

beneficiary incentive program if the beneficiary is assigned to the ACO through either of the following:

(A) Preliminary prospective assignment, as described in § 425.400(a)(2).

(B) Prospective assignment, as described in § 425.400(a)(3).

(iii) *Qualifying service.* For purposes of this section, a qualifying service is a primary care service (as defined in § 425.20) with respect to which coinsurance applies under Part B, if the service is furnished through an ACO by one of the following:

(A) An ACO professional who has a primary care specialty designation included in the definition of primary care physician under § 425.20.

(B) An ACO professional who is a physician assistant, nurse practitioner, or certified nurse specialist.

(C) A FQHC or RHC.

(iv) *Incentive payments.* (A) An ACO that establishes a beneficiary incentive program must furnish an incentive payment for each qualifying service furnished to a beneficiary described in paragraph (c)(3)(ii) of this section in accordance with this section.

(B) Each incentive payment made by an ACO under a beneficiary incentive program must satisfy all of the following conditions:

(1) The incentive payment is in the form of a check, debit card, or a traceable cash equivalent.

(2) The value of the incentive payment does not exceed \$20, as adjusted annually by the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year, rounded to the nearest whole dollar amount.

(3) The incentive payment is provided by the ACO to the beneficiary no later than 30 days after a qualifying service is furnished.

(C) An ACO must furnish incentive payments in the same amount to each eligible Medicare fee-for-service beneficiary without regard to enrollment of such beneficiary in a Medicare supplemental policy (described in section 1882(g)(1) of the Act), in a State Medicaid plan under title XIX or a waiver of such a plan, or in any other health insurance policy or health benefit plan.

(4) *Program integrity requirements—(i) Record retention.* An ACO that establishes a beneficiary incentive program must maintain records related to the beneficiary incentive program that include the following:

(A) Identification of each beneficiary that received an incentive payment, including beneficiary name and HICN or Medicare beneficiary identifier.

(B) The type and amount of each incentive payment made to each beneficiary.

(C) The date each beneficiary received a qualifying service, the corresponding HCPCS code for the qualifying service, and identification of the ACO provider/supplier that furnished the qualifying service.

(D) The date the ACO provided each incentive payment to each beneficiary.

(ii) *Source of funding.* (A) An ACO must not use funds from any entity or organization outside of the ACO to establish or operate a beneficiary incentive program.

(B) An ACO must not directly, through insurance, or otherwise, bill or otherwise shift the cost of establishing or operating a beneficiary incentive program to a Federal health care program.

(iii) *Beneficiary notifications.* An ACO or its ACO participants shall notify assigned beneficiaries of the availability of the beneficiary incentive program in accordance with § 425.312(b).

(iv) *Marketing prohibition.* Except for the beneficiary notifications required under this section, the beneficiary incentive program is not the subject of marketing materials and activities, including but not limited to, an advertisement or solicitation to a beneficiary or any potential patient whose care is paid for in whole or in part by a Federal health care program (as defined at 42 U.S.C. 1320a–7b(f)).

(5) *Effect on program calculations.* CMS disregards incentive payments made by an ACO under paragraph (c) of this section in calculating an ACO's benchmarks, estimated average per capita Medicare expenditures, and shared savings and losses.

(6) *Income exemptions.* Incentive payments made under a beneficiary incentive program are not considered income or resources or otherwise taken