

MaineHealth  
**Accountable Care  
Organization**

<b>Policy # 08</b>	<b>Effective Date:</b> 7/29/22	<b>Revised Date:</b>
<b>Title:</b> Beneficiary Incentives	<b>Owner:</b> Compliance Official	
<b>Reviewed &amp; Approved by:</b> MaineHealth ACO Board		<b>Date:</b> 7/29/22

**Policy Summary:**

It is the policy of MaineHealth Accountable Care Organization (ACO) to comply with state and federal regulations prohibiting the ACO, its Participants, Providers/Suppliers, and other individuals or entities performing functions or services related to the ACO's activities from providing gifts or other remuneration to beneficiaries as inducements.

**Purpose**

This policy shall apply to the activities of MaineHealth ACO, its ACO participants, ACO provider/suppliers, or other individuals or entities performing functions or services related to ACO activities, hereafter referred to as Related Individuals. This policy provides guidance for Related Individuals working on behalf of the ACO in accordance with current federal regulations, Medicare Shared Savings Program Final Rule requirements and MaineHealth Policies related to the provision of beneficiary gifts or other remuneration as incentives.

**Policies:**

1. The ACO, its Participants, Providers/Suppliers, and other individuals or entities performing functions or services related to the ACO's activities are prohibited from providing gifts, monetary rewards or other remuneration to beneficiaries as inducements for:
  - a. Receiving items or services from, or remaining in, an ACO or with ACO providers/suppliers in a particular ACO; or
  - b. Receiving items or services from ACO participants or ACO providers/suppliers.
2. The ACO may consider providing in-kind items or services to beneficiaries **only if all** of the following conditions are satisfied:
  - a. There is a reasonable connection between the items and services and the medical care of the beneficiary;
  - b. The items or services are preventive care items or services or advance a clinical goal for the beneficiary, including adherence to a treatment regime, adherence to a drug regime, adherence to a follow-up care plan, or management of a chronic disease or condition; and
  - c. The items or services are not Medicare-covered items or services for the beneficiary on the date the in-kind item or service is furnished to the beneficiary.
  - d. The item or service complies with the OIG definition of nominal value.
3. No one acting on behalf of the ACO or an ACO Participant or Provider/Supplier may, directly or indirectly, commit any act or omission, nor adopt any policy, that coerces or otherwise influences a

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beneficiary's decision to complete or not complete voluntary alignment, including but not limited to the following:

- a. Offering anything of value to the beneficiary; or
  - b. Withholding or threatening to withhold medical services or limiting or threatening to limit access to care.
4. MaineHealth ACO does not operate nor participate in a Medicare Beneficiary Incentive Program Waiver.

## Procedures:

1. As a general rule, the OIG allows items or services of nominal value other than cash or cash equivalents, which do not exceed \$15.00 per item or \$75.00 in aggregate per patient year, unless an exception identified in the OIG Safe Harbors is met.
2. The MaineHealth ACO encourages all Related Individuals who provide in-kind items or services to beneficiaries to maintain records of all free, discounted goods and in-kind services which are provided to patients to ensure the aggregate value complies with the OIG annual limit. The ACO, recommends tracking logs include the following items:
  - a. Identification of each Beneficiary including name and HICN or a Medicare beneficiary identifier.
  - b. A description and estimated value of the free, discounted or in-kind item or service provided to a Beneficiary.
  - c. Identify the exception or safe harbor the free, discounted or in-kind item or service was provided under.
  - d. The date the Related Individual provided the free, discounted or in-kind item or service to the beneficiary.
  - e. Annual total per patient, per year.
3. MaineHealth Participants and workforce must additionally comply with the MaineHealth Patient Gifts, Discounts, Waivers and Inducements and MaineHealth Free Care Programs policies.

## 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 MaineHealth ACO 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 an ACO, and that is included on the list of ACO participants.

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**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.

**In-Kind Item or Service**- consists of an item or service that is not cash or cash equivalents such as gift cards.

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

**OIG Safe Harbors**- the safe harbor regulations describe various payment and business practices that, although they potentially implicate the Federal anti-kickback statute, are not treated as offenses under the statute. The safe harbor exceptions are located at 42 CFR § 1001.952 (see references for list of potential safe harbors) or <https://www.ecfr.gov/current/title-42/chapter-V/subchapter-B/part-1001/subpart-C/section-1001.952>

**Related Individual**- means ACO officers, directors, employees, ACO Participant, ACO Provider/Supplier, or any other individual or entity providing functions or services related to ACO activities.

**Remuneration**- for purposes of the Beneficiary Inducements CMP as including transfers of items or services for free or for other than fair market value.

### References:

- 42 CFR 425.304 Beneficiary Incentives
- 42 U.S.C. § 1320a-7a(a)(5) Beneficiary Inducements Civil Monetary Penalties
- 42 CFR 1003. Civil Money Penalties
- Section 1128A(a)(5) of the Social Security Act (the Act)
- 42 CFR, §1001.952- Exceptions
  - §1001.952 (k)- Waiver of beneficiary copayment, coinsurance and deductible amounts
  - §1001.952 (bb)-Local Transportation Safe Harbor
  - §1001.952 (ee) - Care coordination arrangements to improve quality, health outcomes, and efficiency.
  - §1001.952 (hh)- Arrangements for patient engagement and support to improve quality, health outcomes, and efficiency.
- Office of Inspector General Policy Statement Regarding Gifts of Nominal Value to Medicare and Medicaid Beneficiaries December 7, 2016
- OIG Special Advisory Bulletin of August 2002 – Offering Gifts and Other Inducements to Beneficiaries
- OIG Special Fraud Alert of May 1991
- CMS FAQ on Waiving Deductibles and Co-Pays
- MaineHealth Patient Gifts, Discounts, Waivers and Inducements Policy
- MaineHealth Free Care Program Policy