

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).¹ 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.”²

The proposed rule seeks to “codify existing guidance, reduce administrative burden and improve program function and transparency”³ 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.”⁴

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.”⁵

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 \$320 million dollars relative to the baseline for CYs 2016 through 2018.”⁶

As discussed in an October 2014 Health Capital Topics article,⁷ the MSSP was established by Section 1899 of the Social Security Act,⁸ 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

1 “Medicare Program; Medicare Shared Savings Program: Accountable Care Organizations,” Department of Health and Human Services Centers for Medicare & Medicaid Services, 42 CFR Part 425, available at http://www.ofr.gov/OFRUpload/OFRData/2014-28388_PL.pdf (Accessed 12/1/14).

2 *Ibid*, p. 10-11.
3 *Ibid*, p. 11.
4 *Ibid*.
5 *Ibid*, p. 11-12.
6 *Ibid*, p. 13.
7 “ACOs Achieving Quality with Shared Savings,” Health Capital Topics, Vol. 7, Issue 10 (October 2014).
8 “Shared Savings Program,” Social Security Act Section 1899.
9 “Methodology for Determining Shared Savings and Losses under the Medicare Shared Savings Program” Department of Health and Humans Services: Centers for Medicare & Medicaid Services, April 2014, http://www.cms.gov/Medicare/MedicareFee-for-ServicePayment/sharedsavingsprogram/Downloads/ACO_Methodology_Factsheet_ICN907405.pdf (Accessed 10/3/14).
10 *Ibid*.
11 CMS, 12/1/14, p. 12.
12 *Ibid*, p. 1.



(800) FYI - VALU

*Providing Solutions
in the Era of
Healthcare Reform*

Founded in 1993, HCC is a
nationally recognized healthcare
economic financial consulting firm

- [HCC Home](#)
- [Firm Profile](#)
- [HCC Services](#)
- [HCC Experts](#)
- [Clients & Projects](#)
- [HCC News](#)
- [Upcoming Events](#)
- [Contact Us](#)
- [Email Us](#)

HEALTH CAPITAL

CONSULTANTS (HCC) is an established, nationally recognized healthcare financial and economic consulting firm headquartered in St. Louis, Missouri, with regional personnel nationwide. Founded in 1993, HCC has served clients in over 45 states, in providing services including: valuation in all healthcare sectors; financial analysis, including the development of forecasts, budgets and income distribution plans; healthcare provider related intermediary services, including integration, affiliation, acquisition and divestiture; Certificate of Need (CON) and regulatory consulting; litigation support and expert witness services; and, industry research services for healthcare providers and their advisors. HCC's accredited professionals are supported by an experienced research and library support staff to maintain a thorough and extensive knowledge of the healthcare reimbursement, regulatory, technological and competitive environment.



Robert James Cimasi, MHA, ASA, FRICS, MCBA, CVA, CM&AA, serves as Chief Executive Officer of **HEALTH CAPITAL CONSULTANTS (HCC)**, a nationally recognized healthcare financial and economic consulting firm headquartered in St. Louis, MO, serving clients in 49 states since 1993. Mr. Cimasi has over thirty years of experience in serving clients, with a professional focus on the financial and economic aspects of healthcare service sector entities including: valuation consulting and capital formation services; healthcare industry transactions including joint ventures, mergers, acquisitions, and divestitures; litigation support & expert testimony; and, certificate-of-need and other regulatory and policy planning consulting.

Mr. Cimasi holds a Masters in Health Administration from the University of Maryland, as well as several professional designations: Accredited Senior Appraiser (ASA – American Society of Appraisers); Fellow Royal Institution of Chartered Surveyors (FRICS – Royal Institute of Chartered Surveyors); Master Certified Business Appraiser (MCBA – Institute of Business Appraisers); Accredited Valuation Analyst (AVA – National Association of Certified Valuators and Analysts); and, Certified Merger & Acquisition Advisor (CM&AA – Alliance of Merger & Acquisition Advisors). He has served as an expert witness on cases in numerous courts, and has provided testimony before federal and state legislative committees. He is a nationally known speaker on healthcare industry topics, the author of several books, the latest of which include: “*Accountable Care Organizations: Value Metrics and Capital Formation*” [2013 - Taylor & Francis, a division of CRC Press], “*The Adviser’s Guide to Healthcare*” – Vols. I, II & III [2010 – AICPA], and “*The U.S. Healthcare Certificate of Need Sourcebook*” [2005 - Beard Books]. His most recent book, entitled “*Healthcare Valuation: The Financial Appraisal of Enterprises, Assets, and Services*” was published by John Wiley & Sons in March 2014.

Mr. Cimasi is the author of numerous additional chapters in anthologies; books, and legal treatises; published articles in peer reviewed and industry trade journals; research papers and case studies; and, is often quoted by healthcare industry press. In 2006, Mr. Cimasi was honored with the prestigious “*Shannon Pratt Award in Business Valuation*” conferred by the Institute of Business Appraisers. Mr. Cimasi serves on the Editorial Board of the Business Appraisals Practice of the Institute of Business Appraisers, of which he is a member of the College of Fellows. In 2011, he was named a Fellow of the Royal Institution of Chartered Surveyors (RICS).



Todd A. Zigrang, MBA, MHA, ASA, FACHE, is the President of **HEALTH CAPITAL CONSULTANTS (HCC)**, where he focuses on the areas valuation and financial analysis for hospitals and other healthcare enterprises. Mr. Zigrang has significant physician integration and financial analysis experience, and has participated in the development of a physician-owned multi-specialty MSO and networks involving a wide range of specialties; physician-owned hospitals, as well as several limited liability companies for the purpose of acquiring acute care and specialty hospitals, ASCs and other ancillary facilities; participated in the evaluation and negotiation of managed care contracts, performed and assisted in the valuation of various healthcare entities and related litigation support engagements; created pro-forma financials; written business plans; conducted a range of industry research; completed due diligence practice analysis; overseen the selection process for vendors, contractors, and architects; and, worked on the arrangement of financing.

Mr. Zigrang holds a Master of Science in Health Administration and a Masters in Business Administration from the University of Missouri at Columbia. He is a Fellow of the American College of Healthcare Executives, and serves as President of the St. Louis Chapter of the American Society of Appraisers (ASA). He has co-authored “*Research and Financial Benchmarking in the Healthcare Industry*” (STP Financial Management) and “*Healthcare Industry Research and its Application in Financial Consulting*” (Aspen Publishers). He has additionally taught before the Institute of Business Appraisers and CPA Leadership Institute, and has presented healthcare industry valuation related research papers before the Healthcare Financial Management Association; the National CPA Health Care Adviser’s Association; Association for Corporate Growth; Infocast Executive Education Series; the St. Louis Business Valuation Roundtable; and, Physician Hospitals of America.



Matthew J. Wagner, MBA, CFA, is Senior Vice President of **HEALTH CAPITAL CONSULTANTS (HCC)**, where he focuses on the areas of valuation and financial analysis. Mr. Wagner has provided valuation services regarding various healthcare related enterprises, assets and services, including but not limited to, physician practices, diagnostic imaging service lines, ambulatory surgery centers, physician-owned insurance plans, equity purchase options, physician clinical compensation, and healthcare equipment leases.



John R. Chwarzinski, MSF, MAE, is Vice President of **HEALTH CAPITAL CONSULTANTS (HCC)**. Mr. Chwarzinski holds a Master’s Degree in Economics from the University of Missouri – St. Louis, as well as, a Master’s Degree in Finance from the John M. Olin School of Business at Washington University in St. Louis. Mr. Chwarzinski’s areas of expertise include advanced statistical analysis, econometric modeling, and economic and financial analysis.



Jessica L. Bailey, Esq., is the Director of Research of **HEALTH CAPITAL CONSULTANTS (HCC)**, where she conducts project management and consulting services related to the impact of both federal and state regulations on healthcare exempt organization transactions and provides research services necessary to support certified opinions of value related to the Fair Market Value and Commercial Reasonableness of transactions related to healthcare enterprises, assets, and services. Ms. Bailey is a member of the Missouri and Illinois Bars and holds a J.D. and Health Law Certificate from Saint Louis University School of Law, where she served as Fall Managing Editor for the Journal of Health Law and Policy.