programs across the country
- Radical departure from traditional fee for service approach
- CareFirst Blue Cross Blue Shield, dominant insurer in the Washington DC
- Advocate Health Care (Chicago based) and BCBS IL formed one of the nations largest ACOs, AdvocateCare



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Pioneer ACO Model

- CMS Innovation Center initiative
- Eligibility-healthcare organizations experienced in providing coordinated, patient centered care to Medicare beneficiaries (a minimum of 15,000 Medicare Part A and B beneficiaries) in an ACO type environment
- Approximately 32 organizations have been designated as Pioneer ACO Models including: Banner Health, Beth Israel Deaconess, Dartmouth Hitchcock, and Presbyterian Healthcare Services.
- Differences between Pioneer ACO Model and MSSP:
 - First two years of Pioneer are shared savings payment with higher levels of savings and risk than Shared Savings Program;
 - By end of second year, Pioneer ACO must enter into similar payment contracts with insurers and health plans constituting 50% of ACO revenue



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Common Characteristics of Successful ACOs

- Broader patient access to care, including extended evening and weekend hours
- Case management and Disease management services
- Electronic Medical Records to better track medical history
- Embedded Care Coordinators
- Data Analytics
- Shared savings and in some cases losses with the Payor of medical services



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ACO Configurations Abound





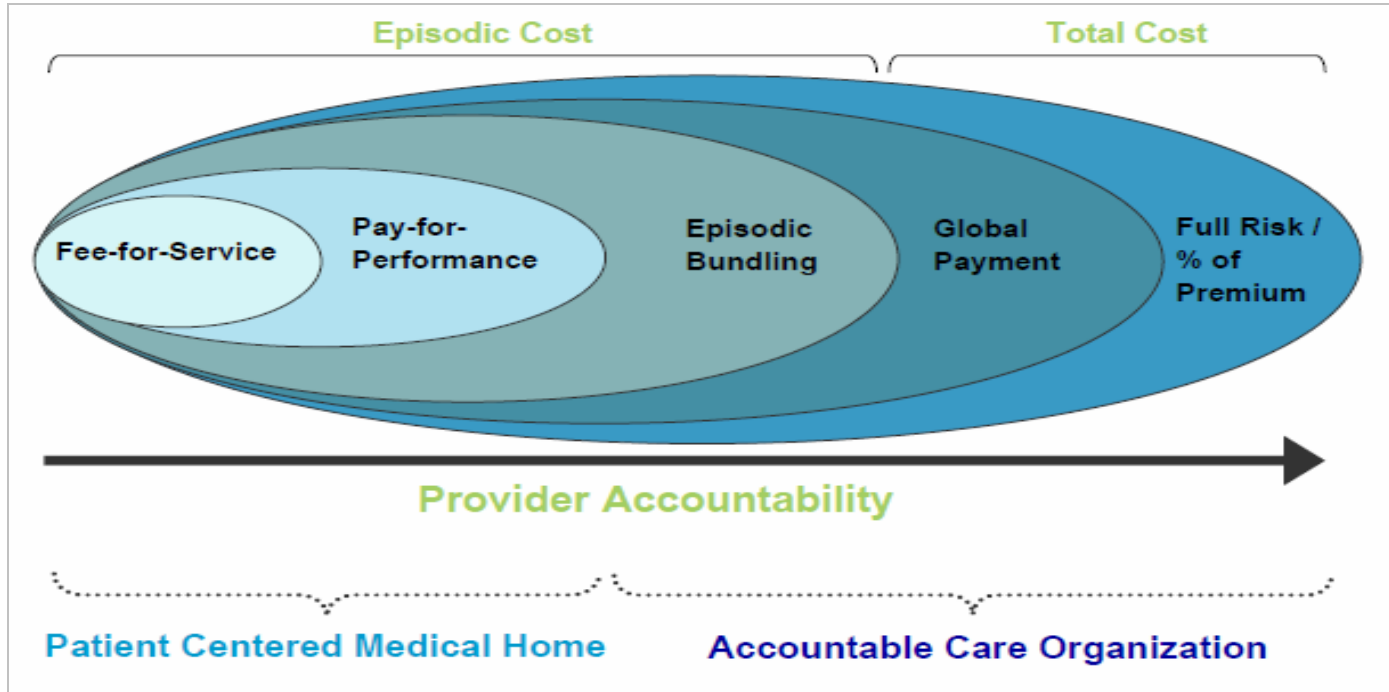
Are ACOs Different Than HMOs?

- ACOs have quality metrics that were not part of the Managed Care model of the 1990s
- ACOs do not purport to limit patient choice of providers or act as gate keepers to prevent patients from specialist care
- Specialist care is encouraged; although will be more closely followed by the primary care physician



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ACOs require a shift in provider accountability and a migration from focus on revenue cycle management to cost management



Revenue Cycle Management

Cost Management/liability

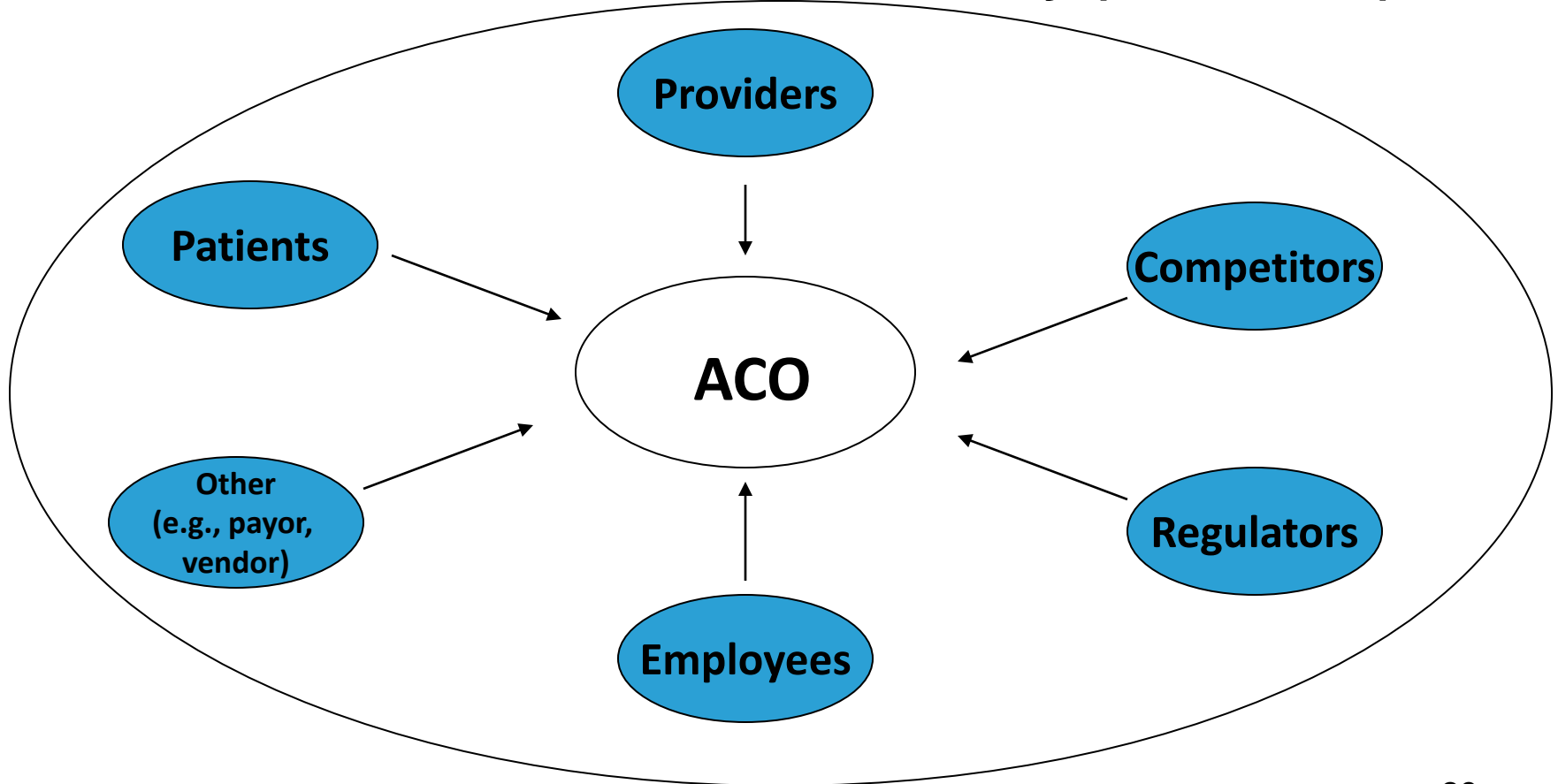


ACO Liability Exposures

- Some heightened exposure based upon ACO' s:
 - 'accountability' for quality of care
 - increased involvement in coordination of care
 - increased control over ACO participants



Common Sources of ACO Liability (Claimants)





Patient Claims Against ACOs

- Medical negligence (direct or vicarious liability)
- Negligence or misconduct in:
 - utilization review
 - case management/coordination of care
 - selection/peer review/credentialing of participating providers
 - medical necessity or coverage determination
- Breach of contract
- Breach of fiduciary duty (including failure to disclose financial incentives)
- Breach of privacy
- Other (including statutory violations)



Insurance Coverage & ACOs

- Types of Exposures Presented
 - D&O
 - E&O
 - Professional Liability
 - Third and First Party Privacy Protection
 - General Liability
 - EPL
 - Fiduciary
- Critical to understand the ACO's corporate structure



Insurance Coverage & ACOs (cont'd)

- Necessary to perform GAP analysis to determine whether existing healthcare entity's Insurance Program provides seamless coverage to the ACO activities
- Policy exclusions could vitiate coverage if an insured provider files suit against the ACO challenging compensation or bonus structure (e.g., Insured v. Insured)
- Consider purchase of separate stand alone product to expressly cover ACO Services and corresponding liability exposures