

# **Fifth National Accountable Care Organization Summit**

The Leading Forum on Accountable Care Organizations (ACO) and  
Related Delivery System and Payment Reform

June 18–20, 2014

Hyatt Regency Washington on Capitol Hill, Washington, DC

[website] [www.acosummit.com](http://www.acosummit.com)

[twitter] [@ACO\\_LN](https://twitter.com/ACO_LN)  
[#acosummit](https://twitter.com/ACO_LN)

# Table of Contents

<b>Preconference: Wednesday, June 18</b> .....	<b>3</b>
FTC vs. St. Luke’s Health System: Implications for ACOs .....	4
Considerations for ACOs in Consolidating Markets .....	6
Tools for Moderating Anticompetitive Behavior .....	8
MSSP Financial Results: Who Did Well and Why .....	10
Random Variation, Data Problems, and Risk Adjustment .....	12
<b>Day 1: Thursday, June 19</b> .....	<b>14</b>
Plenary Panel: The Changing Environment of Commercial ACO Arrangements.....	15
Track One: Performance Measurement for Accountable Care: Challenges and Solutions.....	16
Track Two: Innovations in Contract and Payment Incentives .....	18
Track Three: Emerging Payer-Provider Accountable Care Models .....	20
Track Four: Unique Opportunities and Challenges for Physician-Led ACOs .....	22
Track Five: Engaging Patients in Accountable Care .....	24
Track Six: Consolidation and Competition in Health Care Markets: Implications for ACOs .....	26
<b>Day 2: Friday, June 20</b> .....	<b>28</b>
Track Seven: Coordinating Care for High-Risk & Vulnerable Populations .....	29
Track Eight: Innovations in Data Management .....	30
Track Nine: Clinical Leadership in ACOs .....	32
Track Ten: Optimizing the Value of Pharmaceuticals in New Care Models .....	34
Track Eleven: Caring for and Meeting the Needs of Frail and Elderly Patients .....	36
Track Twelve: Community-Based Accountable Care Arrangements .....	38

# **Fifth National ACO Summit: Preconference**

Legal and Operational Issues in ACO Development

Wednesday, June 18, 2014

## Fifth National ACO Summit

Wednesday, June 18, 2014

Pre-Conference

12:40–1:30

### FTC vs. St. Luke's Health System: Implications for ACOs

PM

**Robert F. Leibenluft, Esq.**, Partner, Hogan Lovells; Former Assistant Director, Health Care, Bureau of Competition, Federal Trade Commission (*Moderator*)

1. **David A. Ettinger, Esq.**, Partner and Leader, Antitrust and Trade Regulation Practice Group, Honigman Miller Schwartz & Cohn
2. **Ben Keith, Esq.**, Partner, Sidley Austin LLP.
3. **Martin Gaynor, PhD.** Director, Bureau of Economics, Federal Trade Commission; E.J. Barone Chair Professor of Economics and Health Policy, Carnegie Mellon University.

### Panel Overview

Health care reform has been accompanied by continuing integration involving hospitals, physician groups, and other health care facilities, amplifying the debate about antitrust enforcement in health care. On the one hand, greater clinical integration creates opportunities for better care coordination, greater efficiency, and other improvements in care. Nevertheless, greater consolidation of hospitals, physician groups, and other health care organizations may also lead to higher prices. Earlier this year, the federal district court of Idaho held that the acquisition of Saltzer Medical Group P.A. by St. Luke's Health system violated antitrust law and ordered St. Luke's to fully divest itself of Saltzer's physicians and assets. While the court in *St. Luke's* maintains that necessary integration can be accompanied without consolidations, this tension between integration and consolidation is likely to intensify. Better-targeted treatments and progress in information technology continue to enable more integrated care that is well-coordinated at the person level, and health care financing is moving away from fee-for-service payments towards reimbursements that place accountability and risk on providers for better outcomes and lower costs will continue to push new combinations. This panel of legal and economic experts will discuss the implications of this case for future vertical health care combinations, including accountable care organizations (ACOs).

### Core Questions

- What are key takeaways from the *St. Luke's* case for ACOs or for those considering forming ACOs?
- What does the *St. Luke's* decision say about the role of hospitals in ACO antitrust analysis?
- In light of *St. Luke's*, what market share thresholds are of serious concern for ACOs?
- What applicability does the *St. Luke's* decision have for ACOs considering exclusive relationships with providers?

- 12:40 PM**  
**Focus**
- Robert F. Leibenluft, Hogan Lovells (Moderator)**  
Bob Leibenluft will provide a brief overview of the St. Luke’s case and lay the groundwork for the rest of the panel discussion.
- 12:50 PM**  
**Focus**
- David A. Ettinger, Honigman Miller Schwartz & Cohn**  
David Ettinger will discuss what the St. Luke’s decision reveals about the definition of product and geographic markets for provider services, and the role of entry barriers in determining whether providers have market power. In addition, he will share what the decision indicates for ACOs who seek to have exclusive relationships with providers.
- 1:00 PM**  
**Focus**
- Ben Keith, Sidley Austin**  
Ben Keith will highlight how the court addressed the efficiency claims raised by the defendants, and what evidence is likely to be persuasive in demonstrating that the gains in quality and reduced costs from an ACO outweigh possible adverse effects on competition.
- 1:10 PM**  
**Focus**
- Marty Gaynor, Federal Trade Commission**  
Marty Gaynor will provide an economic perspective and discuss how antitrust enforcement supports the goals of health reform through its comparison and consideration of potential gains and harms. He also will discuss what the decision means for attempts to obtain efficiencies through mergers or acquisitions, as opposed to through contractual arrangements.
- 1:20 PM**
- Q&A**

## Fifth National ACO Summit

Wednesday, June 18, 2014

Preconference

### 1:30–2:30 PM Considerations for ACOs in Consolidating Markets

**Douglas Hastings, Esq., JD** Partner and Chair Emeritus, Epstein Becker & Green (*Moderator*)

1. **Gene Lindsey, MD**, President and CEO Emeritus, Atrius Health and Harvard Vanguard Medical Associates
2. **Robert Gerberry, Esq., JD**, Associate General Counsel, Summa Health

### Panel Overview

Rising concern exists among ACOs over the current focus on price setting as opposed to creating a truly sustainable competitive environment which emphasizes quality enhancement and cost reduction. This has led to a perception that antitrust agencies tend to look at criteria that are too narrow in addressing proposed mergers or other collaborations. It is important to consider quality measures and evolving metrics of efficiency to better understand and judge the impact of mergers or proposed collaborations from an anti-trust perspective. The panel will consider the complex nature of anti-trust law from a provider perspective, particularly with regard to how regulators are currently addressing provider consolidation related to ACO growth. The panelists will also discuss the dynamics of network arrangements to supplement mergers and analyze current market trends regarding transactions, collaboration and consolidation.

### Core Questions

- Discuss the legal considerations your organization addressed in establishing your ACO. What considerations were specific to being in a competitive market?
- What were the major challenges you faced in the establishment and implementation of your ACO?
- What are the key lessons learned thus far? What tools or guidance do you find most helpful for implementing and operating an ACO in a competitive market?
- What legal considerations do you continue to address?
- Are there any additional legal considerations that you are anticipating in the future (i.e. potentially with the NPRM)?

1:30 PM

Focus

**Doug Hastings, Epstein Becker & Green (*Moderator*)**

Doug Hastings will provide opening comments framing the discussion by giving legal and operational context as to how to build and develop an ACO as well as how to collaborate and consolidate successfully within the limits of antitrust oversight and enforcement. He will discuss constructing successful ACOs in terms of size and growth, address confusion related to antitrust agencies in the marketplace, and approaches to understanding varying perspectives on ACO collaboration.

1:40 PM

Focus

**Gene Lindsey, Atrius Health**

Gene Lindsey will discuss his experience with Atrius regarding collaboration and

consolidation of the ACO, as well as the evolving nature of the Massachusetts health care market. In addition, he will discuss current pricing and the effects of section 228 legislation limiting price increases by payers to state GDP and the subsequent potential negative implications for market competition.

**1:45 PM**  
**Focus**

**Robert Gerberry, Summa Health**

Robert Gerberry will discuss his experience with Summa Healthcare through its development from a hospital system to a clinically integrated network and current ACO operations and the evolving nature of the markets Summa has entered in terms of collaboration. He will also discuss the implications of anti-trust agency oversight in mid-size markets, particularly the forcing of organizations into mergers with physician groups or to create new networks, giving examples of situations where such mergers were helpful in addition to situations where it was unhelpful.

**1:50 PM**  
**Focus**

**Q&A**

## Fifth National ACO Summit

Wednesday, June 18, 2014

Pre-Conference

### 2:30–3:15 PM Tools for Moderating Anticompetitive Behavior

**S. Lawrence Kocot, JD, LL.M., MPA**, Visiting Fellow, Engelberg Center for Health Care Reform, The Brookings Institution (*Moderator*)

1. **Joshua H. Soven, Esq., JD** Partner, Gibson Dunn & Crutcher LLP, Washington, DC
2. **Andrea Cabellero**, Program Director, Catalyst for Payment Reform, Washington, DC
3. **Douglas C. Ross, Esq., JD** Partner, Davis Wright Tremaine LLP, Seattle, Washington

### Panel Overview

The rising movement of provider consolidation to facilitate ACO formation has for the potential to create shifts in market power. The possibility of shifts in market power has led to increased concern regarding the possibility for escalating health care costs and reduced price transparency. However, reliance on anti-trust litigation to manage provider consolidation is resource intensive and consequently other means of addressing the issue must be considered. Consumer engagement, price transparency, and network strategies provide means to address the possibility of market power functioning as a driving force to increase costs. In this context, the panel will consider value based insurance design, value pricing, consumer directed health plans, managing competition, advantages and disadvantages of network tiering, and approaches for monitoring ACO development in order to encourage procompetitive behavior.

### Core Questions

- What are the implications of increased provider consolidation to facilitate ACO formation?
- What impact does provider consolidation have on market competition and what strategies can be used to help mitigate anticompetitive effects?
- What promising strategies exist to address rising provider market power as a result of consolidation and other changes in the marketplace?
- What is the role of regulation in helping to manage or control provider consolidation?
- How can the impact of provider consolidation be monitored?

2:30 PM

Focus

**S. Lawrence Kocot, Engelberg Center for Health Care Reform, The Brookings Institution (*Moderator*)**

Larry will provide preliminary opening remarks to frame the discussion and introduce the panelists.

2:35 PM

Focus

**Joshua Soven, Gibson Dunn & Crutcher LLP, Washington, DC**

Joshua Soven will discuss how competition, efficiency, and cost control can be achieved using policy levers other than antitrust enforcement and driven from the provider side via tiered networks, narrow panel plans and proactive engagement with



regulators. He will also highlight limitations of antitrust enforcement with regard to ACO formation, particularly in cases where substantial amounts of hospital and physician consolidation in densely populated areas have occurred, and discuss the willingness of government officials to use various types of hard and soft regulation to affect prices, clinical design, and overall competition in the market.

**2:40 PM**

**Focus**

**Douglas Ross, Davis Wright Tremaine LLP, Seattle, Washington**

Douglas Ross will discuss the role of competition in successfully reducing health care costs, as well as approaches to enable and sustain competition in the market within the limits of antitrust regulation. He will address the importance of developing tools supporting the ability of consumers to make more informed choices with regard to various types of providers and health plans. He will also discuss procompetitive tools, including higher co-insurance or deductibles as incentives for consumers to have more skin in the game; tiered products allowing for steering patients to lower cost providers; narrow networks offered by health plans and redesigning payment structures; and other policy approaches that state legislatures can pursue to encourage competition..

**2:45 PM**

**Focus**

**Andrea Caballero, Catalyst for Payment Reform, Washington, DC**

Andrea Caballero will discuss the implications of provider consolidation with regard to market competition from an employer perspective and approaches to move forward, including patient engagement and network tiering as potential strategies. She will also highlight the emerging role ACOs can play in the market, and concerns about anti-tiering contract clauses limiting competition.

**Q&A**

**2:50 PM**

## Fifth National ACO Summit

Wednesday, June 18, 2014

Pre-Conference

### 3:30–4:15 PM MSSP Financial Results: Who Did Well and Why?

**S. Lawrence Kocot, JD, LL.M., MPA**, Visiting Fellow, Economic Studies; Senior Counsel, Engelberg Center for Health Care Reform, The Brookings Institution; Member of the Firm, Health Care and Life Sciences, Epstein Becker Green (*Moderator*)

1. **Kelly A. Conroy**, Chief Executive Officer, Palm Beach ACO; Co-founder and Founding Board Member, Florida Association of ACOs
2. **Daniel McCabe, MD**, Chief Executive Officer, Arizona Connected Care

### Panel Overview

CMS recently released first year results for ACOs that joined the Medicare Shared Savings Program in 2012. While a majority of these ACOs were able to successfully report quality metrics and show improvement in clinical care, only about a quarter were successful at reducing spending enough to qualify for shared savings. There are a number of factors that may have contributed to the relative successes of each ACO, including experience in risk-based contracts, the patient population attributed to them, the financial benchmarks calculated by CMS, experience with health IT, and their ability to engage physicians and patients in transforming care. This panel will include two leaders of MSSP participants who will discuss their experiences as early MSSP participants, what they think contributed to their performance, potential lessons for other ACOs already in or considering joining the MSSP program, and ways that CMS could foster the continued success of Medicare ACOs.

### Core Questions

- What were the biggest challenges faced in the early stages of MSSP participation?
- What factors contributed to each ACO's level of success on cost and quality benchmarks?
- What strategies has each ACO used to improve their financial and quality performance going forward?
- What are the key lessons learned from the first two years of ACO operation?
- What could CMS do to help ACOs succeed and what should other newer MSSPs know before entering the program?

3:30 PM

Focus

**S. Lawrence Kocot, Engelberg Center for Health Care Reform, Brookings (*Moderator*)**

Larry Kocot will provide brief framing remarks around the issues the panel will discuss and introduce the panelists in the order they will present.

3:35 PM

Focus

**Kelly Conroy, Palm Beach ACO**

Kelly Conroy will discuss the factors that contributed to Palm Beach ACO qualifying for shared savings, including the success of using a relatively low-tech approach to their ACO operation, strategies to bring all physicians together with a collective vision for improvement, and their approach to get "boots on the ground" to transform care across the organization.

**3:45 PM**

**Focus**

**Daniel McCabe, Arizona Connected Care**

Daniel McCabe will discuss the way in which Arizona Connected Care was able to improve quality through active patient engagement and satisfaction, but was unable to attain shared savings for a number of reasons, including the attribution of high-cost patients and adjustments to their financial baseline as a result of a hospital wage index change.

**3:55 PM**

**Q&A**

## Fifth National ACO Summit

Wednesday, June 18, 2014

Pre-Conference

### 4:15–5:00 PM Random Variation, Data Problems, and Risk Adjustment

**S. Lawrence Kocot, JD, LL.M, MPA**, Visiting Fellow, Economic Studies; Senior Counsel, Engelberg Center for Health Care Reform, The Brookings Institution; Member of the Firm, Health Care and Life Sciences, Epstein Becker Green (*Moderator*)

1. **Francois de Brantes, MS, MBA**, Executive Director, Health Care Incentives
2. **Derek DeLia, PhD**, Associate Research Professor, Center for State Health Policy, Rutgers University
3. **Paul Weygandt, MD, JD, MPH, MBA, CCS**, Vice President, Physician Services, JA Thomas & Associates

### Panel Overview

In order for ACOs to earn shared savings they must be able to adequately identify their patient population, understand the underlying conditions and health status of those attributed to them, and target interventions that most effectively reduce costs and improve quality. The spending and quality metrics for which ACOs will be held accountable are heavily influenced by random variation and patient acuity, both of which can significantly distort true ACO performance if not addressed properly. Random variation can be minimized and more effectively anticipated by stakeholders through careful application of statistical measurement techniques. Patient acuity can be addressed through risk adjustment, which depends fundamentally on the availability of accurate input data in addition to conceptually valid adjustment algorithms. This panel will facilitate an open discussion on the effects of random variation on ACO performance; considerations for more precise measurement of ACO cost and quality performance; strategies for using data to identify patient- and population-level risks; and how this information can improve ACO population health management.

### Core Questions

- To what extent is an ACO's measured performance distorted by random variation?
- How can ACO performance measures minimize and accurately reflect random variation?
- How can an ACO mitigate the effects of random variation and take real control over their own financial and quality performance?
- How can ACOs and payers use risk-adjustment to establish fair and reasonable performance targets and accurately measure performance?
- How can ACOs themselves successfully implement a risk adjustment strategy (CC) to analyze and manage their patient population and identify opportunities for shared savings?

4:15 PM

Focus

**S. Lawrence Kocot, Engelberg Center for Health Care Reform, Brookings (*Moderator*)**

Larry Kocot will provide brief framing remarks around the issues the panel will discuss and introduce the panelists in the order they will present.

**4:20 PM**  
**Focus**

**Francois de Brantes, Health Care Incentives Improvement Institute**

Francois de Brantes will share some lessons learned from the development of care bundles, such as the difficulty of estimating true costs given the wide distribution of costs for patients. He will discuss considerations for ACOs, including the differences in out-of-pocket costs between patients, whether to include patients at both the high and low extreme of the cost distribution, and ways to better understand expected costs for a patient population as a whole.

**4:30 PM**  
**Focus**

**Derek DeLia, Rutgers University**

Derek DeLia will discuss how random variation can place successful ACOs at risk for not receiving shared savings payments that they deserve and place payers at risk for rewarding ACOs that did not reduce spending. He will also discuss related issues and tradeoffs involved with the inclusion or exclusion of different categories of spending (e.g., trauma, end-of-life care) and levels of spending at different points on the cost distribution. Dr. DeLia will conclude with brief consideration of the role of random variation in quality metrics.

**4:40 PM**  
**Focus**

**Paul Weygandt, JA Thomas & Associates**

Paul Weygandt will focus on the challenges of risk adjustment such as the widespread inconsistency of current data collection; analysis necessary to effectively understand a patient population; the need to better educate and engage physicians; and the importance of focusing on a data and population health management infrastructure to effectively transform care. Random variation will be difficult to address until systemic bias (institutional documentation and coding) is eliminated.

**3:55 PM**

**Q&A**