

## § 425.218

(2) Nothing in this part, including the actions set forth in paragraph (a)(1) of this section, negates, diminishes, or otherwise alters the applicability of other laws, rules, or regulations, including, but not limited to, the Sherman Act (15 U.S.C. 1 *et seq.*), the Clayton Act (15 U.S.C. 12), and the Federal Trade Commission Act (15 U.S.C. 45 *et seq.*).

(b) *Corrective action plans.* (1) The ACO must submit a CAP for CMS approval by the deadline indicated on the notice of violation.

(i) The CAP must address what actions the ACO will take to ensure that the ACO, ACO participants, ACO providers/suppliers or other individuals or entities performing functions or services related to the ACO's activities or both correct any deficiencies and comply with all applicable Shared Savings Program requirements.

(ii) The ACO's performance will be monitored and evaluated during and after the CAP process.

(2) CMS may terminate the participation agreement if the ACO fails to submit, obtain approval for, or implement a CAP, or fails to demonstrate improved performance upon completion of the CAP.

[76 FR 67973, Nov. 2, 2011, as amended at 80 FR 32839, June 9, 2015]

## § 425.218 Termination of the participation agreement by CMS.

(a) *General.* CMS may terminate the participation agreement with an ACO when an ACO, the ACO participants, ACO providers/suppliers or other individuals or entities performing functions or services related to ACO activities fail to comply with any of the requirements of the Shared Savings Program under this part.

(b) *Grounds for termination by CMS.* CMS may terminate the participation agreement for reasons including, but not limited to the following:

(1) Non-compliance with eligibility and other requirements described in this part.

(2) The imposition of sanctions or other actions taken against the ACO by an accrediting organization, State, Federal or local government agency leading to inability of the ACO to com-

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ply with the requirements under this part.

(3) Violations of the physician self-referral prohibition, civil monetary penalties (CMP) law, Federal anti-kickback statute, antitrust laws, or any other applicable Medicare laws, rules, or regulations that are relevant to ACO operations.

(4) Failure to comply with CMS requests for documentation or other information by the deadline specified by CMS.

(5) Submitting false or fraudulent data or information.

(c) CMS may immediately terminate a participation agreement without taking any of the pre-termination actions set forth in § 425.216.

(d) *Notice of termination by CMS.* CMS notifies an ACO in writing of its decision to terminate the participation agreement.

[76 FR 67973, Nov. 2, 2011, as amended at 80 FR 32839, June 9, 2015]

## § 425.220 Termination of the participation agreement by the ACO.

(a) *Notice of termination.* An ACO must provide at least 30 days advance written notice to CMS and its ACO participants of its decision to terminate the participation agreement and the effective date of its termination.

(b) [Reserved]

[76 FR 67973, Nov. 2, 2011, as amended at 80 FR 32839, June 9, 2015; 83 FR 68064, Dec. 31, 2018]

## § 425.221 Close-out procedures and payment consequences of early termination.

(a) *Close-out procedures.* (1) An ACO whose participation agreement has expired or is terminated by CMS under § 425.218 or by the ACO under § 425.220 must implement close-out procedures including but not limited to the following issues in a form and manner and by a deadline specified by CMS:

(i) Notice to ACO participants of termination.

(ii) Record retention.

(iii) Data sharing.

(iv) Quality reporting.

(v) Beneficiary continuity of care.

(2) ACOs that fail to complete close-out procedures in the form and manner

and by the deadline specified by CMS will not be eligible to share in savings.

(b) *Payment consequences of early termination.* (1) *Receipt of shared savings.*

(i) Except as set forth in paragraph (b)(3)(i) of this section, an ACO that terminates its participation agreement under § 425.220 is eligible to receive shared savings for the performance year during which the termination becomes effective only if all of the following conditions are met:

(A) CMS designates or approves an effective date of termination of the last calendar day of the performance year.

(B) The ACO has completed all close-out procedures by the deadline specified by CMS.

(C) The ACO has satisfied the criteria for sharing in savings for the performance year.

(ii) If the participation agreement is terminated at any time by CMS under § 425.218, the ACO is not eligible to receive shared savings for the performance year during which the termination becomes effective.

(2) *Payment of shared losses.* (i) Except as set forth in paragraph (b)(3)(i) of this section, for performance years beginning before July 1, 2019, an ACO under a two-sided model is not liable for any shared losses if its participation agreement is terminated effective before the last calendar day of a performance year.

(ii) Except as set forth in paragraph (b)(3)(ii) of this section, for performance years beginning on July 1, 2019 and subsequent performance years, an ACO under a two-sided model is liable for a pro-rated share of any shared losses, as calculated in paragraph (b)(2)(iii) of this section, if its participation agreement is terminated effective before the last calendar day of a performance year.

(A) An ACO under a two-sided model that terminates its participation agreement under § 425.220 with an effective date of termination after June 30th of a 12-month performance year is liable for a pro-rated share of any shared losses determined for the performance year during which the termination becomes effective.

(B) An ACO under a two-sided model whose participation agreement is terminated by CMS under § 425.218 is liable

for a pro-rated share of any shared losses determined for the performance year during which the termination becomes effective.

(iii) The pro-rated share of losses described in paragraph (b)(2)(ii) of this section is calculated as follows:

(A) In the case of a 12-month performance year, the shared losses incurred during the 12 months of the performance year are multiplied by the quotient equal to the number of months of participation in the program during the performance year, including the month in which the termination was effective, divided by 12.

(B) In the case of a 6-month performance year beginning July 1, 2019, the shared losses incurred during CY 2019 are multiplied by the quotient equal to the number of months of participation in the program during the performance year, including the month in which the termination was effective, divided by 12.

(3) *Exceptions.* (i) An ACO starting a 12-month performance year on January 1, 2019, that terminates its participation agreement with an effective date of termination of June 30, 2019, and that enters a new agreement period beginning on July 1, 2019, is eligible for pro-rated shared savings or liable for pro-rated shared losses for the 6-month period from January 1, 2019, through June 30, 2019, as determined in accordance with § 425.609.

(ii) An ACO under a two-sided model that terminates its participation agreement under § 425.220 during the 6-month performance year beginning July 1, 2019, with an effective date of termination prior to the last calendar day of the performance year is not liable for shared losses incurred during the performance year.

[80 FR 32839, June 9, 2015, as amended at 83 FR 60092, Nov. 23, 2018; 83 FR 68064, Dec. 31, 2018]

**§ 425.222 Eligibility to re-enter the program for agreement periods beginning before July 1, 2019.**

(a) For purposes of determining the eligibility of a re-entering ACO to enter an agreement period beginning before July 1, 2019, the ACO may participate in the Shared Savings Program again only after the date on