

MaineHealth  
**Accountable Care  
Organization**

<b>Policy #</b>	<b>Effective Date: 9/25/2020</b>	<b>Revised Date(s):</b>
<b>Title:</b> Beneficiary Avoidance and Referrals	<b>Owner:</b> Compliance Official	
<b>Reviewed &amp; Approved by:</b> MaineHealth ACO Board		<b>Date:</b> 9/25/2020

**Policy Summary:**

It is the policy of MaineHealth Accountable Care Organization (ACO) to comply with regulations issued by the Center for Medicare and Medicaid Services (CMS) related to participation in the Medicare Shared Savings Program (MSSP), including those regulations related to the prohibition on required referrals and avoidance of at-risk beneficiaries.

**Purpose**

This policy shall apply to the activities of MaineHealth ACO, its ACO participants, ACO provider/suppliers, and other individuals or entities performing functions or services related to ACO activities, hereafter referred to as Related Individuals. This policy provides guidance for MaineHealth ACO Related Individuals, in accordance with federal regulations on avoidance of Medicare at-risk beneficiaries and prohibition on required referrals and cost shifting.

**Policies:**

MaineHealth ACO Related Individuals or other individuals or entities performing functions or services related to ACO activities shall not intentionally act or fail to act in a manner that constitutes (1) the conditioning of participation on referrals of individuals who are not ACO beneficiaries, (2) requiring beneficiary referrals only to ACO participants or providers/suppliers or (3) the avoidance of at-risk beneficiaries and their assignment to the ACO under the MSSP.

**Procedures:**

1. The MaineHealth ACO provides services to all beneficiaries attributed to the ACO based on the best medical interests of the beneficiary in the judgement of the referring provider, as well as the preferences of the beneficiary.
  - a) All referrals will be made based on the best medical interests of the beneficiary in the judgement of the referring provider, as well as the preferences of the beneficiary. While ACO Providers/Suppliers may refer a beneficiary to another provider within the ACO, all referrals are voluntary and the beneficiary is free to see any provider, regardless of their participation in the ACO.
2. The ACO may not require beneficiaries be referred only to ACO participants or providers/suppliers within the ACO or to any other provider or supplier, except that the prohibition does not apply to referrals made by employees or contractors who are operating within the scope of their employment or contractual arrangement to the employer or contracting entity, provided that the employees and contractors remain free to make referrals without restriction or limitation if:

- a) The beneficiary expresses a preference for a different provider, practitioner or supplier; or
  - b) The referral is not in the beneficiary's best medical interests in the judgment of the referring party.
3. MaineHealth ACO Related Individuals shall not, directly or indirectly, commit any act or omission, nor adopt any policy, that coerces or otherwise influences a beneficiary's decision to designate an ACO provider or supplier as responsible for coordinating their overall care under CMS' "voluntary alignment" process, including but not limited to the following:
    - a) Offering anything of value to the beneficiary; and
    - b) Withholding or threatening to withhold medical services or limiting or threatening to limit access to care.
  4. The ACO requires its Participants and Provider/Suppliers to make medically necessary covered services available to beneficiaries in accordance with applicable laws, regulations and guidance.
    - a) The ACO and its Participants and Providers/Suppliers shall not take any action to avoid treating at-risk beneficiaries or to target certain beneficiaries for services with the purposes of trying to ensure alignment in a future period.
  5. In the event that the MaineHealth ACO has reason to believe, a Related Individual is avoiding at-risk beneficiaries, the ACO shall take reasonable measures to ensure that the Related Individual promptly cease any such avoidance activities, up to and including termination of employment and/or any contractual relationship with the ACO.
  6. CMS shall have the right to monitor and access the performance of the MaineHealth ACO and its ACO participants, ACO provider/suppliers, or other individuals or entities performing functions or services related to ACO activities to identify any trends or patterns suggesting the avoidance of at-risk beneficiaries.<sup>1</sup>

## Definitions:

**ACO Activities-** means activities related to promoting accountability for the quality, cost, and overall care for a population of attributed Medicare Fee-For-Service beneficiaries, including managing and coordinating care, encouraging investment in infrastructure and redesigned care processes for high quality and efficient service delivery; or carrying out any other obligation or duty of the MHACO under the MSSP.

**ACO Participant** - means an individual or group of Accountable Care Organization (ACO) provider(s)/supplier(s), that is identified by a Medicare-enrolled TIN, that alone or together with one or more other ACO participants comprise(s) an ACO, and that is included on the list of ACO participants.<sup>2</sup>

**ACO Provider/Supplier** - means an individual or entity that -- (1) is a provider or a supplier; (2) is enrolled in Medicare; (3) bills for items and services it furnishes to Medicare fee-for-service beneficiaries under a Medicare billing number assigned to the TIN of an ACO participant in accordance with applicable Medicare regulations; and (4) is included on the list of ACO providers/suppliers.<sup>3</sup>

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<sup>1</sup> 42 CFR 425.316(b)(1).

<sup>2</sup> 42 CFR 425.20 (*ACO participant*)

<sup>3</sup> 42 CFR 425.20 (*ACO provider/supplier*)

**At-risk beneficiary** - means, but is not limited to, a beneficiary who:

- has a high risk score on the CMS-HCC risk adjustment model;
- is considered high cost due to having two or more hospitalizations or emergency room visits each year;
- is dually eligible for Medicare and Medicaid;
- has a high utilization pattern;
- has one or more chronic conditions;
- has had a recent diagnosis that is expected to result in increased cost;
- is entitled to Medicaid because of disability; or
- is diagnosed with a mental health or substance abuse disorder.<sup>4</sup>

**Medicare Shared Savings Program**- means the Medicare Shared Savings Program (MSSP), established under section 1899 of the Social Security Act.<sup>5</sup>

**Related Individual**- means the ACO, an ACO Participant, ACO Provider/Supplier, or any other individual or entity providing functions or services related to ACO activities.<sup>6</sup>

**References:**

- 42 CFR §425.305(b)-Prohibition on certain referrals and cost shifting
- 42 CFR §425.316(b)-Monitoring ACO avoidance of at-risk beneficiaries
- 42 CFR §425.402(e) – Voluntary alignment

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<sup>4</sup> 42 CFR 425.20 (*At-risk beneficiary*)

<sup>5</sup> 42 CFR 425.20 (*Medicare Shared Savings Program*)

<sup>6</sup> 42 CFR 425.305(b)(1); 42 CFR 425.316(b)(2)(i).