

HEALTH CAPITAL

News Alert

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Topics

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ACO Final Rule: CMS Responds Favorably to Provider Concerns

On Thursday, October 20, 2011, the Centers for Medicare and Medicaid Services (CMS) released the highly anticipated final rule for Federal Accountable Care Organizations (ACOs).¹ This rule will set the standard for participation in the Medicare Shared Savings Program (MSSP) authorized under the Patient Protection and Affordable Care Act (ACA) in March of 2010.² The most prominent feature of the final rule is that CMS responded to more than 1,200 comments regarding the poorly received proposed rule, released March 31, 2011, by changing several of the controversial requirements, including those related to beneficiary assignment, quality metric requirements and risk sharing.³

The final rule aims to increase provider interest in Federal ACOs and the MSSP by lessening the strain of developing and maintaining profitability as an ACO. CMS decreased the number of quality indicators ACOs are required to collect and submit data on from 65 to 33. ACOs will only have to achieve benchmarked goals in these 33 measures to be eligible for shared savings payments. Benchmarking will occur during an 18-21 month initial performance period after the start of an ACO agreement.⁴ To minimize risks CMS eliminated several controversial provisions presented in the proposed rule.

The proposed rule presented two options for ACOs to accept risk over a three year period; a one-sided and two sided risk model. While the two-sided risk option remains the same (ACOs share in losses and savings every year), CMS eliminated potential penalties for the final year of implementation under the first model (i.e., ACOs will only share in savings).⁵ In addition, CMS eliminated the two percent threshold, allowing ACOs to receive all shared savings payments after achieving a minimum savings rate.⁶ Testing for Advanced Payment Models for certain ACOs is also set to begin in 2012, likely as an attempt to increase provider interest by speeding up access to approximately \$3.5 million of capital.⁷ Quicker access to savings also allowed CMS to include federally qualified health centers and rural health clinics in the list of entities eligible for MSSP participation.

The last major difference between the two rules involves Medicare beneficiary assignment. Many providers expressed concern that the retrospective beneficiary assignment presented under the proposed rule would

leave them vulnerable and unable to accurately account for patient care measures.⁸ Under the final rule, CMS completely reversed this provision, regulating that patients will be assigned to an ACO prospectively with quarterly updates.⁹ A reconciliation process will ensue at the end of the year based on the patients actually served by the ACO.¹⁰ CMS also established a rolling admission deadline under the final rule, eliminating the three-year agreement requirement and giving providers more flexibility.

The final rule is set to be published in the November 2, 2011 Federal Register.¹¹ Interim final rules for both Stark Law and anti-kickback waivers, as well as antitrust policy, were also recently released by CMS, the Department of Justice (DOJ) and the Federal Trade Commission (FTC) respectively.¹² The MSSP is set to meet its implementation deadline of January 1, 2012. CMS announced the first ACO agreements will begin April and July 1, 2012.¹³ It remains to be seen whether these rules will revive provider interest in Federal ACO adoption, although CMS officials estimate between 50 and 270 organizations will ultimately participate in the MSSP.¹⁴

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2 "Patient Protection and Affordable Care Act" Public Law 111-148, Section 3022, 124 STAT 395-399 (March 23, 2010).

3 "Final ACO Rules Released; Significant Changes Seen" By Melanie Evans, Modern Healthcare, October 20, 2011, <http://www.modernhealthcare.com/article/20111020/NEWS/310209960/modern-healthcare-alert-cms-delivers-aco-regulations#> (Accessed 10/20/2011).

4 "New Affordable Care Act Tools Offer Incentives for Providers to Work Together When Caring for People with Medicare" The Centers for Medicare and Medicaid Services, October 20, 2011, <http://www.healthcare.gov/news/factsheets/2011/10/accountable-care10202011a.html> (Accessed 10/20/2011).

5 "Agencies Release Rules, Policies for Shared Savings Program" By Nataniel Weixel, Bureau of National Affairs, Health Law Resource Center, October 20, 2011, http://healthlawrc.bna.com/hlrc/lpages/lpages.adp?pg=breaking_news&bn_product=hlln#urn:bna:a0c9k7c5p3 (Accessed 10/20/2011).

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- 7 “Medicare Program; Advanced Payment Model: Notice” CMS-5505-N (October 20, 2011), [http://op.bna.com/hl.nsf/id/bbrk-8mtl42/\\$File/ACOADvancepaymodelOct2011.pdf](http://op.bna.com/hl.nsf/id/bbrk-8mtl42/$File/ACOADvancepaymodelOct2011.pdf) (Accessed 10/20/2011); “CMS Makes Major Changes to ACO Rule in Bid to Increase Provider Participation” By Rachana Dixit, InsideHealthPolicy.com, October 20, 2011, <http://insidehealthpolicy.com/201110202379681/Health-Daily-News/Daily-News/cms-makes-major-changes-to-aco-rule-in-bid-to-increase-provider-participation/menu-id-212.html> (Accessed 10/20/2011).
- 8 “Industry Comments Show Some Consensus in Provider Opposition to Key Components of CMS’s Proposal for the Medicare Shared Savings Program” By R. Brent Rawlings and Scott P. Downing, American Bar Association, August 2011, http://www.americanbar.org/newsletter/publications/aba_health_esource_home/aba_health_law_esource_1108_aco_rawlings.htm 1 (Accessed 10/20/2011).
- 9 “New Affordable Care Act Tools Offer Incentives for Providers to Work Together When Caring for People with Medicare” The Centers for Medicare and Medicaid Services, October 20, 2011, <http://www.healthcare.gov/news/factsheets/2011/10/accountable-care10202011a.html> (Accessed 10/20/2011).
- 10 “CMS Makes Major Changes to ACO Rule in Bid to Increase Provider Participation” By Rachana Dixit, InsideHealthPolicy.com, October 20, 2011, <http://insidehealthpolicy.com/201110202379681/Health-Daily-News/Daily-News/cms-makes-major-changes-to-aco-rule-in-bid-to-increase-provider-participation/menu-id-212.html> (Accessed 10/20/2011).
- 11 “Medicare Program; Advanced Payment Model: Notice” CMS-5505-N (October 20, 2011), [http://op.bna.com/hl.nsf/id/bbrk-8mtl42/\\$File/ACOADvancepaymodelOct2011.pdf](http://op.bna.com/hl.nsf/id/bbrk-8mtl42/$File/ACOADvancepaymodelOct2011.pdf) (Accessed 10/20/2011).
- 12 “Medicare Program; Final Waivers in Connection With the Shared Savings Program: Interim Final Rule with Comment Period” CMS-1439-IFC (October 20, 2011), http://insidehealthpolicy.com/index.php?option=com_iwpfile&file=oct2011/he10202011_waivers.pdf (Accessed 10/20/2011); “Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations Participating in the Medicare Shared Savings Program: Final Policy Statement” Federal Trade Commission and Department of Justice (October 20, 2011), http://insidehealthpolicy.com/index.php?option=com_iwpfile&file=oct2011/he10202011_statement.pdf (Accessed 10/20/2011).
- 13 “Final ACO Rules Released; Significant Changes Seen” By Melanie Evans, Modern Healthcare, October 20, 2011, <http://www.modernhealthcare.com/article/20111020/NEWS/310209960/modern-healthcare-alert-cms-delivers-aco-regulations#> (Accessed 10/20/2011).
- 14 “CMS Makes Major Changes to ACO Rule in Bid to Increase Provider Participation” By Rachana Dixit, InsideHealthPolicy.com, October 20, 2011, <http://insidehealthpolicy.com/201110202379681/Health-Daily-News/Daily-News/cms-makes-major-changes-to-aco-rule-in-bid-to-increase-provider-participation/menu-id-212.html> (Accessed 10/20/2011).



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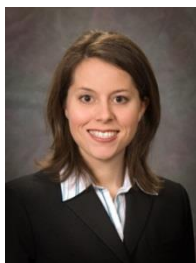
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