

two-sided model that selected this option at the start of their agreement period. In the event a two-sided model ACO selected a fixed MSR/MLR at the start of its agreement period, and the ACO's performance year assigned population identified in paragraph (c)(1) of this section is below 5,000 beneficiaries, the MSR/MLR is determined based on the number of assigned beneficiaries as specified in § 425.110(b)(3)(iii).

(2) To qualify for shared savings an ACO must do all of the following:

(i) Have average per capita Medicare Parts A and B fee-for-service expenditures for its assigned beneficiary population for CY 2019 below its updated benchmark costs for the year by at least the MSR established for the ACO based on the track the ACO is participating under during the performance year starting on July 1, 2019 (§ 425.605 or § 425.610) and paragraph (c)(3)(ii)(C)(1) of this section.

(ii) Meet the minimum quality performance standards established under § 425.502 and according to paragraph (c)(2) of this section.

(iii) Otherwise maintain its eligibility to participate in the Shared Savings Program under this part.

(3) To be responsible for sharing losses with the Medicare program, an ACO's average per capita Medicare Parts A and B fee-for-service expenditures for its assigned beneficiary population for CY 2019 must be above its updated benchmark costs for the year by at least the MLR established for the ACO based on the track the ACO is participating under during the performance year starting on July 1, 2019 (§ 425.605 or § 425.610) and paragraph (c)(3)(ii)(C)(1) of this section.

(D) For an ACO that meets all the requirements to receive a shared savings payment under paragraph (c)(3)(ii)(C)(2) of this section—

(1) The final sharing 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 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 prorates any shared savings amount determined under paragraph (c)(3)(ii)(D)(1) 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—

(1) 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 prorates any shared losses amount determined under paragraph (c)(3)(ii)(E)(1) 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)(1) or (c)(3)(ii)(E)(1) 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 December 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

**§ 425.610**

**42 CFR Ch. IV (10–1–24 Edition)**

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—