

**HHC ACO INC.
MINUTES OF THE
BOARD OF DIRECTORS MEETING
February 11, 2019
125 Worth Street, 5th Floor
Board Room
New York City**

ATTENDEES

BOARD MEMBERS

Dave Chokshi, M.D.
Andrea Cohen
David Gross
Gary Kalkut, M.D.
Mitchell Katz, M.D.
Luis Marcos, M.D.
Israel Rocha, Jr. (joined via video conference)
John Ulberg

HHC STAFF

Nancy Barnicle
Irene Frohlich
Shunsuke Ito
Michael Levitin
Catherine Patsos
Stanislav Seleznyov
Lana Vardanian, M.D.
Joanna Weiner

OTHER ATTENDEES

Kenneth Feifer (representing Dr. Jasmin Moshirpur)
Faith Leonard (NYC OMB)

CALL TO ORDER

The meeting of the Board of Directors of HHC ACO Inc. (the “Board”) was called to order by Dr. Mitchell Katz, Chair of the Board at 3:47 PM.

OLD BUSINESS

On a motion duly made and seconded, the Board unanimously voted to approve the minutes of the October 11, 2018 meeting without correction or modification.

NEW BUSINESS

Dr. Dave Chokshi, the ACO's Chief Executive Officer, recognized the Medicare Beneficiary Representative Ms. Jeromane Berger-Gaskin's service to the ACO because she will be stepping down from the Board later this year. Ms. Berger-Gaskin has been a member of the Board since the inception of the ACO in 2013 and prior to that had a distinguished career as a nurse at Kings County. Ms. Berger-Gaskin had to leave early and Dr. Chokshi and Dr. Vardanian honored her service to the ACO Board prior to the meeting.

Dr. Lana Vardanian, the ACO's Chief Medical Officer, updated the Board on the 2017 Shared Savings Distribution calculated using the methodology approved at the October 11, 2018 Board meeting.

Dr. Vardanian reminded the Board of the two changes from the 2016 to the 2017 Shared Savings Distribution methodology:

- The 2016 Shared Savings Distribution was calculated using a 50/50 participation/quality performance split. For 2017 quality performance is weighted more heavily at 67%.
- The 2016 Shared Savings Distribution was calculated using an individual-level hypertension control measure. For 2017 it was calculated using a practice-level.

Dr. Vardanian explained that the range of 2017 Shared Savings Distributions is \$2,495 - \$2,899 per PCP FTE (with an average of \$2,712 per PCP FTE) and presented the Board with the 2017 Final Shared Savings Distribution and finalized operating expense.

Dr. Chokshi added that at the individual PCP FTE level, the 2017 individual PCPs received greater shared savings distributions than in 2016 (when they received an average \$750 per PCP FTE) and that the operating expenses decreased due to efficiencies achieved by the ACO staff.

The Board discussed the level of ACO administrative costs. Dr. Luis Marcos remarked that a significant part of shared savings goes to ACO administrative costs. Dr. Chokshi responded that when examining the total revenue model it was appropriate to compare the administrative overhead against a denominator of total revenue. The ACOs \$92 million revenue compared to the \$1.2 million administrative expense is a favorable ratio when benchmarked against other ACOs. Dr. Katz asked for clarification on whether the shared savings distribution to physicians was an incentive pay or included salary. Dr. Chokshi explained that the distribution is incentive pay and that the administrative expense relative to the physician incentive pay is close to ideal.

Dr. Marcos expressed concern that the shared savings distribution amount to PCPs for 2017 while greater than last year, is less than it was in 2015 (when it was \$12,000). He asked whether it was reasonable to assume that over the next 5 years, the savings and distribution would decrease. Mr. Feifer asked if it was possible to set shared savings expectations for the future. Dr. Chokshi explained that in the past, the ACO competed against historical benchmarks implemented by CMS that were adjusted based on the ACO's historical performance and that the nature of the ACO program is changing.

Dr. Gary Kalkut requested further explanation on the calculation of PCP FTEs physicians with respect to the Shared Savings Distribution. He expressed concern that H+H has a higher FTE

count than NYU. Dr. Vardanian explained that each ACO facility clinical lead provides the PCP FTE count, that this list is further scrutinized and confirmed by the clinical leads' employers to rectify any discrepancies, and that the shared savings distribution calculations are performed based on this list. Ms. Irene Frolich also explained that there is a quality adjustment factored into the FTE count which accounts for variation in the distribution.

The Board discussed the ACO's new participation agreement with CMS. Dr. Chokshi explained that based on the ACO's history of success, he recommended selecting the "Enhanced Track" that could result in increased shared savings, but also required the ACO to undertake downside risk. He explained that there are two possible tracks, "Basic" and "Enhanced," and that the term of the new agreement would be 5½ years. Dr. Chokshi added that the application for the new agreement, including signed participant agreements, must be submitted to CMS by February 19, 2019.

Ms. Andrea Cohen asked for clarification on differences between the Basic Tracks and Enhanced Tracks. Dr. Chokshi responded that the differences were minor but that the Enhanced Track would make Advanced Alternative Payment Models and additional Medicare Part B revenue available, and would involve greater potential upside and downside risk than Basic Track-E. In response to a question by Dr. Kalkut, Dr. Chokshi confirmed that the upside and downside risk in the Enhanced Track was 75% in each direction and added that the cap on the upside and downside is set as a percentage of the total benchmark as assigned by CMS.

Dr. Katz asked if the predictions for the ACO's future performance only included shared savings (and not shared losses). Dr. Chokshi confirmed this and explained that the modeling is based on the expected benchmarks and the ACO's historical performance.

In response to a question from Mr. Kenneth Feifer, Dr. Vardanian and Dr. Katz discussed how implementation of Epic Financials EMR would result in more accurate billing and coding which would lead to risk score adjustment, affect the regional benchmark, and would likely help the ACO. Dr. Katz added that H+H has a high percentage of salaried physicians, which also correlates with lower utilization and likely better performance for the ACO.

Dr. Kalkut added that there is a tension between risk, the shared savings model, and generating fee-for-service revenue, and that regional benchmarking has a profound effect on this strategy. He asked if a sensitivity analysis was factored into the models. Dr. Chokshi responded that the model was made using a conservative expected regional expenditure growth rate.

Dr. Chokshi explained that CMS requires a repayment mechanism be in place for two-sided risk arrangements to cover potential shared losses. H+H will obtain a letter of credit and bear this risk on behalf of the ACO initially. Dr. Chokshi and Mr. John Ulberg acknowledged the Finance Department's work to ensure the repayment mechanism's compliance with MSSP regulations.

Dr. Chokshi added that because H+H will initially bear the entire risk for shared losses, the Participant Agreements include a 20% withhold of any shared savings distribution that would be held by the ACO to offset this risk.

Dr. Chokshi recommended that the Board choose the Enhanced Track because:

- There is a projected range of shared savings of \$6-32 million over the term of the Agreement.
- It qualifies all participants for the Advanced Alternative Payment Model, which includes an automatic 5% bonus to Medicare Part B revenue starting in 2020.
- It provides participants relief from the burden of reporting.

Mr. David Gross asked if the Advanced Alternative Payment Model would affect CHN because it is a federally qualified health center (FQHC). Dr. Vardanian responded that she does not believe the rules mention FQHCs but agreed to look into it further.

Dr. Kalkut asked whether all of NYU's participating PCPs will qualify for the Advanced Alternative Payment Model and the 5 percent revenue bonus. Dr. Chokshi and Dr. Vardanian confirmed that they will.

Dr. Chokshi then discussed the potential exit strategies in the agreement. He asked for the Participant Agreements to be signed by Wednesday (February 13th, 2019) and explained that they could be modified until May 2, 2019. He noted that if the MSSP conditions appear unfavorable, the ACO could elect to voluntarily terminate its agreement with CMS and exit the MSSP before the 5½ year agreement ends.

Dr. Katz then put forth Resolution #201902-1. A motion to allow for discussion was duly made and seconded.

Dr. Kalkut requested language in the new participant agreement clarifying that the ACO would be responsible for all shared losses. He also requested an outline of the changes between the original participant agreement and the new proposed participant agreements. Dr. Chokshi responded that the ACO is already working on accommodating his request and that the most significant change is the 20% withhold from shared savings.

Mr. Feifer expressed concern about the language used in the Participant Agreement, referring to the maintenance of participants' records that belong to H+H. Ms. Cohen and H+H staff agreed to review the language and modify if needed for clarity.

Dr. Marcos asked:

- whether the 20% withhold would be taken out of the shared savings yearly, and
- why, in the past the H+H physician's shared savings distribution came out of the H+H institutional share, but in the proposed agreement it would be calculated along with other shared savings distributees after the H+H institutional share has been taken out.

Dr. Chokshi responded that the 20% withhold would come out of shared savings annually to protect against shared losses in subsequent years. Dr. Chokshi and Ms. Cohen explained that in order to achieve a 75% shared savings rate in the Enhanced Track, the ACO must have a 20% withhold in place to protect against downside risk.

Dr. Chokshi explained that while historically H+H physician's incentive pay was taken out of the H+H institutional share, the goal was to create parity among all participants and have all PCP distributions calculated and distributed from the same pool of funds. The H+H institutional share is now being reduced to 40% of shared savings (remaining after the 20% withhold), whereas in prior years, shared savings had been split 50%-50% between H+H and physician distributees. As a result, 60% of the remaining shared savings will go to physician distributees because there will be a net enlargement of PCPs participating in the distribution.

Dr. Katz expressed that all participants should be treated equally with respect to the withhold. Dr. Chokshi confirmed that the ACO would withhold 20% from the entire shared savings amount, before any distributions to either H+H or the Affiliates.

The Board discussed the disposition of funds from the 20% shared savings withhold in the event there were no shared losses. Dr. Katz asked if the withheld funds would be released and returned equally. Dr. Chokshi responded that there was no current plan and that it would be the Board's decision. Dr. Kalkut also expressed concern about the potential distribution of the withheld amount.

Dr. Katz asked if the resolution under discussion could state that if a participant's share of the withhold goes unused, that same amount would be distributed to the participant when the time comes to release it. Dr. Kalkut agreed that this should be included in a resolution. Dr. Katz then suggested that a new resolution defining when and how withheld amounts would be distributed to participants be brought before the Board at the next meeting due to time constraints related to the current resolution. Dr. Kalkut suggested that the board reconvene before May 2, 2019, the CMS deadline for final application revisions. Dr. Katz agreed with this recommendation.

Dr. Kalkut asked for clarification on the proposed shared savings distribution split of a 40% share to H+H and 60% share to physician distributees and why the change is being made at this time. Dr. Chokshi responded that the purpose of removing H+H physician distributions from the H+H share was to ensure parity within the shared savings distribution for all physician distributees.

Dr. Marcos asked whether a 30%-70% distribution split was considered. Dr. Chokshi responded that the planned 40% share to H+H was to recognize that the ACO depends on H+H for infrastructure and services such as IT and legal and care management interventions that benefit ACO patients. Dr. Vardanian added that part of the H+H share is distributed to H+H facilities through a team fund to reward the efforts of staff such as nurses and front desk staff who care for ACO patients, but cannot directly receive shared savings under CMS rules.

Dr. Katz explained that his goal as the CEO of H+H is to ensure that shared savings are distributed with parity in a way that is satisfactory to all participants. Dr. Katz then asked if the shared savings distribution formula had to be decided at this meeting. Dr. Chokshi clarified that the formula could be deferred but that the 20% shared savings withhold needed to be voted on at this meeting because it was part of the Participant Agreement mentioned in the resolution.

Hearing no further comments, Dr. Katz called for a vote on **Resolution #201902-1**.

Resolution 201902-1 – Authorizing the Chief Executive Officer of HHC ACO Inc. (the “ACO”) to submit to the Centers for Medicare & Medicaid Services (“CMS”) a renewal application and, if approved by CMS, execute an agreement with CMS to extend the ACO’s participation in the Medicare Shared Savings Program (“MSSP”), from July 1, 2019 through December 31, 2024, under the MSSP Enhanced Track risk arrangement; AND, Authorizing the Chief Executive Officer of the ACO to execute agreements with ACO Participants and Collaborators either to extend their participation or collaboration in the MSSP from July 1, 2019 through December 31, 2024, or to initiate their participation or collaboration in the MSSP effective as of any January 1 during such period, as applicable.

The resolution was unanimously approved by the Board as set forth in the attachment hereto.

At Dr. Katz’s request, Dr. Marcos introduced **Resolution #201902-2**. A motion for discussion was duly made and seconded. Dr. Marcos expressed that it would be a sign of goodwill if the Board would appoint an affiliate representative as an officer of the ACO and recommended Dr. Kalkut. Dr. Kalkut agreed with the idea, but recommended Dr. Marcos.

The Board discussed whether CMS or the ACO Bylaws governed officer positions. Dr. Vardanian replied that the ACO would look into this. Dr. Katz asked what powers an officer of the ACO holds as compared to a voting member. Ms. Cohen responded probably signing power.

Dr. Katz agreed that the Board should explore appointing an officer from an affiliate and asked if this needed to be voted on at this meeting. Ms. Joanna Weiner explained that the ACO bylaws require us to reappoint officers every year, therefore the resolution to reappoint the current board members must be voted on at the meeting. Additional officers can be added at this time or at a subsequent meeting. Ms. Weiner and Ms. Cohen agreed to look at the ACO Bylaws to determine whether there were any limitations on adding an additional officer position such as a Vice Chair or a Vice President, and the Board agreed to discuss this further at a subsequent meeting.

Hearing no further comments, Dr. Marcos called for a vote on **Resolution #201902-2**.

Resolution #201902-2 — Authorizing that each of the following persons be elected to serve in the offices of the Corporation set forth opposite their respective names below, subject to such person’s earlier death, resignation or removal, in accordance with the laws of the State of New York and the By-Laws of the Corporation until such person’s successor is duly elected and qualified:

The resolution was unanimously approved as set forth in the attachment hereto. Dr. Katz thanked members of the Board.

ADJOURNMENT

There being no further business, Dr. Katz adjourned the meeting at approximately 4:55 PM.