

§ 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—

(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