

**Final Regulation and Responses to Comments Can Be Viewed At:**

[http://www.healthwatchusa.org/publications/2012-Documents/Final-Rule-ACO-2011-27461\\_PI.pdf](http://www.healthwatchusa.org/publications/2012-Documents/Final-Rule-ACO-2011-27461_PI.pdf)

**The concern that a non-profit governance structure was not allowed by the proposed regulations was addressed in the final regulations by creating a process to obtain a waiver.**

Comments (P 68): “Some commenter’s stated that the 75 percent requirement may conflict with IRS policy that requires governing bodies of tax-exempt entities to be comprised of a broad spectrum of community members. Another commenter suggested that 501(c)(3) hospitals or health systems would find it difficult to form an ACO as a joint venture because the IRS requires those nonprofits to demonstrate that the joint venture is in the charity’s interest and that charitable assets are not used for private inurement.

Response (p69): “Notwithstanding this requirement, we also agree with commenters that we should provide ACOs with flexibility regarding the composition of the ACO’s governing body. This flexibility is discussed later in this section of this final rule and provides a means for an ACO to compose its governing body to involve ACO participants in innovative ways in ACO governance. We believe this flexibility obviates the commenters’ concerns that the 75 percent threshold would conflict with laws governing the composition of tax-exempt or State-licensed entities.”

Final rule created an exception (P 75): “In cases in which the composition of an ACO’s governing body does not meet the 75 percent ACO participant control threshold or include the required beneficiary governing body representation, the ACO must describe why it seeks to differ from the established requirements and how the ACO will involve ACO participants in innovative ways in ACO governance and/or provide for meaningful participation in ACO governance by Medicare beneficiaries. (§425.106).”