

“Pathways to Success” - CMS Finalizes Overhaul of National ACO Program

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by Claire H. Topp and Alex Stoflet



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On December 21, 2018, CMS announced a final rule, subsequently published in the December 31 issue of the federal register, significantly overhauling the Medicare Shared Savings Program (“MSSP”). Among the important changes in the final rule is a redesign of MSSP’s participation options.

Under MSSP, providers of services and suppliers participating in an Accountable Care Organization (“ACO”) continue to receive traditional fee-for-service payments under Medicare Parts A and B but may be eligible to receive shared savings payments if they meet specified quality and savings requirements. Originally

launched in 2012, MSSP has grown such that CMS estimates more than a quarter of Medicare FFS beneficiaries now receive care from providers participating in a Medicare ACO.

Prior to the

redesign, MSSP included three tracks. Track 1 was “one-sided,” meaning ACOs received a share of savings they achieved for Medicare (i.e., spending less than a benchmark), but they were not required to pay back a share of any losses (i.e., spending exceeding the benchmark). Tracks 2 and 3, on the other hand, were “two-sided,” meaning ACOs were eligible to receive a share of savings but also had to pay back a share of any losses. In exchange for accepting risk of loss, ACOs in Tracks 2 and 3 were eligible to receive a larger portion of savings than ACOs in Track 1. ACOs were only permitted to participate in Track 1 for a maximum of six years (two, three-year agreement periods) before switching to a two-sided model.

Given that 2019

marks the seventh year of the MSSP program, MSSP entrants from the initial program year in 2012 faced mandatory transition to Track 2 in 2019 if they wanted to remain in the program, with other early adopters facing the same fate in coming years. However, in reviews of the program, CMS found that the vast majority of ACOs were still participating under Track 1, and many Track 1 ACOs were reluctant and/or unprepared to move to a two-sided model under Track 2. Meanwhile, CMS found ACOs in one-sided models actually increased Medicare spending relative to their benchmarks, while ACOs participating in two-sided models generated significant savings for Medicare. As an initial step to address some of these issues, CMS created a temporary “Track 1+” model, which began in 2018, which incorporated into the Track 1 model a more limited downside risk payment design as compared to Track 2.

The MSSP

redesign in many ways builds on the experience of introducing the Track 1+ model, which CMS found to be an effective way to encourage ACOs to progress more rapidly to performance-based risk. Under the redesign, CMS has replaced the Track 1, Track 2, Track 3, and Track 1+

models with two tracks, a BASIC track and an ENHANCED track. The ENHANCED track is based on the existing Track 3. The BASIC track, on the other hand, replaces the rest of the existing tracks with a model aimed at aiding ACOs in transitioning to more significant downside risk, providing them with “pathways to success.”

Under the BASIC

track, ACOs begin under a one-sided model and incrementally phase-in higher levels of risk that, at their highest point, would qualify as an Advanced Alternative Payment Model under the Quality Payment Program (for background on QPP see some of our earlier posts, [here](#) and [here](#)). The BASIC track provides a one-sided model available for the first two years for most eligible ACOs (some ACOs that previously participated in Track 1 are restricted to a single year, while some low revenue ACOs are allowed up to three years). Following that, ACOs can take on progressively higher risk in third through fifth years (the MSSP redesign also replaces existing three-year agreement periods with minimum five-year agreement periods).

In order to

allow time to transition to the new BASIC or ENHANCED tracks, CMS finalized an agreement period start date of July 1, 2019 rather than January 1, 2019. Pursuant to an earlier rule, in anticipation of changes, ACOs with agreement periods that would have ended December 31, 2018 were able to opt for a six-month extension period. In addition, in this final rule, CMS provides for ACOs in a three-year agreement period not expiring in 2018 the ability to voluntarily terminate existing participation agreements and enter a new agreement period starting July 1, 2019 under one of the new tracks (prior to this change, ACOs would have faced a “sit out” period after termination). For ACOs entering into agreements with a July 1, 2019 start date, there will be an initial, six-month performance year through December 31, 2019, with five additional performance years to follow. The Notice of Intent to Apply for the ACO agreement period with a July 1, 2019 start date is available through January 18, 2019. As of this blog posting, CMS has yet to finalize the rest of the application timeline for the July 1, 2019 start date. Information on the timeline is available [here](#).

There are many other pieces to the final rule. Some highlights include:

- Updates to repayment mechanisms for two-sided model ACOs;
- Revisions to MSSP's benchmarking methodology;
- Integrity-focused changes, including modifying review criteria for ACOs, providing additional termination options for CMS in ACO participation agreements, and revising consequences for agreement termination;
- A number of changes aimed at promoting innovation through regulatory flexibility, including annual choice of beneficiary-assignment methodology for ACOs, expanding the use of telehealth in ACOs, and expanding SNF 3-day rule waiver eligibility; and
- Changes aimed at promoting beneficiary engagement, including allowing certain beneficiary incentive programs and strengthening beneficiary notification requirements (CMS is developing template notices for ACOs and ACO participants to use). CMS also sought input on allowing a beneficiary "opt-in" methodology for assignment, or possibly using a hybrid claims-based and opt-in approach, but it continues to consider comments on this issue and did not finalize an opt-in based methodology in this rule.

A CMS fact sheet including additional information on the highlights noted above can be found [here](#).

Overall, in its comments regarding the final rule, CMS expressed confidence that two-sided ACO models remain a viable, and promising, option for achieving savings in Medicare while also promoting greater quality in care. Through its final rule, CMS aimed to provide ACOs and ACO participants with new "pathways to success" in realizing these goals of the MSSP. Only time will tell if ACOs are able to successfully navigate these new pathways. In any event, the overhaul will begin affecting MSSP ACOs as early as July of 2019.

