

§ 425.606 Calculation of shared savings and losses under Track 2.

(a) *General rule.* For each performance year, CMS determines whether the estimated average per capita Medicare expenditures under the ACO for Medicare fee-for-service beneficiaries for Parts A and B services are above or below the updated benchmark determined under § 425.602 or § 425.603. In order to qualify for a shared savings payment under Track 2, or to be responsible for sharing losses with CMS, an ACO's average per capita Medicare expenditures under the ACO for Medicare fee-for-service beneficiaries for Parts A and B services for the performance year must be below or above the updated benchmark, respectively, by at least the minimum savings or loss rate under paragraph (b) of this section.

(1) *Newly assigned beneficiaries.* CMS uses an ACO's HCC prospective risk score to adjust the benchmark for changes in severity and case mix in this population.

(2) *Continuously assigned beneficiaries.* (i) CMS uses demographic factors to adjust the benchmark for changes in the continuously assigned beneficiary population.

(ii) If the prospective HCC risk score is lower in the performance year for this population, CMS will adjust the benchmark for changes in severity and case mix for this population using this lower prospective HCC risk score.

(3) Assigned beneficiary changes in demographics and health status are used to adjust benchmark expenditures as described in § 425.602(a) or § 425.603(c). In adjusting the benchmark for health status and demographic changes CMS makes separate adjustments for each of the following populations of beneficiaries:

- (i) ESRD.
- (ii) Disabled.
- (iii) Aged/dual eligible Medicare and Medicaid beneficiaries.
- (iv) Aged/non-dual eligible Medicare and Medicaid beneficiaries.

(4)(i) For performance years before 2017 to minimize variation from catastrophically large claims, CMS truncates an assigned beneficiary's total annual Parts A and B fee-for-service per capita expenditures at the 99th percentile of national Medicare fee-for-

service expenditures as determined for each performance year.

(ii) For the 2017 performance year and subsequent performance years, to minimize variation from catastrophically large claims, CMS truncates an assigned beneficiary's total annual Parts A and B fee-for-service per capita expenditures at the 99th percentile of national Medicare fee-for-service expenditures as determined for the applicable performance year for assignable beneficiaries identified for the 12-month calendar year corresponding to the performance year.

(5) CMS uses a 3 month claims run out with a completion factor to calculate an ACO's per capita expenditures for each performance year.

(6) Calculations of the ACO's expenditures will include the payment amounts included in Part A and B fee-for-service claims.

(i) These calculations will exclude indirect medical education (IME) and disproportionate share hospital (DSH) payments.

(ii) These calculations will take into consideration individually beneficiary identifiable payments made under a demonstration, pilot or time limited program.

(A) For performance years beginning before 2018, these calculations will take into consideration all individually beneficiary identifiable payments, including interim payments, made under a demonstration, pilot or time limited program.

(B) For performance year 2018 and subsequent performance years, these calculations will take into consideration individually beneficiary identifiable final payments made under a demonstration, pilot or time limited program.

(7) In order to qualify for a shared savings payment, the ACO's average per capita Medicare expenditures for the performance year must be below the applicable updated benchmark by at least the minimum savings rate established for the ACO under paragraph (b) of this section.

(b) *Minimum savings or loss rate.* (1)(i) For agreement periods beginning in 2012 through 2015, the ACO's MSR and MLR are set at 2 percent.

(ii) For agreement periods beginning in 2016 and subsequent years, as part of the ACO's application for, or renewal of, program participation, the ACO must choose from the following options for establishing the MSR/MLR for the duration of the agreement period:

(A) Zero percent MSR/MLR.

(B) Symmetrical MSR/MLR in a 0.5 percent increment between 0.5–2.0 percent.

(C) Symmetrical MSR/MLR that varies, based on the number of beneficiaries assigned to the ACO under subpart E of this part. The MSR for an ACO under Track 2 is the same as the MSR that would apply in the one-sided model under § 425.604(b) and is based on the number of assigned beneficiaries. The MLR under Track 2 is equal to the negative MSR.

(2) To qualify for shared savings under Track 2, an ACO's average per capita Medicare expenditures for the performance year must be below its updated benchmark costs for the year by at least the MSR established for the ACO.

(3) To be responsible for sharing losses with the Medicare program, an ACO's average per capita Medicare expenditures for the performance year must be above its updated benchmark costs for the year by at least the MLR established for the ACO.

(c) *Qualification for shared savings payment*—(1) *For performance years (or a performance period) beginning on or before January 1, 2020.* To qualify for shared savings, an ACO must meet the minimum savings rate requirement established under paragraph (b) of this section, meet the minimum quality performance standards established under § 425.502, and otherwise maintain its eligibility to participate in the Shared Savings Program under this part.

(2) *For the performance year beginning on January 1, 2021.* To qualify for shared savings, an ACO must meet the minimum savings rate requirement established under paragraph (b) of this section, meet the quality performance standard established under § 425.512, and otherwise maintain its eligibility to participate in the Shared Savings Program under this part.

(d) *Final sharing rate*—(1) *For performance years (or a performance period) beginning on or before January 1, 2020.* An ACO that meets all the requirements for receiving shared savings payments under Track 2 will receive a shared savings payment of up to 60 percent of all the savings under the updated benchmark, as determined on the basis of its quality performance under § 425.502 (up to the performance payment limit described in paragraph (e)(2) of this section).

(2) *For the performance year beginning on January 1, 2021.* An ACO that meets all the requirements for receiving shared savings payments under Track 2 will receive a shared savings payment of 60 percent of all the savings under the updated benchmark (up to the performance payment limit described in paragraph (e)(2) of this section).

(e) *Performance payment.* (1) If an ACO qualifies for savings by meeting or exceeding the MSR, the final sharing rate will apply to an ACO's savings on a first dollar basis.

(2) The amount of shared savings an eligible ACO receives under Track 2 may not exceed 15 percent of its updated benchmark.

(f) *Shared loss rate*—(1) *For performance years (or a performance period) beginning on or before January 1, 2020.* For an ACO that is required to share losses with the Medicare program for expenditures over the updated benchmark, the amount of shared losses is determined based on the inverse of its final sharing rate described in paragraph (d)(1) of this section (that is, 1 minus the final shared savings rate determined under paragraph (d)(1) of this section). The shared loss rate—

(i) May not exceed 60 percent; and

(ii) May not be less than 40 percent.

(2) *For the performance year beginning on January 1, 2021.* For an ACO that is required to share losses with the Medicare program for expenditures over the updated benchmark, the amount of shared losses is determined as follows:

(i) If the ACO meets the quality performance standard established in § 425.512, CMS determines the shared loss rate as follows:

(A) Calculate the quotient of the MIPS Quality performance category points earned divided by the total

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MIPS Quality performance category points available.

(B) Calculate the product of the quotient determined in paragraph (f)(2)(i)(A) of this section and 60 percent.

(C) Calculate the shared loss rate as 1 minus the product determined in paragraph (f)(2)(i)(B) of this section. The shared loss rate—

(1) May not exceed 60 percent; and

(2) May not be less than 40 percent.

(ii) If the ACO fails to meet the quality performance standard established in § 425.512, the shared loss rate is 60 percent.

(g) *Loss recoupment limit.* The amount of shared losses for which an eligible ACO is liable may not exceed the following percentages of its updated benchmark as determined under § 425.602 or § 425.603:

(1) 5 percent in the first performance year of participation in Track 2 under the Shared Savings Program.

(2) 7.5 percent in the second performance year.

(3) 10 percent in the third and any subsequent performance year.

(h) *Notification of savings and losses.*

(1) CMS notifies an ACO in writing regarding whether the ACO qualifies for a shared savings payment, and if so, the amount of the payment due.

(2) CMS provides written notification to an ACO of the amount of shared losses, if any, that it must repay to the program.

(3) If an ACO has shared losses, the ACO must make payment in full to CMS within 90 days of receipt of notification.

(i) *Extreme and uncontrollable circumstances.* For performance year 2017 and subsequent performance years, the following adjustment is made in calculating the amount of shared losses, after the application of the shared loss rate in paragraph (f) of this section and the loss recoupment limit in paragraph (g) of this section.

(1) CMS determines the percentage of the ACO's performance year assigned beneficiary population affected by an extreme and uncontrollable circumstance.

(2) CMS reduces the amount of the ACO's shared losses by an amount determined by multiplying the shared

losses by the percentage of the total months in the performance year affected by an extreme and uncontrollable circumstance, and the percentage of the ACO's assigned beneficiaries who reside in an area affected by an extreme and uncontrollable circumstance.

(i) For an ACO that is liable for a pro-rated share of losses under § 425.221(b)(2)(ii) or (b)(3)(i), the amount of shared losses determined for the performance year during which the termination becomes effective is adjusted according to this paragraph (i)(2).

(ii) [Reserved]

(3) 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.

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

(j) *January 1, 2019 through June 30, 2019.* Shared savings or shared losses for the January 1, 2019 through June 30, 2019 performance year are calculated as described in § 425.609.

[76 FR 67973, Nov. 2, 2011, as amended at 80 FR 32842, June 9, 2015; 81 FR 38017, June 10, 2016; 82 FR 53370, Nov. 15, 2017; 82 FR 60918, Dec. 26, 2017; 83 FR 60094, Nov. 23, 2018; 83 FR 68077, Dec. 31, 2018; 85 FR 85043, Dec. 28, 2020]

§ 425.608 Determining first year performance for ACOs beginning April 1 or July 1, 2012.

(a) For April 1 and July 1, 2012 starters, first year (defined as 21 and 18 months respectively) performance will be based on an optional interim payment calculation (based on the ACO's first 12 months of participation) and a final reconciliation at the end of the ACO's first performance year. Unless stated otherwise, for purposes of the interim payment calculation and first year reconciliation, the methodology under subpart E of this part for assigning beneficiaries and the methodology described in § 425.602 through § 425.606 for calculating shared savings and