ACO Regulatory Update Proposed by CMS

On December 1, 2014, the Centers for Medicare & Medicaid Services (CMS) released a proposed rule that recommends various changes to the Medicare Shared Savings Program (MSSP) for federal Accountable Care Organizations (ACOs). According to the rule text, “[t]his proposed rule would make changes to the regulations that were promulgated in November 2011 to implement the Shared Savings Program in order to make refinements based on our experience with the program and to respond to concerns raised by stakeholders.”

The proposed rule seeks to “codify existing guidance, reduce administrative burden and improve program function and transparency” in ten areas:

1. “data-sharing requirements;
2. requirements for ACO participant agreements, the ACO application process, and our review of applications;
3. identification and reporting of ACO participants and ACO providers/suppliers, including managing changes to the list of ACO participants and ACO providers/suppliers;
4. eligibility requirements related to the ACO’s number of beneficiaries, required processes, the ACO’s legal structure and governing body, and its leadership and management structure;
5. modification to assignment methodology;
6. repayment mechanisms for ACOs in two-sided performance-based risk tracks;
7. alternatives to encourage participation in risk-based models;
8. ACO public reporting and transparency;
9. the ACO termination process; and,
10. the reconsideration review process.”

CMS seeks to modify the following current rules established in the November 2011 ACO Final Rule, to wit:

1. “Clarify existing and establish new definitions of terms including an ACO participant, ACO provider/supplier, and ACO participation agreement”;
2. “Add a process for ACOs to renew the participation agreement for an additional agreement period”;
3. “Add, clarify, and revise the beneficiary assignment algorithm, including the following-
   (a) Update the CPT codes that would be considered to be primary care services as well as changing the treatment of certain physician specialties in the assignment process;
   (b) Include the claims for primary care services furnished by NP, PAs, and CNSs in Step 1 of the assignment algorithm; and
   (c) Clarify how primary care services furnished in federally qualified health centers (FQHCs), rural health clinics (RHCs), and electing teaching amendment (ETA) hospitals will be considered in the assignment process”;
4. “Expand the kinds of beneficiary-identifiable data that would be provided to ACOs in various reports under the Shared Savings Program as well as simplify the claims data sharing opt-out process to improve the timeliness of access to claims data’’;
5. “Add or change policies to encourage greater ACO participation in risk-based models by-
   (a) Offering the opportunity for ACOs to continue participating under a one-sided participation agreement after their first 3-year agreement;
   (b) Reducing risk under Track 2; and
   (c) Adopting an alternative risk-based model referred to as Track 3 which includes proposals for a higher sharing rate and prospective assignment of beneficiaries.’’

CMS estimates that these proposed changes will result in “median estimated federal savings of $280 million greater than the $730 million median net savings estimated at baseline for calendar years (CYs) 2016 through 2018,” and, “a reduction in the median shared loss dollars by $140 million and an increase in the median shared savings payments by $220 million dollars relative to the baseline for CYs 2016 through 2018.”

As discussed in an October 2014 Health Capital Topics article, the MSSP was established by Section 1899 of the Social Security Act, and provides various levels of shared savings for ACOs that commit to providing quality care. MSSP ACOs still receive payments under
a **Fee-For-Service** (FFS) reimbursement model, but when ACOs enter the program, they can choose one of two tracks, which will afford ACOs shared savings if those ACOs actually save money and meet quality performance standards.\(^9\) To determine any shared savings and losses, CMS establishes an annual benchmark based on the previous three years of data on per-beneficiary expenditures, and adjusts for absolute growth in national per capita expenditures.\(^{10}\)

CMS is soliciting comments to this proposed rule, specifically related to the options CMS has been considering regarding the MSSP two-sided risk model.\(^{11}\) The due date for these comments is 60 days from the publication of the proposed rule.\(^{12}\)

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3. Ibid, p. 11.
4. Ibid.
5. Ibid, p. 11-12.
10. Ibid.
11. CMS, 12/1/14, p. 12.
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