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performance year. For an ACO requesting interim payment, shared savings may result from the interim payment system calculation.

Taxpayer Identification Number (TIN) means a Federal taxpayer identification number or employer identification number as defined by the IRS in 26 CFR 301.6109-1.

Two-sided model means a model under which the ACO may share savings with the Medicare program, if it meets the requirements for doing so, and is also liable for sharing any losses incurred under subpart G of this part.

[76 FR 67973, Nov. 2, 2011, as amended at 80 FR 32833, June 9, 2015; 80 FR 71385, Nov. 16, 2015; 81 FR 38013, June 10, 2016; 82 FR 53368, Nov. 15, 2017; 83 FR 60092, Nov. 23, 2018; 83 FR 68062, Dec. 31, 2018; 87 FR 70232, Nov. 18, 2022]

Subpart B—Shared Savings Program Eligibility Requirements

§ 425.100 General.

(a) Under the Shared Savings Program, ACO participants may work together to manage and coordinate care for Medicare fee-for-service beneficiaries through an ACO that meets the criteria specified in this part. The ACO must become accountable for the quality, cost, and overall care of the Medicare fee-for-service beneficiaries assigned to the ACO.

(b) An ACO is eligible to receive payments for shared savings under subpart G of this part if all of the following conditions are met:

(1) The ACO meets or exceeds the applicable minimum savings rate established under §§ 425.604, 425.605 (except as provided under § 425.605(h)), 425.606, 425.609, or 425.610.

(2) The ACO meets the minimum quality performance standards established under § 425.500 (for performance years or a performance period beginning on or before January 1, 2020), or under the quality performance standard established under § 425.512 (for performance years beginning on or after January 1, 2021).

(3) The ACO otherwise maintains its eligibility to participate in the Shared Savings Program under this part.

(c) ACOs that operate under a two-sided model and meet or exceed a minimum loss rate established under

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§ 425.605, § 425.606, § 425.609 or § 425.610 must share losses with the Medicare program under subpart G of the part.

(d) An ACO is eligible to receive advance investment payments if it meets the criteria under § 425.630(b).

[76 FR 67973, Nov. 2, 2011, as amended at 80 FR 32834, June 9, 2015; 83 FR 60092, Nov. 23, 2018; 83 FR 68083, Dec. 31, 2018; 85 FR 85038, Dec. 28, 2020; 87 FR 70232, Nov. 18, 2022]

§ 425.102 Eligible providers and suppliers.

(a) The following ACO participants or combinations of ACO participants are eligible to form an ACO that may apply to participate in the Shared Savings Program:

(1) ACO professionals in group practice arrangements.

(2) Networks of individual practices of ACO professionals.

(3) Partnerships or joint venture arrangements between hospitals and ACO professionals.

(4) Hospitals employing ACO professionals.

(5) CAHs that bill under Method II (as described in § 413.70(b)(3) of this chapter).

(6) RHCs.

(7) FQHCs.

(8) Teaching hospitals that have elected under § 415.160 of this subchapter to receive payment on a reasonable cost basis for the direct medical and surgical services of their physicians.

(b) Other ACO participants that are not identified in paragraph (a) of this section are eligible to participate through an ACO formed by one or more of the ACO participants identified in paragraph (a) of this section.

[76 FR 67973, Nov. 2, 2011, as amended at 80 FR 71386, Nov. 16, 2015]

§ 425.104 Legal entity.

(a) An ACO must be a legal entity, formed under applicable State, Federal, or Tribal law, and authorized to conduct business in each State in which it operates for purposes of the following:

(1) Receiving and distributing shared savings.

(2) Repaying shared losses or other monies determined to be owed to CMS.

(3) Establishing, reporting, and ensuring provider compliance with health care quality criteria, including quality performance standards.

(4) Fulfilling other ACO functions identified in this part.

(b) An ACO formed by two or more ACO participants, each of which is identified by a unique TIN, must be a legal entity separate from any of its ACO participants.

(c) An ACO formed by a single ACO participant may use its existing legal entity and governing body, provided it satisfies the other requirements in §§ 425.104 and 425.106.

[76 FR 67973, Nov. 2, 2011, as amended at 80 FR 32834, June 9, 2015]

§ 425.106 Shared governance.

(a) *General rule.* (1) An ACO must maintain an identifiable governing body with ultimate authority to execute the functions of an ACO as defined under this part, including but not limited to, the processes defined under § 425.112 to promote evidence-based medicine and patient engagement, to report on quality and cost measures, and to coordinate care.

(2) The governing body of the ACO must satisfy all of the following criteria:

(i) Be the same as the governing body of the legal entity that is the ACO.

(ii) Be separate and unique to the ACO and must not be the same as the governing body of any ACO participant, except as provided in § 425.104(c).

(iii) Satisfy all other requirements of this section.

(b) *Responsibilities of the governing body and its members.* (1) The governing body must have responsibility for oversight and strategic direction of the ACO, holding ACO management accountable for the ACO's activities as described in this part.

(2) The governing body must have a transparent governing process.

(3) The governing body members must have a fiduciary duty to the ACO, including the duty of loyalty, and must act consistent with that fiduciary duty.

(c) *Composition and control of the governing body.* (1) The ACO must—

(i) Establish a mechanism for shared governance among the ACO partici-

pants or combinations of ACO participants (as identified in § 425.102(a)) that formed the ACO; and

(ii) Provide for meaningful participation in the composition and control of the ACO's governing body for ACO participants or their designated representatives.

(2) The ACO governing body must include a Medicare beneficiary who—

(i) Is served by the ACO;

(ii) Is not an ACO provider/supplier;

(iii) Does not have a conflict of interest with the ACO; and

(iv) Does not have an immediate family member who has a conflict of interest with the ACO.

(3) At least 75 percent control of the ACO's governing body must be held by ACO participants.

(4) The governing body members may serve in a similar or complementary manner for an ACO participant.

(5) In cases in which the composition of the ACO's governing body does not meet the requirements of paragraphs (c)(2) and (c)(3) of this section, the ACO must describe why it seeks to differ from these requirements and how the ACO will involve ACO participants in innovative ways in ACO governance or provide meaningful representation in ACO governance by Medicare beneficiaries.

(d) *Conflict of interest.* The ACO governing body must have a conflict of interest policy that applies to members of the governing body. The conflict of interest policy must—

(1) Require each member of the governing body to disclose relevant financial interests; and

(2) Provide a procedure to determine whether a conflict of interest exists and set forth a process to address any conflicts that arise.

(3) The conflict of interest policy must address remedial action for members of the governing body that fail to comply with the policy.

[76 FR 67973, Nov. 2, 2011, as amended at 80 FR 32835, June 9, 2015]

§ 425.108 Leadership and management.

(a) An ACO must have a leadership and management structure that includes clinical and administrative systems that align with and support the goals of the Shared Savings Program

and the aims of better care for individuals, better health for populations, and lower growth in expenditures.

(b) The ACO's operations must be managed by an executive, officer, manager, general partner, or similar party whose appointment and removal are under the control of the ACO's governing body and whose leadership team has demonstrated the ability to influence or direct clinical practice to improve efficiency processes and outcomes.

(c) Clinical management and oversight must be managed by a senior-level medical director. The medical director must be all of the following:

(1) A board-certified physician.

(2) Licensed in a State in which the ACO operates.

(3) Physically present on a regular basis at any clinic, office or other location of the ACO, an ACO participant, or an ACO provider/supplier.

(d) Each ACO participant and each ACO provider/supplier must demonstrate a meaningful commitment to the mission of the ACO to ensure the ACO's likely success.

(1) Meaningful commitment may include, for example, a sufficient financial or human investment (for example, time and effort) in the ongoing operations of the ACO such that the potential loss or recoupment of the investment is likely to motivate the ACO participant and ACO provider/supplier to achieve the ACO's mission under the Shared Savings Program.

(2) A meaningful commitment can be shown when an ACO participant or ACO provider/supplier agrees to comply with and implement the ACO's processes required by § 425.112 and is held accountable for meeting the ACO's performance standards for each required process.

[76 FR 67973, Nov. 2, 2011, as amended at 80 FR 32835, June 9, 2015]

§ 425.110 Number of ACO professionals and beneficiaries.

(a)(1) The ACO must include primary care ACO professionals that are sufficient for the number of Medicare fee-for-service beneficiaries assigned to the ACO under subpart E of this part. The ACO must have at least 5,000 assigned beneficiaries.

(2) CMS deems an ACO to have initially satisfied the requirement to have at least 5,000 assigned beneficiaries as specified in paragraph (a)(1) of this section if 5,000 or more beneficiaries are historically assigned to the ACO participants in each of the 3 benchmark years, as calculated using the assignment methodology set forth in subpart E of this part. In the case of the third benchmark year, CMS uses the most recent data available to estimate the number of assigned beneficiaries.

(b) If at any time during the performance year, an ACO's assigned population falls below 5,000, the ACO may be subject to the actions described in §§ 425.216 and 425.218.

(1) While under a CAP, the ACO remains eligible for shared savings and liable for shared losses.

(2) If the ACO's assigned population is not at least 5,000 by the end of the performance year specified by CMS in its request for a CAP, CMS terminates the participation agreement and the ACO is not eligible to share in savings for that performance year.

(3) In determining financial performance for an ACO with fewer than 5,000 assigned beneficiaries, the MSR/MLR is calculated as follows:

(i) For ACOs with a variable MSR and MLR (if applicable), the MSR and MLR (if applicable) are set at a level consistent with the number of assigned beneficiaries.

(ii) For performance years starting before July 1, 2019, for ACOs with a fixed MSR/MLR, the MSR/MLR remains fixed at the level consistent with the choice of MSR and MLR that the ACO made at the start of the agreement period.

(iii) For performance years starting on July 1, 2019 and in subsequent years, for ACOs that selected a fixed MSR/MLR at the start of the agreement period or prior to entering a two-sided model during their agreement period, the MSR/MLR is calculated as follows:

(A) The MSR/MLR is set at a level based on the number of beneficiaries assigned to the ACO.

(1) The MSR is the same as the MSR that would apply in a one-sided model under § 425.604(b) (for Track 2 ACOs) or

§ 425.605(b)(1) (for BASIC track and ENHANCED track ACOs) and is based on the number of assigned beneficiaries.

(2) The MLR is equal to the negative MSR.

(B) The MSR and MLR revert to the fixed level previously selected by the ACO for any subsequent performance year in the agreement period in which the ACO's assigned beneficiary population is 5,000 or more.

[76 FR 67973, Nov. 2, 2011, as amended at 80 FR 32835, June 9, 2015; 81 FR 80559, Nov. 15, 2016; 83 FR 68063, Dec. 31, 2018]

§ 425.112 Required processes and patient-centeredness criteria.

(a) *General.* (1) An ACO must—

(i) Promote evidence-based medicine and beneficiary engagement, internally report on quality and cost metrics, and coordinate care;

(ii) Adopt a focus on patient centeredness that is promoted by the governing body and integrated into practice by leadership and management working with the organization's health care teams; and

(iii) Have defined processes to fulfill these requirements.

(2) An ACO must have a qualified healthcare professional responsible for the ACO's quality assurance and improvement program, which must include the defined processes included in paragraphs (b)(1) through (4) of this section.

(3) For each process specified in paragraphs (b)(1) through (4) of this section, the ACO must—

(i) Require ACO participants and ACO providers/suppliers to comply with and implement each process (and subelement thereof), including the remedial processes and penalties (including the potential for expulsion) applicable to ACO participants and ACO providers/suppliers for failure to comply with and implement the required process; and

(ii) Employ its internal assessments of cost and quality of care to improve continuously the ACO's care practices.

(b) *Required processes.* The ACO must define, establish, implement, evaluate, and periodically update processes to accomplish the following:

(1) Promote evidence-based medicine. These processes must cover diagnoses

with significant potential for the ACO to achieve quality improvements taking into account the circumstances of individual beneficiaries.

(2) Promote patient engagement. These processes must address the following areas:

(i) Compliance with patient experience of care survey requirements in § 425.500 or § 425.510, as applicable.

(ii) Compliance with beneficiary representative requirements in § 425.106.

(iii) A process for evaluating the health needs of the ACO's population, including consideration of diversity in its patient populations, and a plan to address the needs of its population.

(A) In its plan to address the needs of its population, the ACO must describe how it intends to partner with community stakeholders to improve the health of its population.

(B) An ACO that has a stakeholder organization serving on its governing body will be deemed to have satisfied the requirement to partner with community stakeholders.

(iv) Communication of clinical knowledge/evidence-based medicine to beneficiaries in a way that is understandable to them.

(v) Beneficiary engagement and shared decision-making that takes into account the beneficiaries' unique needs, preferences, values, and priorities;

(vi) Written standards in place for beneficiary access and communication, and a process in place for beneficiaries to access their medical record.

(3) Develop an infrastructure for its ACO participants and ACO providers/suppliers to internally report on quality and cost metrics that enables the ACO to monitor, provide feedback, and evaluate its ACO participants and ACO provider(s)/supplier(s) performance and to use these results to improve care over time.

(4) Coordinate care across and among primary care physicians, specialists, and acute and post-acute providers and suppliers. The ACO must—

(i) Define its methods and processes established to coordinate care throughout an episode of care and during its transitions, such as discharge from a

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hospital or transfer of care from a primary care physician to a specialist (both inside and outside the ACO); and

(ii) Have a written plan to:

(A) Implement an individualized care program that promotes improved outcomes for, at a minimum, the ACO's high-risk and multiple chronic condition patients.

(B) Identify additional target populations that would benefit from individualized care plans. Individualized care plans must take into account the community resources available to the individual.

(C) Encourage and promote use of enabling technologies for improving care coordination for beneficiaries. Enabling technologies may include one or more of the following:

(1) Electronic health records and other health IT tools.

(2) Telehealth services, including remote patient monitoring.

(3) Electronic exchange of health information.

(4) Other electronic tools to engage beneficiaries in their care.

(D) Partner with long-term and post-acute care providers, both inside and outside the ACO, to improve care coordination for its assigned beneficiaries.

[76 FR 67973, Nov. 2, 2011, as amended at 80 FR 32835, June 9, 2015; 82 FR 53368, Nov. 15, 2017; 85 FR 85038, Dec. 28, 2020]

§ 425.114 Participation in other shared savings initiatives.

(a) ACOs may not participate in the Shared Savings Program if they include an ACO participant that participates in the independence at home medical practice pilot program under section 1866E of the Act, a model tested or expanded under section 1115A of the Act that involves shared savings, or any other Medicare initiative that involves shared savings.

(b) CMS will review and deny an ACO's application if any ACO participants are participating in another Medicare initiative that involves shared savings payments.

(c) CMS will determine an appropriate method to ensure no duplication in payments for beneficiaries assigned to other shared savings programs or initiatives, including initiatives in-

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volving dually eligible beneficiaries, when such other shared savings programs have an assignment methodology that is different from the Shared Savings Program.

§ 425.116 Agreements with ACO participants and ACO providers/suppliers.

(a) *ACO participant agreements.* For performance year 2017 and subsequent performance years, the ACO must have an ACO participant agreement with each ACO participant that complies with the following criteria:

(1) The only parties to the agreement are the ACO and the ACO participant.

(2) The agreement must be signed on behalf of the ACO and the ACO participant by individuals who are authorized to bind the ACO and the ACO participant, respectively.

(3) The agreement must expressly require the ACO participant to agree, and to ensure that each ACO provider/supplier billing through the TIN of the ACO participant agrees, to participate in the Shared Savings Program and to comply with the requirements of the Shared Savings Program and all other applicable laws and regulations (including, but not limited to, those specified at § 425.208(b)).

(4) The agreement must set forth the ACO participant's rights and obligations in, and representation by, the ACO, including without limitation, the quality reporting requirements set forth in subpart F of this part, the beneficiary notification requirements set forth at § 425.312, and how participation in the Shared Savings Program affects the ability of the ACO participant and its ACO providers/suppliers to participate in other Medicare demonstration projects or programs that involve shared savings.

(5) The agreement must describe how the opportunity to receive shared savings or other financial arrangements will encourage the ACO participant to adhere to the quality assurance and improvement program and evidence-based medicine guidelines established by the ACO.

(6) The agreement must require the ACO participant to update its enrollment information, including the addition and deletion of ACO professionals

and ACO providers/suppliers billing through the TIN of the ACO participant, on a timely basis in accordance with Medicare program requirements and to notify the ACO of any such changes within 30 days after the change.

(7) The agreement must permit the ACO to take remedial action against the ACO participant, and must require the ACO participant to take remedial action against its ACO providers/suppliers, including imposition of a corrective action plan, denial of incentive payments, and termination of the ACO participant agreement, to address non-compliance with the requirements of the Shared Savings Program and other program integrity issues, including those identified by CMS.

(8) The agreement must be for a term of at least 1 performance year and must articulate potential consequences for early termination from the ACO.

(9) The agreement must require completion of a close-out process upon termination or expiration of the agreement that requires the ACO participant to furnish all data necessary to complete the annual assessment of the ACO's quality of care and addresses other relevant matters.

(b) *Agreements with ACO providers/suppliers.* ACOs have the option of contracting directly with its ACO providers/suppliers regarding items and services furnished to beneficiaries aligned to the ACO. For performance year 2017 and subsequent performance years, an ACO's agreement with an ACO provider/supplier regarding such items and services must satisfy the following criteria:

(1) The only parties to the agreement are the ACO and the ACO provider/supplier.

(2) The agreement must be signed by the ACO provider/supplier and by an individual who is authorized to bind the ACO.

(3) The agreement must expressly require the ACO provider/supplier to agree to participate in the Shared Savings Program and to comply with the requirements of the Shared Savings Program and all other applicable laws and regulations (including, but not limited to, those specified at § 425.208(b)).

(4) The agreement must set forth the ACO provider's/supplier's rights and obligations in, and representation by, the ACO, including without limitation, the quality reporting requirements set forth in subpart F of this part, the beneficiary notification requirements set forth at § 425.312, and how participation in the Shared Savings Program affects the ability of the ACO provider/supplier to participate in other Medicare demonstration projects or programs that involve shared savings.

(5) The agreement must describe how the opportunity to receive shared savings or other financial arrangements will encourage the ACO provider/supplier to adhere to the quality assurance and improvement program and evidence-based medicine guidelines established by the ACO.

(6) The agreement must require the ACO provider/supplier to—

(i) Update its enrollment information on a timely basis in accordance with Medicare program requirements; and

(ii) Notify the ACO of any such changes within 30 days after the change.

(7) The agreement must permit the ACO to take remedial action including the following against the ACO provider/supplier to address noncompliance with the requirements of the Shared Savings Program and other program integrity issues, including those identified by CMS:

(i) Imposition of a corrective action plan.

(ii) Denial of incentive payments.

(iii) Termination of the ACO participant agreement.

(c) *Submission of agreements.* The ACO must submit an executed ACO participant agreement for each ACO participant that it requests to add to its list of ACO participants in accordance with § 425.118. The agreements may be submitted in the form and manner set forth in § 425.204(c)(6) or as otherwise specified by CMS.

[80 FR 32835, June 9, 2015; as amended at 86 FR 65683, Nov. 19, 2021]

§ 425.118 Required reporting of ACO participants and ACO providers/suppliers.

(a) *List requirements.* (1) The ACO must maintain, update, and submit to

CMS an accurate and complete list identifying each ACO participant (including its Medicare-enrolled TIN) and each ACO provider/supplier (including its NPI or other identifier) in accordance with this section.

(2) Before the start of an agreement period, before each performance year thereafter, and at such other times as specified by CMS, the ACO must submit to CMS an ACO participant list and an ACO provider/supplier list. The ACO may request consideration of claims billed under merged and acquired Medicare-enrolled TINs in accordance with the process set forth at § 425.204(g).

(3) The ACO must certify the submitted lists in accordance with § 425.302(a)(2).

(4) All Medicare enrolled individuals and entities that have reassigned their right to receive Medicare payment to the TIN of the ACO participant must be included on the ACO provider/supplier list and must agree to participate in the ACO and comply with the requirements of the Shared Savings Program before the ACO submits the ACO participant list and the ACO provider/supplier list.

(b) *Changes to the ACO participant list*—(1) *Additions*. (i) An ACO must submit to CMS a request to add an entity and its Medicare enrolled TIN to its ACO participant list. This request must be submitted at such time and in the form and manner specified by CMS.

(ii) If CMS approves the request, the entity and its Medicare enrolled TIN is added to the ACO participant list effective January 1 of the following performance year.

(iii) CMS may deny the request on the basis that the entity is not eligible to be an ACO participant or on the basis of the results of the screening performed under § 425.305(a).

(2) *Deletions*. (i) An ACO must notify CMS no later than 30 days after the termination of an ACO participant agreement. Such notice must be submitted in the form and manner specified by CMS and must include the termination date of the ACO participant agreement.

(ii) The entity is deleted from the ACO participant list as of the termi-

nation date of the ACO participant agreement.

(3) *Adjustments*. (i) CMS annually adjusts an ACO's assignment, historical benchmark, the quality reporting sample, and the obligation of the ACO to report on behalf of eligible professionals that bill under the TIN of an ACO participant for certain CMS quality initiatives to reflect the addition or deletion of entities from the list of ACO participants that is submitted to CMS before the start of a performance year in accordance with paragraph (a) of this section.

(ii) Absent unusual circumstances, CMS does not make adjustments during the performance year to the ACO's assignment, historical benchmark, performance year financial calculations, the quality reporting sample, or the obligation of the ACO to report on behalf of eligible professionals that bill under the TIN of an ACO participant for certain CMS quality initiatives to reflect the addition or deletion of entities from the ACO participant list that become effective during the performance year. CMS has sole discretion to determine whether unusual circumstances exist that would warrant such adjustments.

(c) *Changes to the ACO provider/supplier list*—(1) *Additions*. (i) An ACO must notify CMS within 30 days after an individual or entity becomes a Medicare-enrolled provider or supplier that bills for items and services it furnishes to Medicare fee-for-service beneficiaries under a billing number assigned to the TIN of an ACO participant. The notice must be submitted in the form and manner specified by CMS.

(ii) If the ACO timely submits notice to CMS, the addition of an individual or entity to the ACO provider/supplier list is effective on the date specified in the notice furnished to CMS, but no earlier than 30 days before the date of the notice. If the ACO fails to submit timely notice to CMS, the addition of an individual or entity to the ACO provider/supplier list is effective on the date of the notice.

(2) *Deletions*. (i) An ACO must notify CMS no later than 30 days after an individual or entity ceases to be a Medicare-enrolled provider or supplier that bills for items and services it furnishes

to Medicare fee-for-service beneficiaries under a billing number assigned to the TIN of an ACO participant. The notice must be submitted in the form and manner specified by CMS.

(ii) The deletion of an ACO provider/supplier from the ACO provider/supplier list is effective on the date the individual or entity ceased to be a Medicare-enrolled provider or supplier that bills for items and services it furnishes to Medicare fee-for-service beneficiaries under a billing number assigned to the TIN of an ACO participant.

(d) *Update of Medicare enrollment information.* The ACO must ensure that all changes to enrollment information for ACO participants and ACO providers/suppliers, including changes to reassignment of the right to receive Medicare payment, are reported to CMS consistent with § 424.516.

[80 FR 32836, June 9, 2015, as amended at 83 FR 68063, Dec. 31, 2018]

Subpart C—Application Procedures and Participation Agreement

§ 425.200 Participation agreement with CMS.

(a) *General.* In order to participate in the Shared Savings Program, an ACO must enter into a participation agreement with CMS for a period of not less than the number of years specified in this section.

(b) *Agreement period.* (1) *For 2012.* For applications that are approved to participate in the Shared Savings Program for 2012, the start date for the participation agreement will be one of the following:

(i) April 1, 2012 (term of the participation agreement is 3 years and 9 months).

(ii) July 1, 2012 (term of the participation agreement is 3 years and 6 months).

(2) *For 2013 and through 2016.*

(i) The start date is January 1 of that year; and

(ii) The term of the participation agreement is 3 years unless all of the following conditions are met to extend the participation agreement by 6 months:

(A) The ACO entered an agreement period starting on January 1, 2016.

(B) The ACO elects to extend its agreement period until June 30, 2019.

(1) The ACO's election to extend its agreement period is made in the form and manner and according to the time-frame established by CMS; and

(2) An ACO executive who has the authority to legally bind the ACO must certify the election described in paragraph (b)(2)(ii)(B) of this section.

(3) *For 2017 and 2018.*

(i) The start date is January 1 of that year; and

(ii) The term of the participation agreement is 3 years, except as follows:

(A) For an ACO whose first agreement period in Track 1 began in 2014 or 2015, in which case the term of the ACO's initial agreement period under Track 1 (as described under § 425.604) may be extended, at the ACO's option, for an additional year for a total of 4 performance years if the conditions specified in paragraph (e) of this section are met.

(B) For an ACO whose agreement period started on January 1, 2018, the term of the participation agreement is extended by 12 months if both of the following conditions are met:

(1) The ACO elects to extend the participation agreement for a fourth performance year until December 31, 2021.

(2) The ACO's election to extend its agreement period is made in the form and manner and by a deadline established by CMS.

(4) *For 2019.* (i) The start date is January 1, 2019, and the term of the participation agreement is 3 years for ACOs whose first agreement period began in 2015 and who deferred renewal of their participation agreement under paragraph (e) of this section; or

(ii) The start date is July 1, 2019, and the term of the participation agreement is 5 years and 6 months.

(5) *For 2020 and subsequent years.* (i) The start date is January 1 of that year; and

(ii) The term of the participation agreement is 5 years.

(c) *Performance year.* The ACO's performance year under the participation