



## Member Alert: March 15, 2024

### Lawmakers Introduce Bills on ACO Assignment & Medicaid Duals

This week lawmakers in the House and Senate introduced bills to update the ACO assignment process and improve care for Medicare and Medicaid dual-eligible beneficiaries.

**ACO Assignment**—Sen. Sheldon Whitehouse (D-RI), Sen. John Barrasso (R-WY), Rep. Derek Kilmer (D-WA), Adrian Smith (R-NE), Suzan DelBene (D-WA), and Mike Gallagher (R-WI) introduced the ACO Assignment Improvement Act, which would remove the physician-visit requirement for ACO assignment.

- There is no question that nurse practitioners, physician assistants, and other non-physician providers (NPPs) play an important role in the success of ACOs. However, we have concerns with the approach outlined in the bill as it will harm some ACOs while benefiting others.
  - Removing the physician-visit requirement would increase assignment of beneficiaries in rural and other areas experiencing primary care physician shortages.
  - However, we remain concerned that follow up care delivered by NPPs in specialty practices could lead to beneficiaries being attributed to an ACO with which they have no primary care or longitudinal relationship.
    - CMS does not have a way to distinguish care provided by NPPs and classifies them all as primary care clinicians.
    - ACOs report that beneficiaries aligning through NPPs in specialty practices tend to be those who are receiving follow-up care subsequent to a high-cost procedure in the performance year and do not align to the ACO again in future performance years.
    - This unintended assignment flaw will make it challenging for ACOs, especially those with multispecialty practices or academic medical centers, to meet their benchmarks.
  - NAACOS and the Institute for Accountable Care conducted an analysis that highlights the potential financial impact of this approach. Contact [advocacy@naacos.com](mailto:advocacy@naacos.com) for additional information on this analysis.
- We believe that NPPs that deliver primary care, as opposed to specialty care, should play a prominent role in ACO assignment. We want to continue to work with the sponsors to refine the policy.
- **NAACOS recommendations to solve this issue:**
  1. **Allow ACOs to elect to have NPP attribution without a physician visit,**
  2. **Direct CMS to establish a more refined approach to defining primary care delivered by NPPs, or**
  3. **Establish an option for MSSP ACOs to select TIN-NPI participation.**

**Medicaid Duals**—Sens. Bill Cassidy (R-LA), Mark Warner (D-VA), John Cornyn (R-TX), Tom Carper (D-DE), Tim Scott (R-SC), and Bob Menendez (D-NJ) introduced the Delivering Unified Access to Lifesaving Services (DUALS) Act, which seeks to improve the coordination of coverage for dual eligible beneficiaries by adding new requirements for health plans and states to improve coordination of care.

- We are pleased that ACOs are listed as a type of integrated care plan model from which states can select to develop and administer integrated care for dual eligibles.
- Additionally, we are pleased the sponsor offices removed a provision from the bill that would have required ACOs to have contacts with state Medicaid agencies as a condition of participation in MSSP.

- **We wish to continue to work with sponsors to ensure that state Medicaid agencies offer opportunities for ACOs to serve as an integrated care plan.**
- In the absence of state Medicaid agencies or managed care organizations (MCOs) contracting with ACOs, it's unclear how ACOs will meet the requirements of the bill's integrated care plan.
- We also have remaining concerns about how the bill's auto enrollment in integrated care plans could impact ACOs.
  - Under the current language, a beneficiary that is currently attributed to an ACO through their primary care provider (PCP) could still be passively enrolled in another plan for which the PCP is in-network.
  - **NAACOS has recommended that when a PCP is in-network for multiple plans, preference should be given to the model or plan to which the beneficiary was previously aligned.**
    - For example, if a beneficiary has been attributed to an ACO through a PCP and that ACO has contracted with the state to offer an integrated care plan for duals, the beneficiary should be passively enrolled in the ACO integrated care plan, rather than any other integrated care plan for which the PCP is in-network.