

year starting on July 1, 2019 (§ 425.605 or § 425.610), is applied to all savings under the updated benchmark specified under paragraph (c)(3)(i) of this section, not to exceed the performance payment limit for the ACO based on its track; and

(2) After applying the applicable performance payment limit, CMS pro-rates any shared savings amount determined under paragraph (c)(3)(ii)(D)(I) of this section by multiplying the amount by one-half, which represents the fraction of the calendar year covered by the July 1, 2019 through December 31, 2019 performance year.

(E) For an ACO responsible for shared losses under paragraph (c)(3)(ii)(C)(3) of this section—

(I) The shared loss rate, determined based on the track the ACO is participating under during the performance year starting on July 1, 2019 (§ 425.605 or § 425.610), is applied to all losses under the updated benchmark specified under paragraph (c)(3)(i) of this section, not to exceed the loss recoupment limit for the ACO based on its track; and

(2) After applying the applicable loss recoupment limit, CMS pro-rates any shared losses amount determined under paragraph (c)(3)(ii)(E)(I) of this section by multiplying the amount by one-half, which represents the fraction of the calendar year covered by the July 1, 2019 through December 31, 2019 performance year.

(d) *Extreme and uncontrollable circumstances.* For ACOs affected by extreme and uncontrollable circumstances during CY 2019—

(1) In calculating the amount of shared losses owed, CMS makes adjustments to the amount determined in paragraph (b)(3)(ii)(E)(I) or (c)(3)(ii)(E)(I) of this section, as specified in § 425.605(f), § 425.606(i), or § 425.610(i), as applicable; and

(2) In determining the ACO's quality performance score for the 2019 quality reporting period, CMS uses the alternative scoring methodology specified in § 425.502(f).

(e) *Notification of savings and losses.*

(1) CMS notifies the ACO of shared savings or shared losses separately for the January 1, 2019 through June 30, 2019 performance year (or performance period) and the July 1, 2019 through De-

cember 31, 2019 performance year, consistent with the notification requirements specified in §§ 425.604(f), 425.605(e), 425.606(h), and 425.610(h), as applicable:

(i) 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.

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

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

(2) If an ACO is reconciled for both the January 1, 2019 through June 30, 2019 performance year (or performance period) and the July 1, 2019 through December 31, 2019 performance year, CMS issues a separate notice of shared savings or shared losses for each performance year (or performance period), and if the ACO has shared savings for one performance year (or performance period) and shared losses for the other performance year (or performance period), CMS reduces the amount of shared savings by the amount of shared losses.

(i) If any amount of shared savings remains after completely repaying the amount of shared losses owed, the ACO is eligible to receive payment for the remainder of the shared savings.

(ii) If the amount of shared losses owed exceeds the amount of shared savings earned, the ACO is accountable for payment of the remaining balance of shared losses in full.

[83 FR 60094, Nov. 23, 2018, as amended at 83 FR 68078, Dec. 31, 2018]

#### **§ 425.610 Calculation of shared savings and losses under the ENHANCED track.**

(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 § 425.601, 425.602, 425.603, or 425.652. In order to qualify for a shared savings payment under the ENHANCED track, 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) Risk adjustment for ACOs in agreement periods beginning on or before January 1, 2019. CMS does the following to adjust the benchmark each performance year:

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

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

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

(2) Risk adjustment for ACOs in agreement periods beginning on July 1, 2019, and in subsequent years. CMS uses an ACO's prospective HCC risk score to adjust the benchmark for changes in severity and case mix in the assigned beneficiary population between BY3 and the performance year.

(i) For agreement periods beginning before January 1, 2024:

(A) Positive adjustments in prospective HCC risk scores are subject to a cap of 3 percent.

(B) This cap is the maximum increase in risk scores for each agreement period, such that any positive adjustment between BY3 and any performance year in the agreement period cannot be larger than 3 percent.

(ii) For agreement periods beginning on January 1, 2024, and in subsequent years:

(A) Positive adjustments in prospective HCC risk scores are subject to a cap equal to the ACO's aggregate growth in demographic risk scores between BY3 and the performance year (positive or negative) plus 3 percentage points.

(B) The cap described in paragraph (a)(2)(ii)(A) of this section will apply to prospective HCC risk score growth for a population described in paragraph (a)(3) of this section only if the ACO's aggregate growth in prospective HCC risk scores between BY3 and the performance year across all of the populations described in paragraph (a)(3) of this section exceeds this cap. If the cap described in paragraph (a)(2)(ii)(A) of this section is determined to apply, the value of the cap is the maximum increase in risk scores for the applicable performance year, such that any positive adjustment between BY3 and the performance year cannot be larger than the value of the cap for any of the populations described in paragraph (a)(3) of this section.

(C) The aggregate growth in demographic risk scores for purposes of paragraph (a)(2)(ii)(A) of this section and the aggregate growth in prospective HCC risk scores for purposes of paragraph (a)(2)(ii)(B) of this section is calculated by taking a weighted average of the growth in demographic risk scores or prospective HCC risk scores, as applicable, across the populations described in paragraph (a)(3) of this section. When calculating the weighted average growth in demographic risk scores or prospective HCC risk scores, as applicable, the weight applied to the growth in risk scores (expressed as a ratio of the ACO's performance year risk score to the ACO's BY3 risk score) for each Medicare enrollment type is equal to the product of the historical benchmark expenditures for that enrollment type and the performance year person years for that enrollment type.

(3) In risk adjusting the benchmark as described in §§ 425.601(a)(10), 425.602(a)(9), 425.603(c)(10), and 425.652(a)(10) 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, and the supplemental payment for IHS/Tribal hospitals and Puerto Rico hospitals.

(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) 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:

(i) Zero percent MSR/MLR

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

(iii) 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 the ENHANCED track is the same as the MSR that would apply in the one-sided model under either § 425.604(b) (for ACOs entering an agreement period on or before January 1, 2019) or § 425.605(b)(1) (for ACOs entering an agreement period on July 1, 2019, and in subsequent years) and is based on the number of assigned beneficiaries. The MLR under the ENHANCED track is equal to the negative MSR.

(2) To qualify for shared savings under the ENHANCED track, 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 performance years beginning on or after 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 the ENHANCED track will receive a shared savings payment of up to 75 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 performance years beginning on January 1, 2021, or January 1, 2022.* An ACO that meets all the requirements for receiving shared savings payments under the ENHANCED track will receive a shared savings payment of 75 percent of all the savings under the updated benchmark (up to the performance payment limit described in paragraph (e)(2) of this section).

(3) *For the performance year beginning on January 1, 2023.* An ACO that meets all the requirements for receiving shared savings payments under the ENHANCED track will receive a shared savings payment equal to a percentage of all the savings under the updated benchmark (up to the performance payment limit described in paragraph (e)(2) of this section). The percentage is as follows:

(i) 75 percent for an ACO that meets the quality performance standard by meeting the criteria specified in § 425.512(a)(2) or (a)(4)(i).

(ii) 75 percent multiplied by the ACO's health equity adjusted quality performance score calculated according to § 425.512(b) for an ACO that meets the alternative quality performance standard by meeting the criteria specified in § 425.512(a)(4)(ii).

(4) *For performance years beginning on or after January 1, 2024.* An ACO that meets all the requirements for receiving shared savings payments under the

ENHANCED track will receive a shared savings payment equal to a percentage of all the savings under the updated benchmark (up to the performance payment limit described in paragraph (e)(2) of this section). The percentage is as follows:

(i) 75 percent for an ACO that meets the quality performance standard by meeting the criteria specified in § 425.512(a)(2) or (a)(5)(i).

(ii) 75 percent multiplied by the ACO's health equity adjusted quality performance score calculated according to § 425.512(b) for an ACO that meets the alternative quality performance standard by meeting the criteria specified in § 425.512(a)(5)(ii).

(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 the ENHANCED track may not exceed 20 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 75 percent; and

(ii) May not be less than 40 percent.

(2) *For performance years beginning on January 1, 2021, or January 1, 2022.* 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 MIPS Quality performance category points available.

(B) Calculate the product of the quotient determined in paragraph (f)(2)(i)(A) of this section, and 75 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 75 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 75 percent.

(3) *For the performance year beginning on January 1, 2023.* 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 either the quality performance standard established in § 425.512 applicable for the performance year by meeting the criteria specified in § 425.512(a)(2) or (a)(4)(i), or the alternative quality performance standard established in § 425.512(a)(4)(ii), CMS determines the shared loss rate as follows:

(A) Calculate the product of 75 percent and the ACO's health equity adjusted quality performance score calculated according to § 425.512(b).

(B) Calculate the shared loss rate as 1 minus the product determined in paragraph (f)(3)(i)(A) of this section. The shared loss rate—

- (1) May not exceed 75 percent; and
- (2) May not be less than 40 percent.

(ii) If the ACO fails to meet either the quality performance standard or the alternative quality performance standard established in § 425.512 applicable for the performance year, the shared loss rate is 75 percent.

(4) *For performance years beginning on or after January 1, 2024.* 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 either the quality performance standard established in § 425.512 applicable for the performance year by meeting the criteria specified in § 425.512(a)(2) or (a)(5)(i), or the alternative quality performance standard established in § 425.512(a)(5)(ii),

CMS determines the shared loss rate as follows:

(A) Calculate the product of 75 percent and the ACO's health equity adjusted quality performance score calculated according to § 425.512(b).

(B) Calculate the shared loss rate as 1 minus the product determined in paragraph (f)(4)(i)(A) of this section. The shared loss rate—

- (1) May not exceed 75 percent; and
- (2) May not be less than 40 percent.

(ii) If the ACO fails to meet either the quality performance standard or the alternative quality performance standard established in § 425.512 for the applicable performance year, the shared loss rate is 75 percent.

(g) *Loss recoupment limit.* The amount of shared losses for which an eligible ACO is liable may not exceed 15 percent of its updated benchmark as determined under § 425.601, 425.602, 425.603 or 425.652.

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

(k) *July 1, 2019 through December 31, 2019 performance year.* Shared savings or shared losses for the July 1, 2019 through December 31, 2019 performance year are calculated as described in § 425.609.

[80 FR 32842, June 9, 2015, as amended at 81 FR 38017, June 10, 2016; 82 FR 53370, Nov. 15, 2017; 82 FR 60918, Dec. 26, 2017; 83 FR 60096, Nov. 23, 2018; 83 FR 68079, Dec. 31, 2018; 85 FR 85044, Dec. 28, 2020; 87 FR 70240, Nov. 18, 2022]

EDITORIAL NOTE: At 81 FR 38017, June 10, 2016, in § 425.610, paragraph (a)(2)(ii), the phrase “adjust for changes” was removed, and in its place the phrase “adjust the benchmark for changes” was added, however, the phrase “adjust for changes” does not appear in this paragraph, so the amendment could not be incorporated.

**§ 425.611 Adjustments to Shared Savings Program calculations to address the COVID–19 pandemic.**

(a) *General.* This section describes adjustments CMS makes to Shared Savings Program calculations to address the impact of the COVID–19 pandemic.

(b) *Episodes of care for treatment of COVID–19.* (1) CMS identifies an episode of care for treatment of COVID–19 based on either of the following:

(i) Discharges for inpatient services eligible for the 20 percent adjustment under section 1886(d)(4)(C) of the Act.

(ii) Discharges for acute care inpatient services for treatment of COVID–19 from facilities that are not paid under the inpatient prospective payment system, such as CAHs, when the date of discharge occurs within the Public Health Emergency as defined in § 400.200 of this chapter.

(2) CMS defines the episode of care as starting in the month in which the inpatient stay begins as identified by the admission date, all months during the inpatient stay, and the month following the end of the inpatient stay as indicated by the discharge date.

(c) *Applicability of adjustments.* Notwithstanding any other provision in this part, CMS adjusts the following Shared Savings Program calculations to exclude all Parts A and B fee-for-service payment amounts for a beneficiary's episode of care for treatment of COVID–19 as described in paragraph (b) of this section:

(1) Calculation of Medicare Parts A and B fee-for-service expenditures for an ACO's assigned beneficiaries for all purposes including the following: Establishing, adjusting, updating, and resetting the ACO's historical benchmark and determining performance year expenditures.

(2) Calculation of fee-for-service expenditures for assignable beneficiaries as used in determining county-level fee-for-service expenditures and national Medicare fee-for-service expenditures, including the following calculations:

(i) Determining average county fee-for-service expenditures based on expenditures for the assignable population of beneficiaries in each county in the ACO's regional service area according to §§ 425.601(c), 425.603(e), and 425.654(a) for purposes of calculating the ACO's regional fee-for-service expenditures.

(ii) Determining the 99th percentile of national Medicare fee-for-service expenditures for assignable beneficiaries for purposes of the following:

(A) Truncating assigned beneficiary expenditures used in calculating benchmark expenditures under §§ 425.601(a)(4), 425.602(a)(4), 425.603(c)(4),