

§ 425.206

42 CFR Ch. IV (10–1–23 Edition)

(2) The ACO must submit the following supporting documentation in the form and manner specified by CMS.

(i) An attestation that—

(A) Identifies by TIN both the acquired entity and the ACO participant that acquired it;

(B) Specifies that all the providers and suppliers that previously reassigned their right to receive Medicare payment to the acquired entity's TIN have reassigned such right to the TIN of the identified ACO participant and have been added to the ACO provider/supplier list under paragraph (c)(5) of this section; and

(C) Specifies that the acquired entity's TIN is no longer used to bill Medicare.

(ii) Documentation sufficient to demonstrate that the acquired entity's TIN was merged with or purchased by the ACO participant.

[76 FR 67973, Nov. 2, 2011, as amended at 80 FR 32837, June 9, 2015; 81 FR 80559, Nov. 15, 2016; 82 FR 53369, Nov. 15, 2017; 83 FR 68063, Dec. 31, 2018; 85 FR 85038, Dec. 28, 2020; 86 FR 65683, Nov. 19, 2021; 87 FR 70232, Nov. 18, 2022]

§ 425.206 Evaluation procedures for applications.

(a) *Basis for evaluation and determination.* (1) CMS evaluates an ACO's application to determine whether an applicant satisfies the requirements of this part and is qualified to participate in the Shared Savings Program, and approves or denies applications accordingly. Applications are approved or denied on the basis of the following:

(i) Information contained in and submitted with the application by an application deadline specified by CMS.

(ii) Supplemental information that was submitted in response to a CMS request and by a deadline specified by CMS.

(iii) Other information available to CMS.

(2) CMS notifies an ACO applicant when supplemental information is required for CMS to make a determination on the ACO's application and provides an opportunity for the ACO to submit the information.

(3) CMS may deny an application if an ACO applicant fails to submit requested information by the deadlines established by CMS.

(b) *Notice of determination.* (1) CMS notifies in writing each applicant ACO of its determination to approve or deny the ACO's application to participate in the Shared Savings Program.

(2) If CMS denies the application, the notice will indicate that the ACO is not qualified to participate in the Shared Savings Program, specify the reasons why the ACO is not so qualified, and inform the ACO of its right to request reconsideration review in accordance with the procedures specified in subpart I of this part.

[76 FR 67973, Nov. 2, 2011, as amended at 80 FR 32838, June 9, 2015]

§ 425.208 Provisions of participation agreement.

(a) *General rules.* (1) Upon being notified by CMS of its approval to participate in the Shared Savings Program, an executive of that ACO who has the ability to legally bind the ACO must sign and submit to CMS a participation agreement.

(2) Under the participation agreement the ACO must agree to comply with the provisions of this part in order to participate in the Shared Savings Program.

(b) *Compliance with laws.* The ACO must agree, and must require its ACO participants, ACO providers/suppliers, and other individuals or entities performing functions or services related to the ACO's activities to agree, or to comply with all applicable laws including, but not limited to, the following:

(1) Federal criminal law.

(2) The False Claims Act (31 U.S.C. 3729 *et seq.*).

(3) The anti-kickback statute (42 U.S.C. 1320a–7b(b)).

(4) The civil monetary penalties law (42 U.S.C. 1320a–7a).

(5) The physician self-referral law (42 U.S.C. 1395nn).

(c) *Certifications.* (1) The ACO must agree, as a condition of participating in the program and receiving any shared savings payment, that an individual with the authority to legally bind the ACO will certify the accuracy, completeness, and truthfulness of any data or information requested by or submitted to CMS, including, but not limited to, the application form, participation agreement, and any quality data

or other information on which CMS bases its calculation of shared savings payments and shared losses.

(2) Certifications must meet the requirements at § 425.302.

§ 425.210 Application of agreement to ACO participants, ACO providers/suppliers, and others.

(a) The ACO must provide a copy of its participation agreement with CMS to all ACO participants, ACO providers/suppliers, and other individuals or entities involved in ACO governance.

(b) All contracts or arrangements between or among the ACO, ACO participants, ACO providers/suppliers, and other individuals or entities performing functions or services related to ACO activities must require compliance with the requirements and conditions of this part, including, but not limited to, those specified in the participation agreement with CMS.

§ 425.212 Changes to program requirements during the agreement period.

(a) An ACO is subject to all regulatory changes that become effective during the agreement period, with the exception of the following program areas, unless otherwise required by statute:

(1) Eligibility requirements concerning the structure and governance of ACOs.

(2) Calculation of sharing rate.

(b) In those instances where there are changes in law or regulations, the ACO will be required to submit to CMS for review and approval, as a supplement to its original application, an explanation detailing how it will modify its processes to address these changes in law or regulations.

(c) If an ACO does not modify its processes to address a change in law or regulations, it will be placed on a CAP. If the ACO fails to effectuate the necessary modifications while under the CAP, the ACO will be terminated from the Shared Savings Program using the procedures in § 425.218.

(d) An ACO will be permitted to terminate its agreement, in those instances where Shared Savings Program statutory and regulatory standards are established during the agreement period which the ACO believes will im-

pact its ability to continue to participate in the Shared Savings Program.

[76 FR 67973, Nov. 2, 2011, as amended at 80 FR 32838, June 9, 2015]

§ 425.214 Managing changes to the ACO during the agreement period.

(a)(1) An ACO must notify CMS within 30 days of any significant change.

(2) An ACO's failure to notify CMS of a significant change does not preclude CMS from determining that the ACO has experienced a significant change.

(3) A "significant change" occurs when an ACO is no longer able to meet the eligibility or program requirements of this part.

(b) Upon becoming aware of a significant change or receiving an ACO's notice of a significant change described in paragraph (b) of this section, CMS reevaluates the ACO's eligibility to continue to participate in the Shared Savings Program and may request additional documentation. CMS may make a determination that includes one of the following:

(1) The ACO may continue to operate under the new structure.

(2) The ACO structure is so different from the initially approved ACO that it must terminate its participation agreement and submit a new application for participation.

(3) The ACO no longer meets the eligibility criteria for the program and its participation agreement must be terminated.

(4) CMS and the ACO may mutually decide to terminate the participation agreement.

[76 FR 67973, Nov. 2, 2011, as amended at 80 FR 32838, June 9, 2015]

§ 425.216 Actions prior to termination.

(a) *Pre-termination actions.* (1) If CMS concludes that termination of an ACO from the Shared Savings Program is warranted, CMS may take one or more of the following actions prior to termination of the ACO from the Shared Savings Program.

(i) Provide a warning notice to the ACO regarding noncompliance with one or more program requirements.

(ii) Request a CAP from the ACO.

(iii) Place the ACO on a special monitoring plan.