

Publications

Health Care Alert: CMS Releases ACO Final Rule

Related Attorneys

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On October 20, 2011, the Centers for Medicare and Medicaid Services (“CMS”) released its final rule implementing provisions of the Medicare Shared Savings Program for Accountable Care Organizations (“Final Rule”), created in last year’s Health Reform legislation.¹ The Final Rule will be published in the Federal Register on November 2, 2011.

CMS implemented the Shared Savings program as part of its broader efforts targeted at improving coordination of care, encouraging investment in infrastructure and redesigned care processes, and incenting higher value care. Accountable Care Organizations (“ACOs”) that meet quality standards and generate savings will share in these savings with the Medicare Program. In a previous publication, we discussed the provisions of CMS’s proposed rule.² In response to more than 1300 public comments, CMS has made significant modifications aimed at reducing the burden and cost for participating ACOs. Major changes to the Medicare Shared Savings Program proposed rule include the following:

- **Simpler and More Streamlined Quality Performance Standards:** 33 measures — down from 65 — organized into four domains (patient experience, care coordination and patient safety, preventive health, and caring for at-risk populations) will be used to assess quality and effectiveness of care. Electronic Health Record (“EHR”) use is no longer required, but will be weighted higher than any other measure for quality-scoring purposes.
- **Prospective Assignment of Beneficiaries:** Eligibility for shared savings will be based on whether the requirements for receiving shared savings are met for the ACO’s assigned population. Beneficiaries will be prospectively assigned to the ACO, as opposed to retroactively, which was originally proposed.
- **Multiple Start Dates in 2012:** For applications approved to participate in 2012, the start date will be either April 1 or July 1. Generally, the term of the agreement will be 3 years, beginning on January 1. For start date April 1, 2012, however, the term of the agreement will be 3 years and 9 months; for July 1, 2012, the term of the agreement will be 3 years and 6 months.

- No Down-Side Risk and First-Dollar Sharing in Track 1: Two tracks will be offered for ACOs at different levels of readiness, with Track 2 providing higher sharing rates for ACOs willing to also share in losses. Track 1 will not be required to share in losses for its third year, as originally proposed. Regardless of the track, all ACOs will share on the first dollar once the minimum savings rate has been achieved.
- Claims Run-Out Reduced to 3 Months: The shortened 3-month claims run-out period will provide a quicker turnaround for the shared savings determination and the provision of performance feedback.
- Additional Eligible Entities: Federally Qualified Health Centers and Rural Health Clinics were added to the list of entities eligible to form and participate in an ACO.

In conjunction with CMS's Final Rule, other federal agencies issued documents addressing a number of other issues regarding ACOs. CMS and the Department of Health and Human Services ("HHS") Office of Inspector General ("OIG") jointly issued an interim final rule establishing five waivers of the Stark Physician Self-Referral Law, the Anti-Kickback Statute, and certain provisions of the Civil Monetary Penalty Law. The Federal Trade Commission and the Department of Justice jointly issued a "Statement of Antitrust Enforcement Regarding Accountable Care Organizations Participating in the Medicare Shared Savings Program." Finally, the Internal Revenue Service has created a Fact Sheet with Questions and Answers entitled "Tax-Exempt Organizations Participating in the Medicare Shared Savings Program Through Accountable Care Organizations." Further analysis of this guidance will be forthcoming.

¹ Patient Protection and Affordable Care Act ("ACA"), Pub. L. 111-148, 124 Stat. 119, as amended by Health Care and Education Reconciliation Act of 2010, Pub. L. 111-152, 124 Stat. 1029.

² Medicare Shared Savings Program: Accountable Care Organizations 76 Fed. Reg. 19528 (April 7, 2011).