



CCMS Special Alert

Clark County Medical Society

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Medicare Accountable Care Organizations: Final Rules

On October 20, 2011, the Centers for Medicare & Medicaid Services (CMS) released the final rule of the Medicare Shared Savings Program. In the final rule, CMS tried to address some of the physicians' concerns expressed during the proposed rules' comment period. In the Final Rule, CMS 1) changed the eligibility requirements; 2) established a different patient assignment methodology; 3) improved the quality reporting thresholds for payment and reduced the number of quality measures; 4) modified the downside risks requirements; 5) adjusted the shared savings calculations; and 6) eliminated the mandatory antitrust review.

This alert highlights the differences between the Final Rule and the proposed rule.

Eligibility Requirements

Under the proposed rule, CMS required the ACO to enter into a three-year agreement starting January 1, 2012. Under the final rule, the ACO must still enter into a three-year agreement, but the ACO may choose to have its initial participation agreement period begin on either April 1 or July 1 in 2012. If the ACO agreement period begins on April 1, the first performance year will be 21 months that terminates on December 31, 2013. If the ACO agreement period begins on July 1, the first performance year will be 18 months that terminates on December 31, 2013. Providers that enroll in the Medicare Shared Savings Program in 2012 will have a three-year agreement that terminates December 31, 2015.

Beneficiary Assignment

Under CMS' proposed rule, each ACO participating in the Shared Savings Program would have a minimum of 5,000 Medicare fee-for-service beneficiaries assigned to it retrospectively. These beneficiaries would be assigned to the ACO based on primary care services utilization data. Providers preferred to know which Medicare beneficiaries were participating in the program at the beginning of the year, in order to clarify their responsibilities for these patients. The final rule seeks to strike a balance between retrospective and prospective assignment of beneficiaries by identifying the patients that *may be* participating in the ACO prospectively and then assigning the beneficiaries retrospectively at the end of the year in order to evaluate the organization's performance. In addition, CMS will provide the ACO a list of the beneficiaries they are *likely* held accountable for every quarter.

Quality Measures Reporting Requirements

ACOs participating in the Shared Savings Program must meet the quality measurement standards before shared savings are gained. The proposed rule defined 65 quality measures used to calculate the ACO's quality performance standard across 5 domains: 1) Patient/caregiver experience; 2) Care coordination; 3) Patient safety; 4) Preventive health; and 5) Population health. In addition, the proposed rule stated the ACO must successfully report all of the required measures in year 1, and in years 2-3, the ACO would be evaluated on its performance of these measures. Further, the proposed rules stated the ACO would not be eligible for the maximum shared savings allotment if it did not meet the quality

performance threshold for all proposed measures. CMS reduced the quality measures to 33 in the final rule. In addition, the final rule relaxes the reporting requirements; an ACO may qualify for the shared savings bonus if it meets the minimum performance targets for 70% of the quality measures in each of the domains. CMS no longer requires at least 50% of the ACO's primary care physicians be meaningful EHR users by the beginning of year 2.

Agreement Options

The proposed rules establish mechanisms for an ACO to receive a portion of the shared savings as well as to repay a portion of the shared losses. An ACO could choose to enter into a three-year agreement with one of two options.

- Option 1: "One-sided" model: The ACO would only be eligible to receive shared savings during years 1-2; the ACO would not be at risk for the shared losses. During year 3, however, the ACO would be eligible to receive shared savings and would be at risk for the losses.
- Option 2: "Two-sided" model: The ACO would be eligible to receive shared savings and would be at risk for the losses during all three years.

CMS states in the final rule that ACOs may still enter into one of two options; however, the one-sided model (option 1) would have zero downside risk during the initial agreement period. ACOs participating in the two-sided model (option 2) would remain responsible for any shared losses in exchange for greater potential shared savings. After 3 year, both ACO models would be at risk for the losses.

Shared Savings Calculations

The proposed rule required each option to reach a minimum shared savings rate prior to CMS releasing any shared savings generated by the ACO. In option 1, the ACO would have been entitled to share in the savings that exceeded the minimum shared savings rate. In option 2, the ACO would have shared in the "first dollar savings" once the minimum share savings rate was achieved. The final rule states, however, that ACOs participating under either option will be allowed to share in the first dollar savings once the savings exceed the minimum savings rate. CMS also increased the cap on the total savings an ACO can earn, to 10% or 15% of their overall spending target, but slightly lowered the share of savings the ACO can retain.

Antitrust Enforcement Policy

The FTC and DOJ issued a proposed policy statement on antitrust enforcement, which required these agencies to review ACOs that make up more than 50% of the market. The Medicare Shared Savings final rule no longer requires a mandatory antitrust review for affiliations meeting certain market share thresholds.

The Clark County Medical Society encourages physicians to seek further business or legal advice prior to joining an ACO. To read the Medicare Shared Savings Final Rules, visit www.gpo.gov/fdsys/pkg/FR-2011-11-02/pdf/2011-27461.pdf

The "Medicare Accountable Care Organizations: Final Rules" publication should be used for informational purposes only.

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