

## § 425.608

## 42 CFR Ch. IV (10–1–23 Edition)

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

losses will apply, and quality performance will be assessed as described in subpart F of this part.

(b) In the interim payment calculation, based on the ACO's first 12 months of performance—

(1) CMS compares the first 12 months of per capita beneficiary expenditures to a historical benchmark updated for the period which includes the ACO's first 12 months of participation, taking into account changes in health status and demographics; and

(2) Quality performance is based on GPRO quality data reported for CY 2012.

(c)(1) The interim payment calculation is reconciled with the ACO's performance for its complete first performance year, defined as 21 months for April 1, 2012 starters and 18 months for July 1, 2012 starters.

(2) The first year reconciliation takes into account expenditures spanning the entire 21 or 18 months of the first performance year.

(3) First performance year expenditures are summed over beneficiaries assigned in two overlapping 12 month assignment windows.

(i) The first window will be the first 12 months used for interim payment calculation.

(ii) The second window will be CY2013.

(4) Expenditures for the first performance year are the sum of aggregate expenditure dollars accounting for the ACO's first 6 or 9 months of performance within CY 2012 for beneficiaries assigned for the interim payment calculation and aggregate dollars calculated for CY2013 for beneficiaries assigned for CY 2013.

(5) Adjustments for health status and demographic changes are performed as described in § 425.604 through § 425.606 with the following exceptions:

(i) Beneficiaries from the CY2013 assignment window are identified as continuously assigned or newly assigned relative to the previous calendar year.

(ii) The adjustment factor identified for purposes of the interim payment calculation is applied to the 6 months or 9 months of the ACO's first performance year that lie within CY2012.

(6) The updated benchmark, stated in aggregate dollars, is the sum of the in-

terim updated benchmark for the average fraction of expenditures incurred in the latter 6 or 9 months of CY 2012 and an updated aggregate benchmark representing CY 2013.

(7) A savings percentage (based on a comparison of summed expenditures to summed updated benchmark dollars) for the ACO's 18 or 21 month performance year is compared to the ACO's MSR or MLR. The reconciled amount of the shared savings or losses owed to or by the ACO for the performance year is net of any interim payments of shared savings or losses.

(8) Quality performance for the first year reconciliation is based on complete and accurate reporting, of all required quality measures, for CYs 2012 and 2013.

(d) An ACO with a start date of April 1, 2012 or July 1, 2012 has the option to request an interim payment calculation based on quality and financial performance for its first 12 months of program participation. As required under § 425.204(f), the ACO requesting an interim payment calculation must have a mechanism in place to pay back the interim payment if final reconciliation determines an overpayment.

(e) Unless otherwise stated, program requirements which apply in the course of a performance year apply to the interim payment calculation and first year reconciliation.

#### **§ 425.609 Determining performance for 6-month performance years during CY 2019.**

(a) *General.* An ACO's financial and quality performance for a 6-month performance year during 2019 are determined as described in this section.

(b) *January 2019 through June 2019.* For ACOs participating in a 6-month performance year from January 1, 2019, through June 30, 2019, under § 425.200(b)(2)(ii)(B) and for ACOs eligible for pro-rated shared savings or liable for pro-rated shared losses in accordance with § 425.221(b)(3)(i) for the performance period from January 1, 2019, through June 30, 2019, CMS reconciles the ACO for the period from January 1, 2019, through June 30, 2019, after the conclusion of CY 2019, based on the 12-month calendar year and pro-rates shared savings or shared losses to