

§ 425.600

excluding entities/providers eligible for facility-based scoring, for the relevant performance year.

(3) If the ACO reports quality data via the APP and meets data completeness and case minimum requirements:

(i) For performance years 2021 and 2022, CMS will use the higher of the ACO's quality performance score or the equivalent of the 30th percentile MIPS Quality performance category score across all MIPS Quality performance category scores, excluding entities/providers eligible for facility-based scoring, for the relevant performance year.

(ii) For performance year 2023, CMS will use the higher of the ACO's health equity adjusted quality performance score or the equivalent of the 30th percentile MIPS Quality performance category score across all MIPS Quality performance category scores, excluding entities/providers eligible for facility-based scoring, for the relevant performance year.

(iii) For performance year 2024 and subsequent performance years, CMS will use the higher of the ACO's health equity adjusted quality performance score or the equivalent of the 40th percentile MIPS Quality performance category score across all MIPS Quality performance category scores, excluding entities/providers eligible for facility-based scoring, for the relevant performance year.

(4) CMS applies determinations made under the Quality Payment Program with respect to—

(i) Whether an extreme and uncontrollable circumstance has occurred; and

(ii) The affected areas.

(5) CMS has sole discretion to determine the time period during which an extreme and uncontrollable circumstance occurred, the percentage of the ACO's assigned beneficiaries residing in the affected areas, and the location of the ACO legal entity.

[85 FR 85041, Dec. 28, 2020; 86 FR 65685, Nov. 19, 2021, as amended at 87 FR 70234, Nov. 18, 2022]

42 CFR Ch. IV (10–1–23 Edition)

Subpart G—Shared Savings and Losses

§ 425.600 Selection of risk model.

(a) An ACO may elect to operate under one of the following tracks:

(1) *Track 1.* For agreement periods beginning before July 1, 2019, an ACO in Track 1 operates under the one-sided model (as described under § 425.604) for the agreement period.

(2) *Track 2.* For agreement periods beginning before July 1, 2019, an ACO in Track 2 operates under a two-sided model (as described under § 425.606), sharing both savings and losses with the Medicare program for the agreement period.

(3) *ENHANCED track.* An ACO in the ENHANCED track operates under a two-sided model (as described under § 425.610), sharing both savings and losses with the Medicare program for the agreement period. For purposes of this part, all references to the ENHANCED track are deemed to include Track 3.

(4) *BASIC track.* For agreement periods beginning on July 1, 2019, and in subsequent years, an ACO in the BASIC track operates under either a one-sided model or a two-sided model (as described under § 425.605), either sharing savings only or sharing both savings and losses with the Medicare program, as specified in this paragraph (a)(4).

(i) *Levels of the BASIC track's glide path—(A) Phase-in of levels of the risk and reward.* Under the BASIC track's glide path, the level of risk and potential reward phases in over the course of the agreement period in the following order:

(1) *Level A.* The ACO operates under a one-sided model as described under § 425.605(d)(1)(i).

(2) *Level B.* The ACO operates under a one-sided model as described under § 425.605(d)(1)(ii).

(3) *Level C.* The ACO operates under a two-sided model as described under § 425.605(d)(1)(iii).

(4) *Level D.* The ACO operates under a two-sided model as described under § 425.605(d)(1)(iv).

(5) *Level E.* The ACO operates under a two-sided model as described under § 425.605(d)(1)(v).

(B) *Glide path progression for agreement periods beginning on or after July 1, 2019 and before January 1, 2024.* (1) Experience in Track 1. (i) Except for an ACO that previously participated in Track 1 under paragraph (a)(1) of this section or a new ACO identified as a re-entering ACO because more than 50 percent of its ACO participants have recent prior experience in a Track 1 ACO, an ACO eligible to enter the BASIC track's glide path as determined under paragraphs (d)(1)(i) and (d)(2)(i) of this section may elect to enter its agreement period at any of the levels of risk and potential reward available under paragraphs (a)(4)(i)(A)(1) through (5) of this section.

(ii) An ACO that previously participated in Track 1 under paragraph (a)(1) of this section or a new ACO identified as a re-entering ACO because more than 50 percent of its ACO participants have recent prior experience in a Track 1 ACO may elect to enter its agreement period at any of the levels of risk and potential reward available under paragraphs (a)(4)(i)(A)(2) through (5) of this section.

(2) Automatic advancement. Unless the ACO elects to transition to a higher level of risk and potential reward within the BASIC track's glide path as provided in § 425.226(a)(2)(i), the ACO is automatically advanced to the next level of the BASIC track's glide path at the start of each subsequent performance year of the agreement period, if a higher level of risk and potential reward is available under the BASIC track.

(i) Exception for ACO entering the BASIC track's glide path for an agreement period beginning on July 1, 2019. The automatic advancement does not apply at the start of the second performance year for an ACO entering the BASIC track's glide path for an agreement period beginning on July 1, 2019. For performance year 2020, the ACO remains in the same level of the BASIC track's glide path that it entered for the July 1, 2019 through December 31, 2019 performance year, unless the ACO chooses to advance more quickly in accordance with § 425.226(a)(2)(i). The ACO is automatically advanced to the next level of the BASIC track's glide path at the start of performance year 2021 and

all subsequent performance years of the agreement period.

(ii) Exception for new legal entity identified as a low revenue ACO. An exception is available for a low revenue ACO that is a new legal entity and is not identified as a re-entering ACO that enters the BASIC track's glide path at Level A under paragraph (a)(4)(i)(A)(1) of this section, and is automatically advanced to Level B under paragraph (a)(4)(i)(A)(2) of this section for performance year 2 (or performance 3 in the case of ACOs entering an agreement period beginning on July 1, 2019). Prior to the automatic advancement of the ACO to Level C under paragraph (a)(4)(i)(A)(3) of this section, the ACO may elect to remain in Level B under paragraph (a)(4)(i)(A)(2) of this section for performance year 3 (performance year 4 in the case of ACOs entering an agreement period beginning on July 1, 2019). In the case of an ACO that elects to remain in Level B for an additional performance year pursuant to the second sentence of paragraph (a)(4)(i)(B)(2)(ii) of this section, and except as provided in paragraph (a)(4)(i)(B)(2)(vi) of this section, the ACO is automatically advanced to Level E under paragraph (a)(4)(i)(A)(5) of this section at the start of performance year 4 (or performance year 5 in the case of ACOs entering an agreement period beginning on July 1, 2019).

(iii) Exception for ACOs participating in the BASIC track's glide path that elect to maintain their participation level for performance year 2021. Prior to the automatic advancement for performance year 2021, an ACO that is participating in the BASIC track's glide path for performance year 2020 may elect to remain in the same level of the BASIC track's glide path that it entered for the 2020 performance year, for performance year 2021. For performance year 2022, the ACO is automatically advanced to the level of the BASIC track's glide path to which the ACO would have automatically advanced absent the election to maintain its participation level for performance year 2021, unless the ACO elects to transition to a higher level of risk and potential reward within the BASIC track's glide path as provided in

§ 425.226(a)(2)(i). A voluntary election by an ACO under this paragraph must be made in the form and manner and by a deadline established by CMS.

(iv) Exception for ACOs participating in the BASIC track's glide path that elect to maintain their participation level for performance year 2022. Prior to the automatic advancement for performance year 2022, an ACO that is participating in the BASIC track's glide path for performance year 2021 may elect to remain in the same level of the BASIC track's glide path in which it participated during the 2021 performance year, for performance year 2022. Except as provided in paragraph (a)(4)(i)(B)(2)(vi) of this section, for performance year 2023, the ACO is automatically advanced to the level of the BASIC track's glide path to which the ACO would have automatically advanced absent the election to maintain its participation level for performance year 2022 and, if applicable, the election to maintain its participation level for performance year 2021 under paragraph (a)(4)(i)(B)(2)(iii) of this section, unless the ACO elects to transition to a higher level of risk and potential reward within the BASIC track's glide path as provided in § 425.226(a)(2)(i). A voluntary election by an ACO under this paragraph must be made in the form and manner and by a deadline established by CMS.

(v) Prior to entering performance-based risk, an ACO must meet all requirements to participate under performance-based risk, including establishing an adequate repayment mechanism as specified under § 425.204(f) and selecting a MSR/MLR from the options specified under § 425.605(b).

(vi) For performance year 2023, an ACO in Level A under paragraph (a)(4)(i)(A)(I) of this section or in Level B under paragraph (a)(4)(i)(A)(2) of this section may elect to remain in the same level of the BASIC track's glide path in which it participated during performance year 2022, for the remainder of the agreement period, unless the ACO elects to transition to a higher level of risk and potential reward within the BASIC track's glide path as provided in § 425.226(a)(2)(i). If the ACO does not elect to remain under Level A or Level B, for performance year 2023,

the ACO is automatically advanced to the next level of the BASIC track's glide path to which the ACO would have automatically advanced absent any election to maintain its participation level for performance year 2022 under paragraph (a)(4)(i)(B)(2)(iv) of this section and, if applicable, the election to maintain its participation level for performance year 2021 under paragraph (a)(4)(i)(B)(2)(iii) of this section, unless the ACO elects to transition to a higher level of risk and potential reward within the BASIC track's glide path as provided in § 425.226(a)(2)(i). A voluntary election by an ACO under this paragraph must be made in the form and manner and by a deadline established by CMS.

(vii) For performance year 2024, an ACO with an agreement period beginning January 1, 2023 in Level A under paragraph (a)(4)(i)(A)(I) of this section or in Level B under paragraph (a)(4)(i)(A)(2) of this section may elect to remain in the same level of the BASIC track's glide path in which it participated during performance year 2023, for the remainder of the agreement period, unless the ACO elects to transition to a higher level of risk and potential reward within the BASIC track's glide path as provided in § 425.226(a)(2)(i). If the ACO does not elect to remain under Level A or Level B, for performance year 2024, the ACO is automatically advanced to the next level of the BASIC track's glide path, unless the ACO elects to transition to a higher level of risk and potential reward within the BASIC track's glide path as provided in § 425.226(a)(2)(i). A voluntary election by an ACO under this paragraph must be made in the form and manner and by a deadline established by CMS.

(3) If the ACO fails to meet the requirements to participate under performance-based risk under paragraph (a)(4)(i)(B)(2)(v) of this section, the agreement is terminated.

(4) If, in accordance with § 425.226(a)(2)(i), the ACO elects to transition to a higher level of risk and reward available under paragraphs (a)(4)(i)(A)(3) through (5) of this section, then the automatic transition to levels of higher risk and reward specified in paragraph (a)(4)(i)(B)(2) of this

section applies to all subsequent performance years of the agreement period.

(C) *Glide path progression for agreement periods beginning on or after January 1, 2024.* (1) *Level of glide path entry.* An ACO eligible to enter the BASIC track's glide path as determined under paragraph (g)(1) of this section may elect to enter its agreement period at any of the levels of risk and potential reward available under paragraphs (a)(4)(i)(A)(1) through (5) of this section.

(2) *Automatic advancement.* An ACO is automatically advanced to the next level of the BASIC track's glide path at the start of each subsequent performance year of the agreement period, if a higher level of risk and potential reward is available under the BASIC track, except as follows:

(i) The ACO elects to transition to a higher level of risk and potential reward within the BASIC track's glide path as provided in § 425.226(a)(2)(i).

(ii) The ACO elects to maintain its level of participation as provided in paragraph (a)(4)(i)(C)(3) of this section.

(iii) The ACO is automatically advanced to Level E pursuant to paragraph (h)(2)(i) of this section.

(3) *Election to remain under a one-sided model.* An eligible ACO that enters the BASIC track's glide path at Level A under paragraph (a)(4)(i)(A)(1) of this section and is currently at Level A may elect to remain in Level A under paragraph (a)(4)(i)(A)(1) of this section for all subsequent performance years of the agreement period.

(i) To be eligible to participate under Level A of the BASIC track as described in this paragraph, the ACO must meet the following requirements: the ACO is participating in its first agreement period under the BASIC track under paragraph (a)(4) of this section, and is not participating in an agreement period under the BASIC track as a renewing ACO (as defined at § 425.20) or a re-entering ACO (as defined in § 425.20) that previously participated in the BASIC track's glide path under paragraph (a)(4) of this section; and the ACO is inexperienced with performance-based risk Medicare ACO initiatives (as defined in § 425.20).

(ii) A voluntary election by an ACO under this paragraph (a)(4)(i)(C)(3) must be made in the form and manner and by a deadline established by CMS.

(iii) The ACO's election to remain in Level A applies for the entirety of the agreement period, unless the ACO elects to transition to a higher level of risk and potential reward within the BASIC track's glide path as provided in § 425.226(a)(2)(i).

(4) Prior to entering performance-based risk, an ACO must meet all requirements to participate under performance-based risk, including establishing an adequate repayment mechanism as specified under § 425.204(f) and selecting a MSR/MLR from the options specified under § 425.605(b).

(5) If the ACO fails to meet the requirements to participate under performance-based risk under paragraph (a)(4)(i)(C)(4) of this section, the agreement is terminated.

(6) If, in accordance with § 425.226(a)(2)(i), the ACO elects to transition to a higher level of risk and reward available under paragraphs (a)(4)(i)(A)(3) through (5) of this section, then the automatic transition to levels of higher risk and reward specified in paragraph (a)(4)(i)(C)(2) of this section applies to all subsequent performance years of the agreement period.

(ii) *Agreement period under Level E of the BASIC track.* If an ACO enters the BASIC track and is ineligible to participate under the glide path described in paragraph (a)(4)(i) of this section, as determined under paragraph (d) or paragraph (g)(2) of this section, as applicable, Level E as described in paragraph (a)(4)(i)(A)(5) of this section applies to all performance years of the agreement period.

(b) For agreement periods beginning before July 1, 2019, ACOs may operate under the one-sided model for a maximum of 2 agreement periods. An ACO may not operate under the one-sided model for a second agreement period unless the—

(1) Immediately preceding agreement period was under the one-sided model; and

(2) The ACO meets the criteria established for ACOs seeking to renew their agreements under § 425.224(b).

(c) For agreement periods beginning before July 1, 2019, an ACO experiencing a net loss during a previous agreement period may reapply to participate under the conditions in § 425.202(a), except the ACO must also identify in its application the cause(s) for the net loss and specify what safeguards are in place to enable the ACO to potentially achieve savings in its next agreement period.

(d) For agreement periods beginning on or after July 1, 2019, and before January 1, 2024, CMS determines an ACO's eligibility for the Shared Savings Program participation options specified in paragraph (a) of this section as follows:

(1) If an ACO is identified as a high revenue ACO, the ACO is eligible for the participation options indicated in paragraph (a) of this section as follows:

(i) If the ACO is determined to be inexperienced with performance-based risk Medicare ACO initiatives, the ACO may enter either the BASIC track's glide path at any of the levels of risk and potential reward available under paragraphs (a)(4)(i)(A)(1) through (5) of this section, except as provided in paragraph (a)(4)(i)(B) of this section, or the ENHANCED track under paragraph (a)(3) of this section.

(ii) If the ACO is determined to be experienced with performance-based risk Medicare ACO initiatives:

(A) The ACO may enter the ENHANCED track under paragraph (a)(3) of this section except as provided in paragraph (d)(1)(ii)(B) of this section.

(B) An ACO in a first or second agreement period beginning in 2016 or 2017 identified as experienced with performance-based risk Medicare ACO initiatives based on participation in the Track 1+ Model may renew for a consecutive agreement period beginning on July 1, 2019, or January 1, 2020 (respectively), under either the BASIC track Level E under paragraph (a)(4)(i)(A)(5) of this section, or the ENHANCED track under paragraph (a)(3) of this section.

(2) If an ACO is identified as a low revenue ACO, the ACO is eligible for the participation options indicated in paragraph (a) of this section as follows:

(i) If the ACO is determined to be inexperienced with performance-based risk Medicare ACO initiatives, the ACO

may enter either the BASIC track's glide path at any of the levels of risk and potential reward available under paragraphs (a)(4)(i)(A)(1) through (5) of this section, except as provided in paragraph (a)(4)(i)(B) of this section, or the ENHANCED track under paragraph (a)(3) of this section.

(ii) If the ACO is determined to be experienced with performance-based risk Medicare ACO initiatives, the ACO may enter under either the BASIC track Level E under paragraph (a)(4)(i)(A)(5) of this section, except as provided in paragraph (d)(3) of this section, or the ENHANCED track under paragraph (a)(3) of this section.

(3) Low revenue ACOs may participate under the BASIC track for a maximum of two agreement periods. A low revenue ACO may only participate in the BASIC track for a second agreement period if it satisfies either of the following:

(i) The ACO is the same legal entity as a current or previous ACO that previously entered into a participation agreement for participation in the BASIC track only one time.

(ii) For a new ACO identified as a re-entering ACO, the ACO in which the majority of the new ACO's participants were participating previously entered into a participation agreement for participation in the BASIC track only one time.

(e) For performance years beginning on or after July 1, 2019 and before January 1, 2024, CMS monitors low revenue ACOs identified as experienced with performance-based risk Medicare ACO initiatives, during an agreement period in the BASIC track, for changes in the revenue of ACO participants that would cause the ACO to be considered a high revenue ACO and ineligible for participation in the BASIC track. If the ACO meets the definition of a high revenue ACO (as specified in § 425.20)—

(1) The ACO is permitted to complete the remainder of its current performance year under the BASIC track, but is ineligible to continue participation in the BASIC track after the end of that performance year if it continues to meet the definition of a high revenue ACO; and

(2) CMS takes compliance action as specified in §§ 425.216 and 425.218, up to

and including termination of the participation agreement, to ensure the ACO does not continue in the BASIC track for subsequent performance years of the agreement period if it continues to meet the definition of a high revenue ACO.

(f) For agreement periods beginning on July 1, 2019, and in subsequent years, CMS determines the agreement period an ACO is entering for purposes of applying program requirements that phase-in over multiple agreement periods, as follows:

(1) An ACO entering an initial agreement period is considered to be entering a first agreement period in the Shared Savings Program.

(2) A re-entering ACO is considered to be entering a new agreement period in the Shared Savings Program as follows—

(i) An ACO whose participation agreement expired without having been renewed re-enters the program under the next consecutive agreement period in the Shared Savings Program;

(ii) An ACO whose participation agreement was terminated under § 425.218 or § 425.220 re-enters the program at the start of the same agreement period in which it was participating at the time of termination from the Shared Savings Program, beginning with the first performance year of that agreement period; or

(iii) A new ACO identified as a re-entering ACO enters the program in an agreement period that is determined based on the prior participation of the ACO in which the majority of the new ACO's participants were participating.

(A) If the participation agreement of the ACO used in this determination expired without having been renewed or was terminated, the agreement period of the re-entering ACO is determined in accordance with paragraph (f)(2)(i) or (ii) of this section, as applicable.

(B) If the ACO used in this determination is currently participating in the program, the new ACO is considered to be entering into the same agreement period as this currently participating ACO, beginning with the first performance year of that agreement period.

(3) A renewing ACO is considered to be entering the next consecutive agree-

ment period in the Shared Savings Program.

(4) For purposes of this paragraph (f), program requirements that phase in over multiple agreement periods are as follows:

(i) The quality performance standard as described in § 425.502(a) or § 425.512(a), as applicable.

(ii) The weight used in calculating the regional adjustment to the ACO's historical benchmark as described in §§ 425.601(f), and 425.656(d).

(iii) The use of equal weights to weight each benchmark year as specified in §§ 425.601(e), and 425.652(c)(2).

(g) For agreement periods beginning on or after January 1, 2024, CMS determines an ACO's eligibility for the Shared Savings Program participation options specified in paragraph (a) of this section as follows:

(1) If an ACO is determined to be inexperienced with performance-based risk Medicare ACO initiatives, the ACO may enter either the BASIC track's glide path at any of the levels of risk and potential reward under paragraphs (a)(4)(i)(A)(1) through (5) of this section, or the ENHANCED track under paragraph (a)(3) of this section.

(i) An ACO that is inexperienced with performance-based risk Medicare ACO initiatives may participate under the BASIC track's glide path for a maximum of two agreement periods, as specified in paragraph (a)(4)(i)(C) of this section.

(ii) An ACO that enters an agreement under the BASIC track's glide path at either Level A under paragraph (a)(4)(i)(A)(1) of this section or Level B under paragraph (a)(4)(i)(A)(2) of this section is deemed to have completed one agreement under the BASIC track's glide path and is only eligible to enter a second agreement under the BASIC track's glide path if the ACO continues to meet the definition of inexperienced with performance-based risk Medicare ACO initiatives and satisfies either of the following:

(A) The ACO is the same legal entity as a current or previous ACO that previously entered into a participation agreement for participation in the BASIC track's glide path only one time.

(B) For a new ACO identified as a re-entering ACO, the ACO in which the majority of the new ACO's participants were participating previously entered into a participation agreement for participation in the BASIC track's glide path only one time.

(iii) An ACO that is determined to be inexperienced with performance-based risk Medicare ACO initiatives but is not eligible to enter the BASIC track's glide path as specified in paragraph (a)(4)(i)(C) of this section may enter either the BASIC track Level E under paragraph (a)(4)(i)(A)(5) of this section for all performance years of the agreement period, or the ENHANCED track under paragraph (a)(3) of this section.

(2) If an ACO is determined to be experienced with performance-based risk Medicare ACO initiatives, the ACO may enter either the BASIC track Level E under paragraph (a)(4)(i)(A)(5) of this section for all performance years of the agreement period, or the ENHANCED track under paragraph (a)(3) of this section.

(h)(1) For performance years beginning on or after January 1, 2024, CMS monitors ACOs identified as inexperienced with performance-based risk Medicare ACO initiatives and participating in the BASIC track under a one-sided model during an agreement period pursuant to an election under paragraph (a)(4)(i)(B)(2)(vi), paragraph (a)(4)(i)(B)(2)(vii), or paragraph (a)(4)(i)(C)(3) of this section for changes to their certified list of ACO participants that would cause the ACO to be considered experienced with performance-based risk Medicare ACO initiatives and ineligible for participation in a one-sided model.

(2) If the ACO meets the definition of experienced with performance-based risk Medicare ACO initiatives (under § 425.20)—

(i) The ACO is permitted to complete the performance year for which it met the definition of experienced with performance-based risk Medicare ACO initiatives in a one-sided model of the BASIC track, but is ineligible to continue participation in the one-sided model after the end of that performance year if it continues to meet the definition of experienced with performance-based risk Medicare ACO initia-

tives. The ACO will be automatically advanced to Level E within the BASIC track under paragraph (a)(4)(i)(A)(5) of this section at the start of the next performance year and will remain in Level E for all subsequent performance years of the agreement period; and

(ii) Prior to entering performance-based risk, the ACO must meet all requirements to participate under performance-based risk, including establishing an adequate repayment mechanism as specified under § 425.204(f) and selecting a MSR/MLR from the options specified under § 425.605(b), in accordance with paragraph (a)(4)(i)(B)(2)(v) of this section or paragraph (a)(4)(i)(C)(4) of this section, as applicable. If the ACO fails to meet the requirements to participate under performance-based risk, the agreement is terminated in accordance with paragraph (a)(4)(i)(B)(3) of this section or paragraph (a)(4)(i)(C)(5) of this section, as applicable.

[76 FR 67973, Nov. 2, 2011, as amended at 80 FR 32841, June 9, 2015; 83 FR 68069, Dec. 31, 2018; 85 FR 27625, May 8, 2020; 85 FR 85041, Dec. 28, 2020; 86 FR 45521, Aug. 13, 2021; 87 FR 70235, Nov. 18, 2022]

§ 425.601 Establishing, adjusting, and updating the benchmark for agreement periods beginning on or after July 1, 2019, and before January 1, 2024.

(a) *Computing per capita Medicare Part A and Part B benchmark expenditures for an ACO's first agreement period.* For agreement periods beginning on July 1, 2019, and in subsequent years, in computing an ACO's historical benchmark for its first agreement period under the Shared Savings Program, CMS determines the per capita Parts A and B fee-for-service expenditures for beneficiaries that would have been assigned to the ACO in any of the 3 most recent years prior to the start of the agreement period using the ACO participant TINs identified before the start of the agreement period as required under § 425.118(a) and the beneficiary assignment methodology selected by the ACO for the first performance year of the agreement period as required under § 425.226(a)(1). CMS does all of the following: