

(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 which the term of its original participation agreement would have expired if the ACO had not been terminated.

(b) For purposes of determining the eligibility of a re-entering ACO to enter an agreement period beginning before July 1, 2019, an ACO whose participation agreement was previously terminated must demonstrate in its application that it has corrected the deficiencies that caused it to be terminated from the Shared Savings Program and has processes in place to ensure that it remains in compliance with the terms of the new participation agreement.

(c) For purposes of determining the eligibility of a re-entering ACO to enter an agreement period beginning before July 1, 2019, an ACO whose participation agreement was previously terminated or expired without having been renewed may re-enter the program for a subsequent agreement period.

(1) If the termination occurred less than half way through the agreement

period, an ACO that was previously under a one-sided model may reenter the program under the one-sided model or a two-sided model. If the ACO reenters the program under the one-sided model, the ACO will be considered to be in the same agreement period under the one-sided model as it was at the time of termination.

(2) If the termination occurred more than half way through the agreement period, an ACO that was previously in its first agreement period under the one-sided model may reenter the program under the one-sided model or a two-sided model. If the ACO reenters the program under the one-sided model, the ACO will be considered to be in its second agreement period under the one-sided model. An ACO that was previously in its second agreement period under the one-sided model must reenter the program under a two-sided model.

(3) Regardless of the date of termination, an ACO that was previously under a two-sided model may only reapply for participation in a two-sided model.

[76 FR 67973, Nov. 2, 2011, as amended at 80 FR 32839, June 9, 2015; 83 FR 68065, Dec. 31, 2018]

§ 425.224 Application procedures for renewing ACOs and re-entering ACOs.

(a) *General rules.* A renewing ACO or a re-entering ACO may apply to enter a new participation agreement with CMS for participation in the Shared Savings Program.

(1) In order to obtain a determination regarding whether it meets the requirements to participate in the Shared Savings Program, the ACO must submit a complete application in the form and manner and by the deadline specified by CMS.

(2) An ACO executive who has the authority to legally bind the ACO must certify to the best of his or her knowledge, information, and belief that the information contained in the application is accurate, complete, and truthful.

(3) An ACO that seeks to enter a new participation agreement under the Shared Savings Program and was newly formed after March 23, 2010, as

defined in the Antitrust Policy Statement, must agree that CMS can share a copy of its application with the Antitrust Agencies.

(4) The ACO must select a participation option in accordance with the requirements specified in § 425.600. Regardless of the date of termination or expiration of the participation agreement, a renewing ACO or re-entering ACO that was previously under a two-sided model may only reapply for participation in a two-sided model.

(b) *Review of application.* (1) CMS determines whether to approve a renewing ACO's or re-entering ACO's application based on an evaluation of all of the following factors:

(i) Whether the ACO satisfies the criteria for operating under the selected risk track.

(ii) The ACO's history of noncompliance with the requirements of the Shared Savings Program, including, but not limited to, the following factors:

(A) Whether the ACO demonstrated a pattern of failure to meet the quality performance standards or met any of the criteria for termination under § 425.316(c)(1)(ii) or (c)(2)(ii).

(B) For 2 performance years of the ACO's previous agreement period, regardless of whether the years are in consecutive order, whether the average per capita Medicare Parts A and B fee-for-service expenditures for the ACO's assigned beneficiary population exceeded its updated benchmark by an amount equal to or exceeding either of the following:

(1) The ACO's negative MSR, under a one-sided model.

(2) The ACO's MLR, under a two-sided model.

(C) Whether the ACO failed to repay shared losses in full within 90 days as required under subpart G of this part for any performance year of the ACO's previous agreement period in a two-sided model.

(D) For an ACO that has participated in a two-sided model authorized under section 1115A of the Act, whether the ACO failed to repay shared losses for any performance year as required under the terms of the ACO's participation agreement for such model.