

2010

Accountable Care Organizations
Under the Patient Protection and
Affordable Care Act

VBA Health Law Section

6th Annual Health Care Practitioners Roundtable

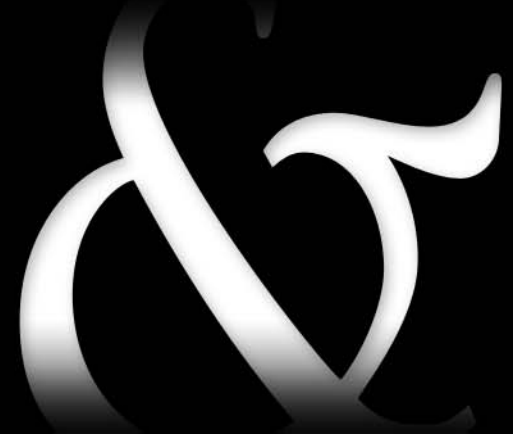
Mark S. Hedberg

Hunton & Williams LLP

November 5, 2010

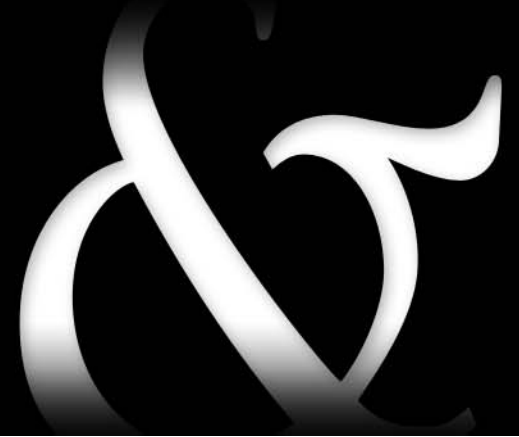
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Disclaimer



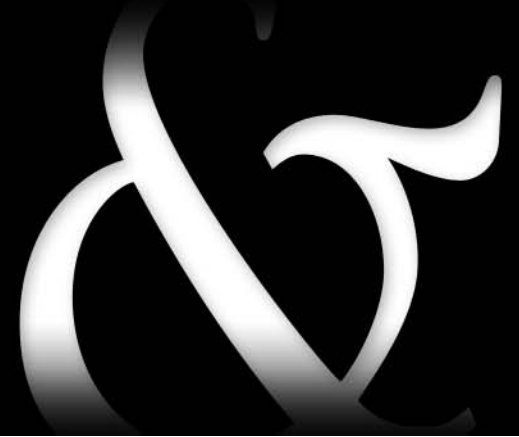
These materials and associated remarks are intended as a general discussion of the subject matter addressed. They are not intended to be comprehensive or as legal advice, and they should not be relied upon as such. Attorneys will need to draw their own conclusions relative to any particular case and take into account all applicable laws when formulating advice.

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Accountable Care Organizations Under the Patient Protection and Affordable Care Act

Agenda



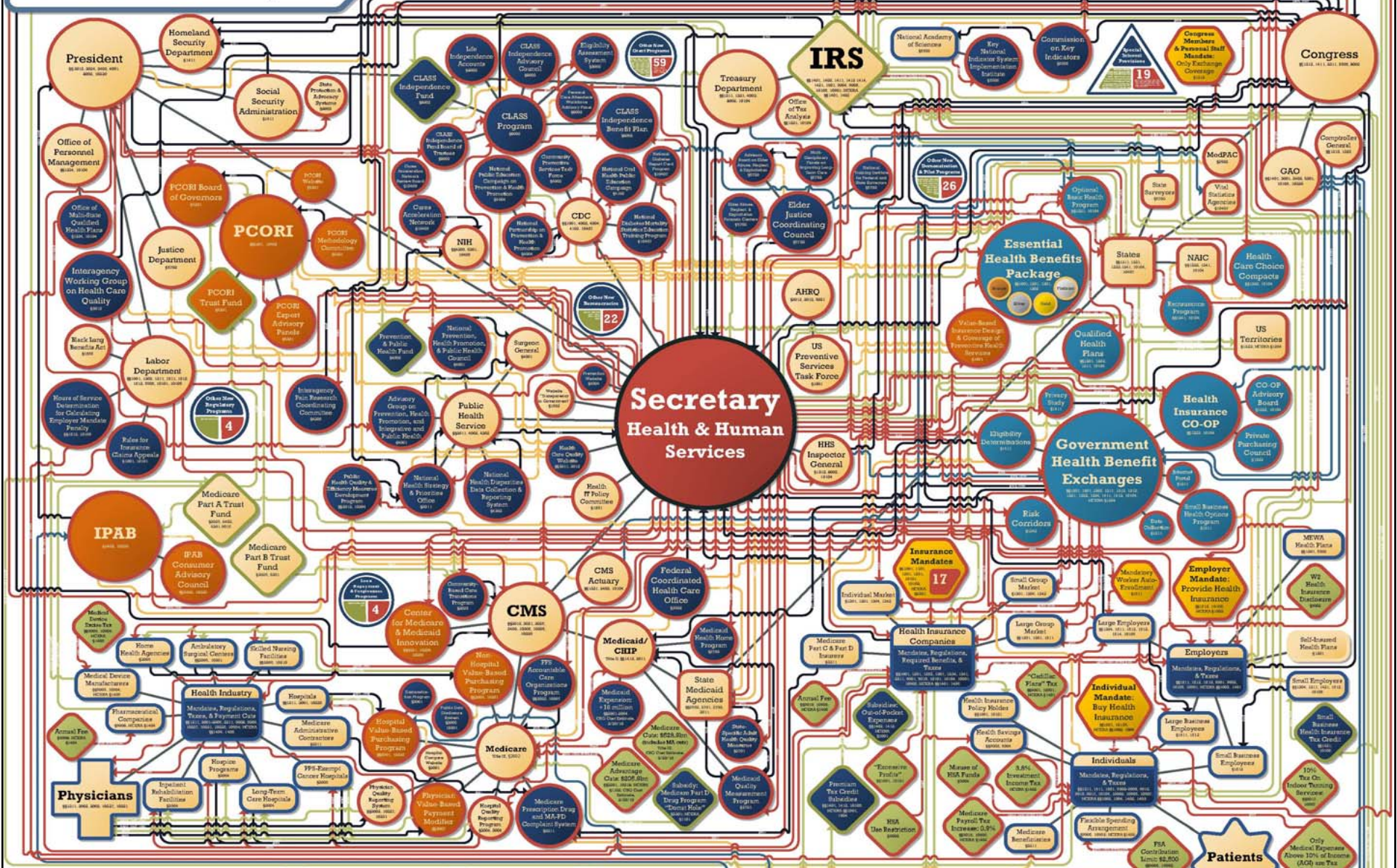
- Context
- Nuts & Bolts
- Challenges

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Context



Your New Health Care System



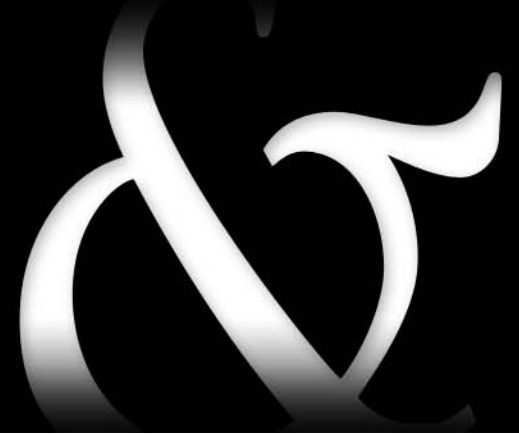
New Government		Expanded Government		Private		New Relationships	
	Rationing Potential		Mandates		Private Entity with New Mandates/Regulations/Responsibilities		Regulations/Requirements/Mandates
	Insurance in Health Insurance Market		Taxes & Monetary Fees/Penalties/Cuts		Government Financial Entity with New Inflows/Outflows		Reporting Requirements
	Other Expansions		Trust Fund (Rationing Potential)		State/Territory with Expanded Authority/Responsibility		Oversight
	Represents Bundles of Additional Entities		Other New Trust Funds/Monetary Benefits		Special Interest Provisions		Money Flows
							Consultation/Advisory/Info Sharing
							Structural Connections (Includes Existing)

AIG: Adjusted Gross Income
 AHRQ: Agency for Healthcare Research and Quality
 CDC: Centers for Disease Control & Prevention
 CHIP: Children's Health Insurance Program
 CLASS: Community Living Assistance Services & Supports
 CMS: Centers for Medicare & Medicaid Services
 CO-OP: Consumer Owned & Oriented Program
 FFS: Fee-For-Service
 FFS: Flexible Spending Arrangement
 GAO: Government Accountability Office
 HHS: Health Care & Education Reconciliation Act
 HHS: Health & Human Services Department
 HSA: Health Savings Account
 IPAB: Independent Payment Advisory Board
 IRS: Internal Revenue Service
 MA-PD: Medicare Advantage Prescription Drug
 MedPAC: Medicare Payment Advisory Commission
 MED: Medical Early Risk Detection
 EALORS: Executive Assistant Linked Office Regional Systems
 MEWA: Multiple Employer Welfare Arrangement
 NAC: National Association of Insurance Commissioners
 NIH: National Institutes of Health
 PCORI: Patient-Centered Outcomes Research Institute
 PPS: Prospective Payment System

**Patient Protection & Affordable Care Act, P.L. 111-148;
 Health Care & Education Reconciliation Act, P.L. 111-152**
 Prepared by: Joint Economic Committee, Republican Staff
 Congressman Kevin Brady, Senior House Republican
 Senator Sam Brownback, Ranking Member



- Republicans have promised to repeal PPACA or block its implementation.



- "I believe that the healthcare bill that was enacted by the current Congress will kill jobs in America, ruin the best healthcare system in the world, and bankrupt our country," Boehner, an Ohio Republican, told a news conference. "That means we have to do everything we can to try to repeal this bill and replace it with common sense reforms to bring down the cost of health care." (Reuters, Nov. 3, 2010)

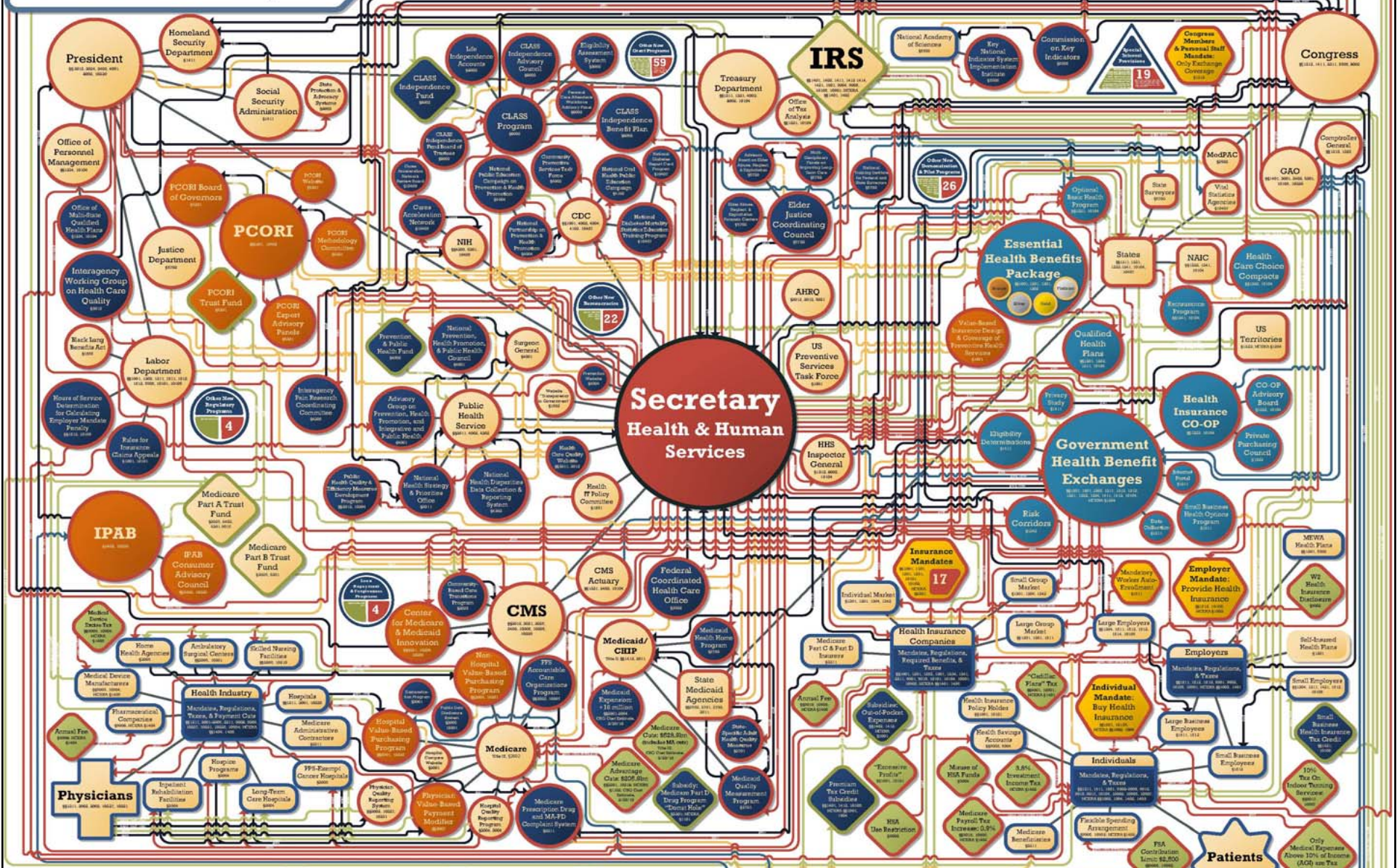


- "Our new Republican majority will move to repeal ObamaCare and replace it with commonsense alternatives that lower costs while protecting those with pre-existing conditions. Of course, even if our repeal bill makes it through the Senate, we can expect that President Obama will veto it. But that doesn't mean the fight is over."



- "If all of ObamaCare cannot be immediately repealed, then it is my intention to begin repealing it piece by piece, blocking funding for its implementation, and blocking the issuance of the regulations necessary to implement it. In short, it is my intention to use every tool at our disposal to achieve full repeal of ObamaCare." (*Delivering on Our Commitment: A Majority to Limit Government and Create Jobs* at 8 (Nov. 3, 2010))

Your New Health Care System

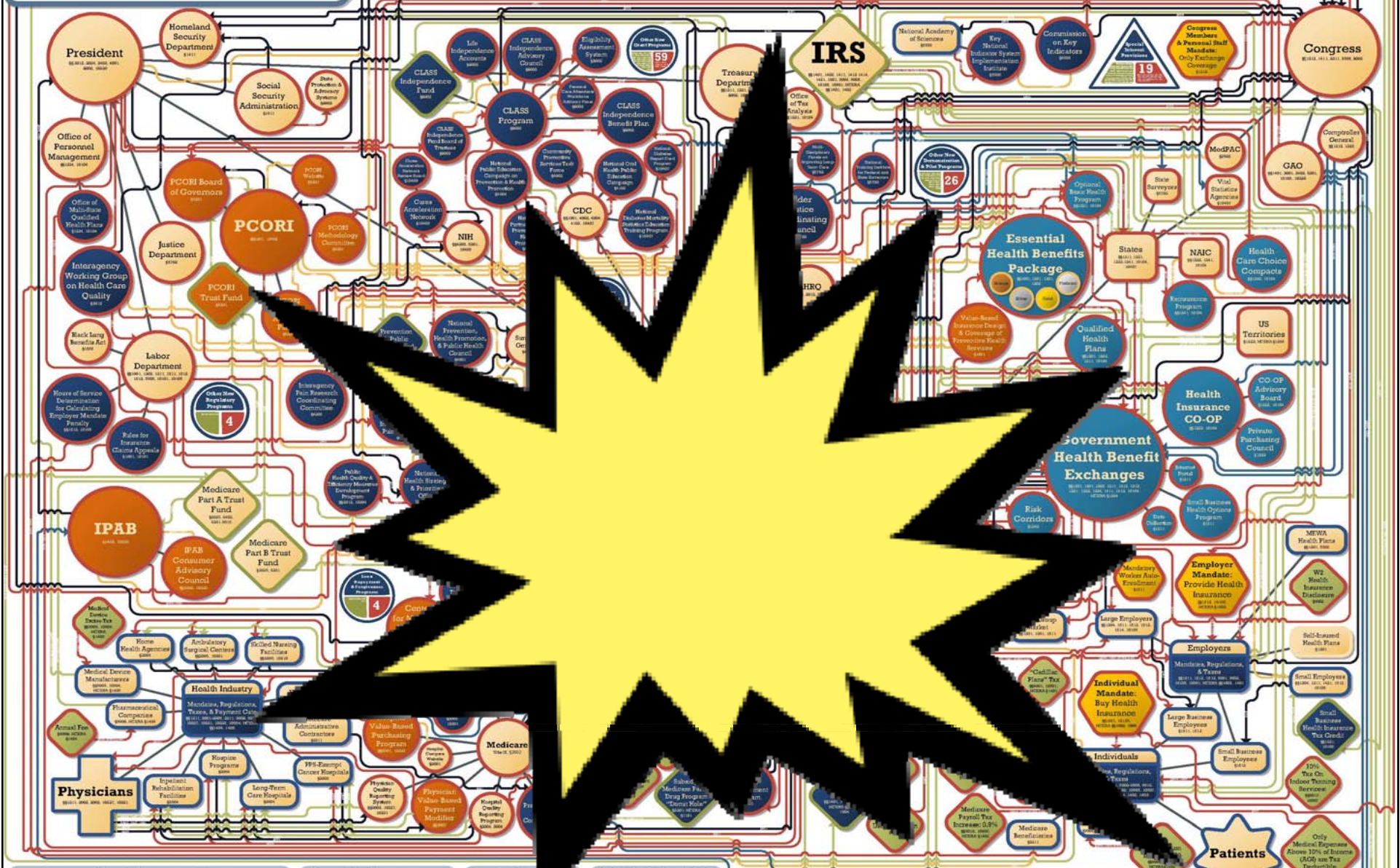


New Government	Expanded Government	Private	New Relationships
<ul style="list-style-type: none"> Rationing Potential Insurance in Health Insurance Market Other Expansions Represents Bundles of Additional Entities 	<ul style="list-style-type: none"> Mandates Taxes & Monetary Fees/ Penalties/Cuts Trust Fund (Rationing Potential) Other New Trust Funds/ Monetary Benefits 	<ul style="list-style-type: none"> Government with Expanded Authority/ Responsibility Government Financial Entity with New Inflows/ Outflows State/Territory with Expanded Authority/ Responsibility 	<ul style="list-style-type: none"> Private Entity with New Mandates/ Regulations/ Responsibilities Unchanged Private Entity Special Interest Provisions Regulations/Mandates Reporting Requirements Oversight Money Flows Consultation/Advisory/ Info Sharing Structural Connections (Includes Existing)

Abbreviations:
 AGI: Adjusted Gross Income
 AHRQ: Agency for Healthcare Research and Quality
 CDC: Centers for Disease Control & Prevention
 CHIP: Children's Health Insurance Program
 CLASS: Community Living Assistance Services & Supports
 CMS: Centers for Medicare & Medicaid Services
 CO-OP: Consumer Owned & Oriented Program
 FFS: Fee-for-Service
 FSA: Flexible Spending Arrangement
 GAO: Government Accountability Office
 HHS: Health Care & Education Reconciliation Act
 HHS: Health & Human Services Department
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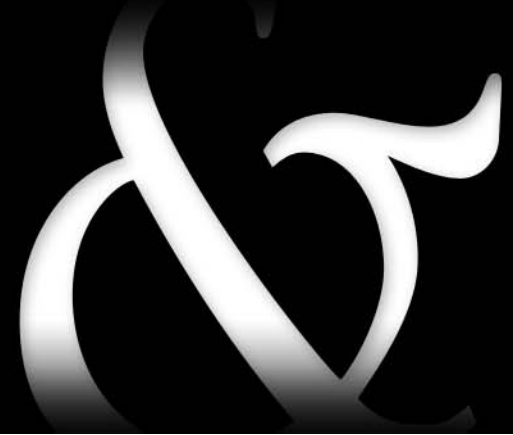
Your New Health Care System



New Government	Expanded Government	Private	New Relationships
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Regulations/Requirements/Mandates	Reporting Requirements	Oversight	Money Flows	Consultation/Advisory/Info Sharing	Structural Connections (Includes Existing)
<ul style="list-style-type: none"> AGI: Adjusted Gross Income ARHQ: Agency for Healthcare Research and Quality CDC: Centers for Disease Control & Prevention CHIP: Children's Health Insurance Program CLASS: Community Living Assistance Services & Supports CMS: Centers for Medicare & Medicaid Services CO-OP: Cooperatives Operated & Oriented Program FPS: Fee-for-Service FSA: Flexible Spending Account GAO: Government Accountability Office NCERA: Health Care & Education Reconciliation Act HR: Health & Human Services Department 	<ul style="list-style-type: none"> HSA: Health Savings Account IPAB: Independent Payment Advisory Board IRS: Internal Revenue Service MA-PD: Medicare Advantage Prescription Drug MedPAC: Medicare Payment Advisory Commission MEPS: Medical Early Risk Detection REALOR: Executive Auxiliary Linked Office Regional Systems CO-OP: Cooperatives Operated & Oriented Program MEWA: Multiple Employer Welfare Arrangement NAIC: National Association of Insurance Commissioners NIH: National Institutes of Health PCORI: Patient-Centered Outcomes Research Institute PPS: Prospective Payment System 	<p>Patient Protection & Affordable Care Act, P.L. 111-148; Health Care & Education Reconciliation Act, P.L. 111-152 Prepared by: Joint Economic Committee, Republican Staff Congressman Kevin Brady, Senior House Republican Senator Sam Brownback, Ranking Member</p>			

The Delivery Side of the Equation Matters



- The Patient Protection and Affordable Care Act (PPACA) expands access while seeking to contain the growth in health care spending
- These goals are not consistent
 - 32 million people added to the ranks of the insured (public and private)
 - New public programs established
 - New coverage mandates imposed
- This is not a recipe for cost containment
- Revenue provisions help, but are not enough

Transforming the Delivery System



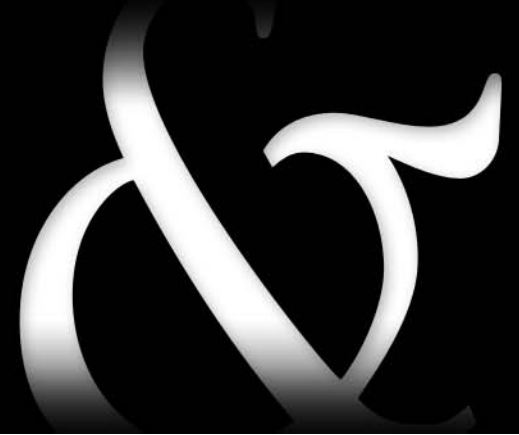
- Cutting rates is not the answer
 - Past efforts to cut rates have largely failed
- The problem is more basic than rates
 - We get what we pay for; but
 - We pay for the wrong things

Transforming the Delivery System



- The success of health reform depends on transforming the health care payment and delivery systems
- PPACA sets the stage for these fundamental changes

Transforming the Delivery System



- Accountable Care Organizations (ACO)
- Many other approaches
 - Pilot program on payment bundling for episodes of care
 - Patient-centered medical home
 - Center for Medicare & Medicaid Innovation

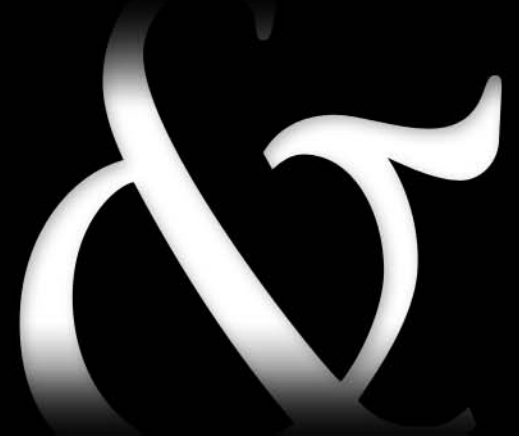
Transforming the Delivery System



- Payment change is highly dependent on detailed, timely and crunchable data
 - Electronic Medical Records (EMRs) are essential

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Nuts & Bolts



Accountable Care Organizations



- Another government contractor
 - Minimum contract term = three-year “agreement period”
- Eligible to receive payments under the new Medicare Shared Savings Program (PPACA § 3022)
- Statute is light on specifics and gives the Secretary of HHS broad discretion
- Proposed rules expected in December 2010

Accountable Care Organizations



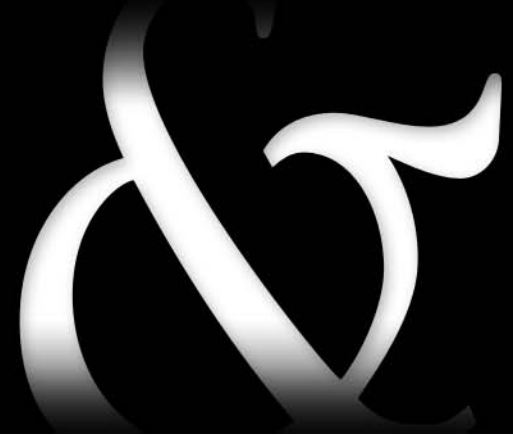
- The Shared Savings Program must
 - Promote accountability for a patient population
 - Coordinate items and services under parts A and B; and
 - Encourage investment in infrastructure and redesigned care processes for high quality and efficient service delivery

Accountable Care Organizations



- Who may form an ACO?
 - ACO professionals (ACOPs) in group practices
 - Networks of individual practices of ACOPs
 - J/Vs between hospitals and ACOPs
 - Hospitals employing ACOPs
 - Other groups as approved by the Secretary
- Participation in certain other projects or models bars participation in an ACO

Accountable Care Organizations



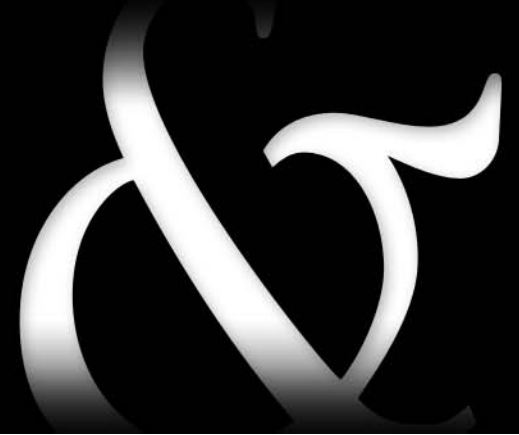
- An ACO must
 - Be “willing to become accountable for the quality, cost, and overall care of the Medicare fee-for-service beneficiaries assigned to it”
 - Have a “formal legal structure that would allow the organization to receive and distribute payments for shared savings to participating providers and suppliers”
 - Have an established mechanism for shared governance

Accountable Care Organizations



- An ACO must
 - “Include primary care ACO professionals that are sufficient for the number of Medicare fee-for-service beneficiaries assigned to the ACO”
 - Minimum number of assigned beneficiaries = 5,000

Accountable Care Organizations



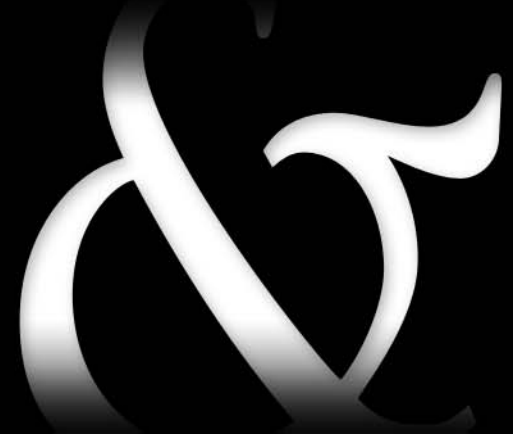
- An ACO must
 - “Have in place a leadership and management structure that includes clinical and administrative systems”
 - Define processes to promote evidence-based medicine and patient engagement, report on quality and cost measures, and coordinate care
 - (e.g., using telehealth, remote patient monitoring, and other enabling technologies)

Accountable Care Organizations



- An ACO must
 - “Demonstrate to the Secretary that it meets patient-centeredness criteria specified by the Secretary, such as the use of patient and caregiver assessments or the use of individualized care plans”

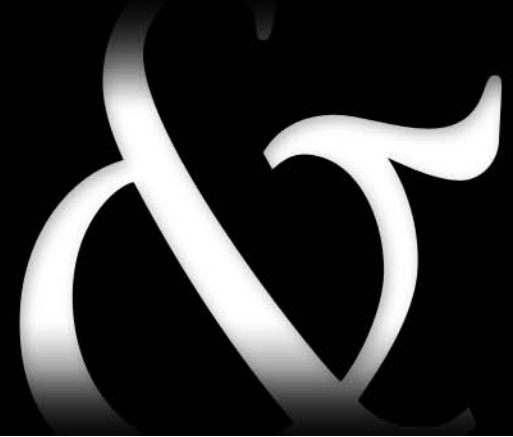
Accountable Care Organizations



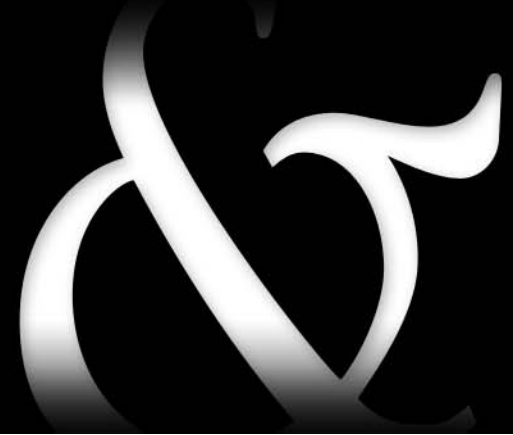
- An ACO must
 - Make required reports, including
 - Information about the ACO's ACOPs
 - Quality
 - Measures of clinical processes and outcomes
 - Patient and caregiver experience of care
 - Utilization
 - Information needed to calculate shared savings payments



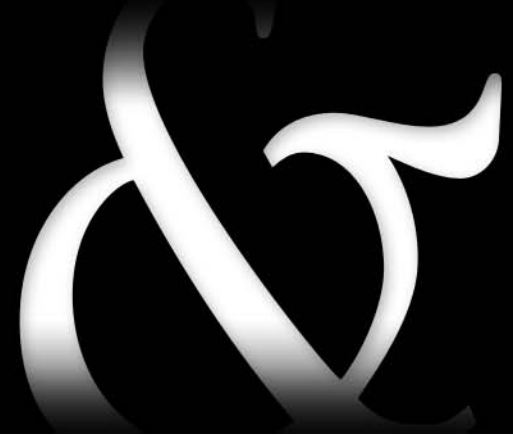
- Shared Savings Payments
 - Relate to FFS beneficiaries assigned to the ACO only
 - Doctors and hospitals continue to receive FFS payments
 - If savings are generated and if the ACO satisfies the quality standards established by the Secretary, the ACO is eligible to receive a portion of the savings



- Shared Savings Payment Calculation
 - The Secretary estimates a benchmark for each agreement period for each ACO using the most recent available three years of per-beneficiary expenditures for parts A and B services for beneficiaries assigned to the ACO
 - The Secretary also establishes
 - a target savings percentage, and
 - a savings sharing percentage



- Shared Savings Payment Calculation
 - The benchmark is
 - Adjusted for beneficiary characteristics and such other factors as the Secretary determines appropriate
 - Updated by the projected absolute amount of growth in national per capita expenditures for parts A and B services under the original Medicare fee-for-service program, as estimated by the Secretary
 - Reset at the start of each agreement period



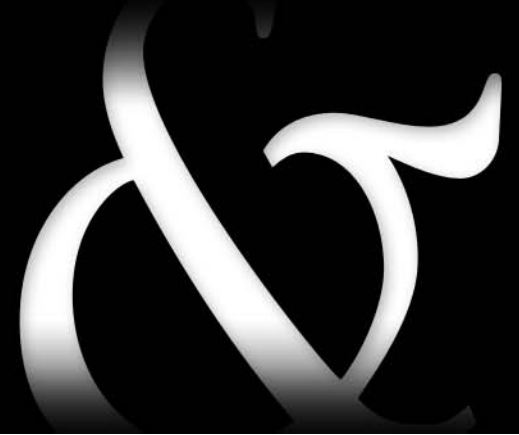
- Shared Savings Payment Calculation
 - If the estimated average per capita Medicare expenditure under the ACO for Part A and B services, adjusted for beneficiary characteristics, is below the applicable benchmark by at least the target percentage, (and all other requirements are satisfied) the ACO will receive a payment equal to:
(the amount of savings generated) x (savings sharing percentage)

Accountable Care Organizations



- Secretary is required to “establish limits” on the amount of shared savings payments that may be made to an ACO
- If an ACO takes steps to avoid patients at risk to reduce the likelihood of increased costs to the ACO, the Secretary may impose an “appropriate sanction,” including termination from the program

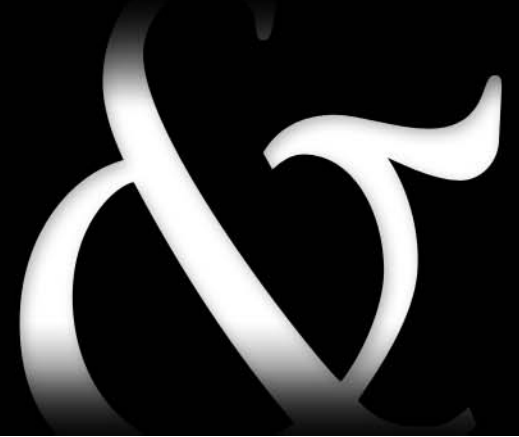
Accountable Care Organizations



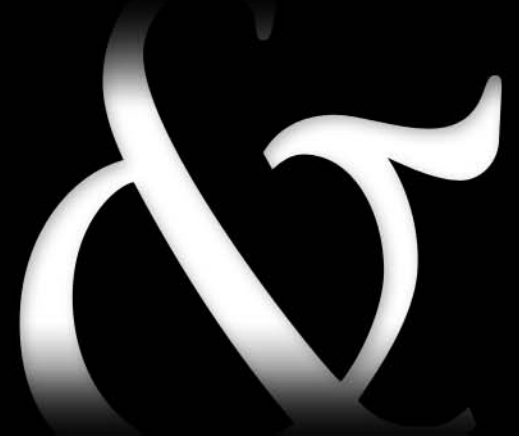
- Secretary has discretion to make partial capitation payments or other types of payments in lieu of shared savings payments

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Challenges



Accountable Care Organizations



- ACO Challenges
 - Assignment of beneficiaries
 - Leakage
 - Physician exclusivity

Accountable Care Organizations



- ACO Challenges
 - State insurance regulation
 - Is the shared savings payment large enough to influence behavior?
 - Disproportionate adverse effect on acute care hospitals?

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Questions?