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CMS Finalizes ACO Rules: Good News for Providers

The Centers for Medicare & Medicaid Services ("CMS") released a final rule ("Final Rule") on the Medicare Shared Savings Program ("MSSP") (Fed. Reg. Vol. 80, No. 110, 32692-32845), which contained good news for accountable care organizations ("ACOs"). Not only did the Final Rule incorporate informal guidance that CMS had previously issued, it also responded to many of the comments provided during the comment period, most notably the ability for ACOs to continue for one more contract cycle in a shared savings agreement (called Track 1 by CMS). Previously, ACOs would have had to accept downside financial risk if they were continuing in the MSSP and entered into a Track 2 agreement. In the press release and fact sheet accompanying the Final Rule, CMS highlighted its "support for the care provider community in creating a delivery system with better care, smarter spending, and healthier people."

The Final Rule continues the existing MSSP model in which providers and suppliers participating in ACOs receive traditional Medicare Parts A and B fee-for-service payments and are eligible to receive shared savings if certain quality and savings targets are met. The Final Rule added the following changes to improve the program:

- Allowing ACOs in Track 1 (shared savings but no risk for financial losses) to continue in Track 1 for an additional three-year renewal period rather than being forced to transition to Track 2 and accept risk for financial losses or drop out of the MSSP. Continued participation in Track 1 is conditioned on the ACO's meeting its quality performance standard in at least one of the first two years of the initial three-year agreement and otherwise being in good standing in the MSSP.
- Increasing the emphasis on primary care services in the beneficiary assignment methodology by including services provided by certain specialist physicians, physician assistants, nurse practitioners and clinical nurse specialists to identify eligible beneficiaries.
- Streamlining the data sharing from CMS to ACOs, while maintaining beneficiary protections, to allow better access to additional beneficiary data such as information on care coordination and quality data.
- Adding a new performance-based risk option called "Track 3," which includes prospective beneficiary assignment (rather than retrospective assignment in Tracks 1 and 2) and allows ACOs to accept more shared savings (up to 75 percent) in exchange for accepting up to 75 percent of their shared losses. Another enhancement for Track 3 is the waiver of a payment rule in order for beneficiaries to receive coverage for services in skilled nursing facilities without requiring a prior three-day hospitalization.
- Providing ACOs with a choice of symmetrical thresholds for savings and losses under Tracks 2 and 3, the performance-based tracks.
- Addressing the concern that successful performance would create future challenges to meeting benchmarks by refining the methodology for resetting benchmarks.

The Final Rule also clarified and formalized prior guidance in a number of areas, including requirements related to:

- The application process
- Governance and management structure
- ACO provider and supplier eligibility
- Data sharing

Overall, the Final Rule provides clearer guidance to MSSP ACOs, and adds new models and financial incentives to help focus on quality and innovation while allowing providers and suppliers additional time and experience in a shared savings model to be better prepared to transition to a downside financial risk model.