

Final Rule on Medicare Shared Savings Program

OVERVIEW

On June 6th, the Centers for Medicare and Medicaid Services (CMS) issued a final rule on the Medicare Shared Savings Program (MSSP). The final rule refines the methodologies used for resetting benchmarks for accountable care organizations (ACO) that continue to participate in the MSSP after their initial agreement period. The final rule also aims to encourage ACOs to transition to performance-based risk arrangements.

This document summarizes several major provisions of the final rule. The final rule is available [here](#).

KEY PROVISIONS

Benchmark Rebasing Methodology

Currently, MSSP ACO performance is evaluated by comparing each ACO's expenditures for its assigned participants to the ACO's average per capita historical benchmark. The historical benchmark is based on the Medicare Part A and B fee-for-service (FFS) expenditures of the ACO's assigned beneficiaries and is annually risk adjusted and trended forward according to national growth rates of Part A and B expenditures.

The current methodology makes it difficult for long-term participants in MSSP to continue to achieve savings since their initial successes in lowering costs become the benchmark against which they are measured in subsequent years. It also fails to recognize that health cost trends vary in communities across the country. To address this, CMS finalized its phased-in proposal for ACOs that continue to participate in MSSP after their initial three-year agreement period. The methodology for determining the ACO's rebased historical benchmark will reflect an ACO's performance in relation to other providers in the same regional market, rather than just evaluating the ACO against its own past performance. CMS also finalized its proposal to remove the adjustment for savings generated under the ACO's prior agreement period. This methodology will favor ACOs that become more efficient than their regional peers.

The ACO's regional service area will include any county where at least one assigned beneficiary resides and FFS costs will be weighted according to the proportion of assigned beneficiaries that reside in that county. This revised methodology will apply to all ACOs with agreement periods beginning in 2017 and subsequent years.

Transition to Performance-Based Risk

MSSP ACOs currently enter three-year agreements to participate in one of three tracks. Track 1 is a one-sided shared savings model under which the ACO may share savings, but not losses. Tracks 2 and 3 are two-sided performance-based risk models under which the ACO must share both savings and losses. At the end of their first agreement period, Track 1 ACOs may apply for one additional three-year contract to continue in their current track or apply to Track 2 or 3.

To encourage more MSSP ACOs to take on performance-based risk, CMS is finalizing an additional option to allow ACOs participating in Track 1 to apply to have their shared savings-only agreement extended for a fourth performance year rather than a second three-year agreement in Track 1. At the end of the fourth year, the ACO will be required to transition into Track 2 or 3.

Reconsideration of ACO Payments

The final rule establishes specific criteria under which CMS may reopen an ACO's payment determination of savings or losses. The re-opening of a payment determination due to an error identified during an inspection, evaluation, or audit must occur within four years of the initial determination. There will be no time restriction for CMS to reopen a payment determination in the case of fraud.