



Final ACO Rules Released

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Recently, the Centers for Medicare and Medicaid Services (CMS) and Department of Health and Human Services (HHS) announced final rules relating to Medicare payments to providers participating in Accountable Care Organizations (ACOs) under the Medicare Shared Savings Program (SSP). Participants in the SSP can continue to receive traditional Medicare fee-for-service payments under Parts A and B and be eligible for additional payments if they meet specified quality and savings requirements. The final rules provide updated guidance on the SSP and include a new Advanced Payment Model available to certain ACOs.

The final rules are scheduled for publication in the Federal Register on November 2, and will become effective 60 days following publication.

Medicare Shared Savings Program

Each participating ACO will be held accountable for at least 5,000 beneficiaries annually for three years. All Medicare providers can participate in an ACO but only certain types of providers can sponsor one. Eligible sponsoring providers include physicians in group practice arrangements, networks of individual practitioners, and hospitals that are partnering with or employ eligible physicians, nurse practitioners, physician assistants, and specialists. Unlike the proposed rules, the final rules permit Rural Health Clinics and Federally Qualified Health Centers to work together to form and participate in an ACO. In addition, certain critical access hospitals are also eligible to participate under the final rules. The final rules also make a number of changes in the requirements for how the ACO is governed and managed.

The final rules link the amount of savings an ACO may receive, and in certain instances losses it may be accountable for, to its performance on: 1) patient experience; 2) care coordination and patient safety; 3) preventive health; and 4) caring for at-risk populations. To earn shared savings during the first performance year, providers must report across these four quality domains. In the second and third performance years, providers will begin to share in savings based on how they perform on 33 quality measures.

ACOs can choose from two implementation tracks — a one-sided shared saving model in which providers only share in savings and a two-sided savings and loss model in which providers also share in losses. Those participating in the two-sided model may earn greater potential rewards in return for taking on additional risk. ACOs implementing the one-sided savings model can remain



in the model during their entire initial three-year agreement period but then must transition into the two-sided savings and loss model for subsequent agreements.

CMS plans to begin accepting applications from prospective ACOs on and after January 1, 2012. CMS will soon begin posting application information on its [website](#). Applications will be accepted for an April 1, 2012, or July 1, 2012, start date. For ACOs starting on April 1, 2012, the first performance measurement period is 21 months. For ACOs starting on July 1, 2012, the first performance measurement period is 18 months. Subsequent performance periods would be based on a calendar year. Every agreement would include three performance measurement periods and any agreements that commence in 2012 would end on December 31, 2015. ACOs must report quality measures for calendar year 2013 to qualify for shared savings during the first performance measurement period. ACOs will have the option for an interim payment if they report calendar year 2012 quality measures.

Advance Payment Model

The final rules introduce the Advance Payment Model in an effort to increase participation in the SSP by physician-owned and rural ACOs by paying a portion of anticipated savings in advance. CMS hopes to determine whether these advance payments produce faster improvements in care and resulting Medicare savings. Advance payments may take the form of: 1) upfront fixed payment; 2) upfront payment based on the number of Medicare patients served; or 3) monthly payment based on the number of Medicare patients. Advance payments will have to be re-paid if future savings are less than the advances.

This model is only available for physician-owned organizations, critical access hospitals, and rural providers participating in the SSP. Application deadlines will coincide with SSP application deadlines.

Other Guidance

In conjunction with the release of the final rules, CMS and the HHS Office of Inspector General issued an interim final rule establishing waivers on certain fraud and abuse laws, such as Stark and the Anti-Kickback statute, for participants in the SSP. In addition, the Federal Trade Commission and the Department of Justice issued a joint Statement of Enforcement Policy Regarding Accountable Care Organizations Participating in the SSP. The Internal Revenue Service (IRS) issued a Fact Sheet confirming that IRS Notice 2011-20 remains in effect and reflects IRS expectations regarding the SSP and ACOs. The IRS Notice also provides information for charitable organizations that choose to participate in the SSP.

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