

PUBLICATION

CMS Proposes Changes to the Medicare Shared Savings Program MSSP [Ober|Kaler]

January 08, 2015

On December 8, 2014, CMS published its proposed changes and updates to the Medicare Shared Savings Program (MSSP) for Accountable Care Organizations (ACOs). Comments are due by February 6, 2015. Below is a summary of the proposed rule.

Participation Agreement Renewal and Continued Participation in Track 1

- *Background:* CMS's current regulations require that ACOs participating in Track 1 may continue in this program after their initial three-year agreement period if they enter a performance risk-based track.
- *Proposal:* CMS proposes rules to review and approve participation agreement renewal requests. CMS will consider the ACO's compliance history with the MSSP's requirements as well as the ACO's history of meeting the quality performance standard during its first two years of program participation.
- *Proposal:* CMS also proposes to permit ACOs to participate in one additional agreement period under Track 1, but this additional agreement would be at a lower sharing rate.

Beneficiary Assignment

- *Background:* After the ACO identifies beneficiaries who have received primary care services from a physician participating in the ACO, CMS's existing methodology assigns beneficiaries to ACOs in a two step process based on the number of primary care services furnished by 1) primary care physicians (Step 1), and 2) specialist physicians, nurse practitioners, physician assistants, and clinical nurse specialists (Step 2).
- *Proposal:* CMS proposes that Step 1 will also include nurse practitioners, physician assistants, and clinical nurse specialist primary care services.
- *Proposal:* CMS proposes revising Step 2 to remove certain specialty physicians who are not likely indicators of primary care services.

Data Sharing

- *Background:* CMS currently shares claims data with ACOs when it is necessary for health care operations. Before CMS will share this data, an ACO must notify beneficiaries and provide them with an opportunity to decline to have their data shared with the ACO.
- *Proposal:* CMS proposes to streamline the process for an ACO to access beneficiary claims data by allowing the ACO's participants to provide written notification at the point of care through posted signs in the participants' facilities. The signs would have template language describing data sharing and informing the beneficiaries how to decline data sharing by directly contacting CMS. ACOs would no longer have to send letters to the beneficiaries. Instead, the beneficiaries would express their data sharing preferences by calling 1-800-Medicare.

Establishing, Updating, and Resetting ACO Financial Benchmarks

- *Background:* CMS previously adopted a methodology for establishing ACO financial benchmarks used to determine shared savings and losses. CMS has the authority to implement alternative benchmarking approaches as long as the approaches do not result in additional program expenditures.
- *Proposal:* CMS seeks comment on alternative methodologies for establishing, updating, and resetting ACO financial benchmarks. These alternative methodologies are described in the proposed rule at 79 Fed. Reg. 72842-72843.

Encouraging ACOs to Take on Greater Performance Based Risk

- CMS proposes to implement an additional performance risk-based model (Track 3) for ACOs to participate in the MSSP. Track 3 would have a higher sharing rate than the other tracks and would assign beneficiaries to the ACO.
- CMS also proposes to modify Track 2 by making the minimum savings and loss rates variable, compared to the current flat 2% rate.
- CMS seeks comment on what other design elements would be necessary for organizations to consider taking on greater financial risk. Potential elements to incentivize organizations include: (1) modifying the current assignment methodology to include beneficiaries on the assignment list when the beneficiary attests that a practitioner participating in the ACO is responsible for the beneficiary's care coordination and (2) waiving certain fee-for-services (FFS) payment and regulations related to qualifying hospital stays for skilled nursing facility admission, telehealth, qualifications for home health services, and qualifications for post-acute referrals.

Eligibility Requirements

- CMS proposes to modify the requirements related to the agreements ACOs have with Medicare enrolled entities.
- CMS also proposes to modify the requirements related to the governing body and leadership, such as removing the requirement that the ACO's medical director is required to be an ACO provider/supplier.
- CMS proposes to revise the requirements related to the ACO's plan for coordinating care, such as requiring ACOs to articulate how they will encourage and promote the use of enabling technologies for improving care coordination.
- CMS proposes to simplify the process that allows prior Pioneer ACOs to apply for program participation.

Ober|Kaler's Comments

Through this proposed rule, CMS seeks to improve the MSSP by focusing more on primary care services and promoting transitions to performance-based risk arrangements. CMS is seeking public input to ensure the success of the MSSP. Those interested in commenting should submit their comments by **February 6, 2015**.