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CMS Issues Proposed Rule on Accountable Care Organizations

The Centers for Medicare and Medicaid Services (CMS) issued its proposed rules for Accountable Care Organizations (ACOs) on March 31, 2011, answering several questions regarding these new models of care as well as raising some new concerns (*see Health Capital Topics News Alert April 1, 2011*).[1] In its 429-page document, CMS addressed all aspects of the original Medicare Shared Savings section of the Patient Protection and Affordable Care Act (ACA), from the legal structure of each ACO to the shared savings risk models available.

Structure and Governance

The proposed rule defines an ACO as *"a team of doctors, hospitals and other providers that work together to manage and coordinate care for people in the traditional fee-for-service Medicare program."*[2] ACOs have been touted as the model of the future for integrated and coordinated care where patients are directly involved with their own treatment. Accordingly, the new rule require that each ACO include healthcare providers, suppliers and Medicare beneficiaries on its governing board. At least 75 percent of the governing board must consist of providers participating in the ACO in order to keep primary care physicians central to decision-making operations. In addition to the groups of providers outlined in the ACA as eligible to participate in the ACO program (i.e., group practices, networks of individual practices, partnerships/joint ventures, and hospital employment models), the proposed rule also includes certain critical access hospitals as eligible legal structures to form an ACO. [3]

The proposed rule also addresses another major concern, namely how and when Medicare beneficiaries will be assigned to a particular ACO. The proposed rule lays out the process by which Medicare patients are assigned to an ACO. First providers who chose to become an ACO are responsible for informing all Medicare patients of their intention, as well as all financial incentives available and information about the ACO. From there Medicare patients can chose to remain with their current provider, chose another provider, or opt out of participation in the ACO altogether. Any Medicare beneficiary participating in an ACO must consent to the disclosure of their health information.[4] At the end of each performance year, CMS will analyze the amount of primary care services utilize by those Medicare patients who opted to participate in an ACO, and use that information to retroactively assign those patients to a particular ACO for quality measurements. The proposed rule emphasized Medicare patient's free choice when choosing a healthcare provider. [5]

Shared Savings

Flexibility in shared savings represents a key characteristic of the proposed rule. As such, though ACOs will be reimbursed under fee-for-service, CMS will also develop benchmarks tailored toward each individual ACO. If the ACO exceeds its benchmark in Medicare cost savings, it will qualify for shared savings, but it will also be held accountable for any losses incurred for failure to meet set benchmarks. CMS has also proposed establishing a minimum sharing rate to account for normal variations in spending that could affect whether the ACO reaches or exceeds its benchmark. [6]

Under the ACA regulations, ACOs are required to serve at least 5,000 Medicare beneficiaries for at least three years. The new rule gives ACOs the choice to follow a one-sided risk model (which will require only shared savings for the first two years and loss sharing in the third) or a two-sided risk model (which requires shared savings and losses for all three years).[7] CMS anticipates that the one-sided risk model will provide organizations with less experience in risk management and smaller ACOs time to gain familiarity with patient management prior to transitioning to a model with the potential for loss. In order to incentivize the two-sided risk model to larger organizations, CMS will give ACOs participating in the two-sided model a maximum sharing rate of 60 percent as opposed to the 50 percent offered by the one-sided model.[8] Both of these shared savings rates also depend on the ACO meeting its quality measurements and reporting requirements.

Quality Measurements and Reporting Requirements

Under the proposed law, CMS lists 65 different quality metrics ACOs must comply with for the first year of the program, i.e., from January 1 to December 31, 2011 or 2012. These quality measures focus on five key areas affecting patient care, including: (1) patient/caregiver experience of care; (2) care coordination; (3) patient safety; (4) preventive health; and, (5) at-risk

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populations.[9] ACOs that do not meet all of the quality metrics will be ineligible for shared savings, regardless of reductions to Medicare costs.[10] According to the rule, ACOs could save Medicare up to $960 million over the next three years if these quality metrics are met.[11]

To be eligible for shared savings, ACOs must meet certain organizational standards, including the meaningful use of electronic health records (EHR) promoted through an incentive program started by CMS this year. According to the proposed rule, at least 50 percent of the primary care physicians in the ACO must be "*meaningfully using*" an EHR system by the beginning of the second year of the ACO program, in January 2013.[12]

CONCLUSION

While the proposed rule provides much needed answers for how to organize an accountable care organization, there is still much confusion, especially regarding capital startup costs and possible legal hurdles.[13] Healthcare providers and entities can submit comments on the proposed rules to CMS until June 6, 2011.[14]

1 "Medicare Shared Savings Program: Accountable Care Organizations (Proposed Rule)" 42 CFR Part 425 (March 31, 2011), Accessed at http://op.bna.com/hl.nsf/id/bbrk-8fgkxb/$File/ACOproposedruleMarch2011.pdf (Accessed 4/1/11).

2 "Standards Set for Joint Ventures to Improve Health Care" By Robert Pear, The New York Times, March 31, 2011, Accessed at www.nytimes.com/2011/04/01/health/policy/01health.html (Accessed 4/1/2011).

3 "Medicare Shared Savings Program: Accountable Care Organizations (Proposed Rule)" 42 CFR Part 425 (March 31, 2011), Accessed at http://op.bna.com/hl.nsf/id/bbrk-8fgkxb/$File/ACOproposedruleMarch2011.pdf (Accessed 4/1/11).

4 "HHS Issues Proposed ACO Regulations" Drinker Binddle & Reath LLP: Health Government Relations Group: Client Alert, April 1, 2011, Accessed at http://www.rehabnurse.org/uploads/files/pdf/hp11dbroverview.pdf (Accessed 4/15/11).

5 "Medicare Shared Savings Program: Accountable Care Organizations (Proposed Rule)" 42 CFR Part 425 (March 31, 2011), Accessed at http://op.bna.com/hl.nsf/id/bbrk-8fgkxb/$File/ACOproposedruleMarch2011.pdf (Accessed 4/1/11).

6 "Accountable Care Organizations: Improving Care Coordination for People with Medicare" HealthCare.gov, March 31, 2011, www.healthcare.gov/news/factsheets/accountablecare03312011a.html (Accessed 3/31/11).

7 "Accountable Care Organizations: Improving Care Coordination for People with Medicare" HealthCare.gov, March 31, 2011, www.healthcare.gov/news/factsheets/accountablecare03312011a.html (Accessed 3/31/11).

8 "CMS Proposed Rule on Medicare Shared Savings Program: Accountable Care Organizations" Healthcare Financial Management Association, March 31, 2011, p. 3.

9 "Accountable Care Organizations: Improving Care Coordination for People with Medicare" HealthCare.gov, March 31, 2011, www.healthcare.gov/news/factsheets/accountablecare03312011a.html (Accessed 3/31/11).

10 "CMS Issues Proposed Rule on Accountable Care Organizations" American Health Lawyers Association, Vol. IX, Issue 13, April 1, 2011.

11 "Accountable Care Organizations: Improving Care Coordination for People with Medicare" HealthCare.gov, March 31, 2011, www.healthcare.gov/news/factsheets/accountablecare03312011a.html (Accessed 3/31/11).

12 "Proposed Rules for ACOs Push for EHR Adoption" By Robert Lowes, Medscape Medical News, March 31, 2011, www.medscape.com/viewarticle/740055 (Accessed 4/1/11).

13 "Miles to Go: Proposed ACO Regs Are Lacking On Clinical Integration, Increase Risks and Costs" By Richard Umbdenstock, Modern Healthcare, April 11, 2011, p.26.

14 "ACOs: CMS, IRS, Antitrust Agencies Issues Proposals for ACOs Under ACA Shared Savings Program" By Nathaniel Weixel, et al., Bureau of National Affairs health Law Reporter, Special Report, Aril 7, 2011.

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