

does not make any advance investment payment, the notice will specify the reason(s) why and inform the ACO of its right to request reconsideration review in accordance with the procedures specified in subpart I of this part.

(1) *Frequency of payments.* An ACO will receive the one-time payment at the beginning of Performance Year 1 of the ACO's agreement period. An ACO will receive quarterly payments each quarter for the first two performance years of the ACO's agreement period. An ACO may receive no more than eight quarterly payments.

(2) *Quarterly payment amount calculation methodology.* CMS does all of the following in determining the quarterly payment amount prior to the start of the quarter.

(i) Determines the ACO's assigned beneficiary population. The assigned beneficiaries used in determining the quarterly payment amount are the beneficiaries most recently assigned to the ACO under § 425.400(a)(2) (for an ACO under preliminary prospective assignment with retrospective reconciliation) or § 425.400(a)(3) (for an ACO under prospective assignment), based on the certified ACO participant list for the relevant performance year.

(ii) Assigns each beneficiary a risk factors-based score. For each beneficiary in the assigned population identified

in paragraph (f)(2)(i) of this section, CMS applies the following requirements in assigning a risk factors-based score:

(A) The risk factors-based score will be set to 100 if the beneficiary is enrolled in the Medicare Part D LIS or is dually eligible for Medicare and Medicaid.

(B) The risk factors-based score will be set to the Area Deprivation Index national percentile rank matched to the beneficiary's mailing address if the beneficiary is not enrolled in the LIS or is not dually eligible for Medicare and Medicaid and sufficient data is available to match the beneficiary to an Area Deprivation Index national percentile rank.

(C) The risk factors-based score will be set to 50 if the beneficiary is not enrolled in the LIS or is not dually eligible for Medicare and Medicaid and sufficient data is not available to match the beneficiary to an Area Deprivation Index national percentile rank.

(iii) Determines a beneficiary's payment amount. For each beneficiary in the assigned population identified in paragraph (f)(2)(i) of this section, CMS determines the payment amount that corresponds to the beneficiary's risk factors-based score determined in paragraph (f)(2)(ii) of this section. The beneficiary payment amount is as follows:

TABLE 1 TO PARAGRAPH (f)(2)(iii)

Risk factors-based score	1–24	25–34	35–44	45–54	55–64	65–74	75–84	85–100
Payment amount	\$0	\$20	\$24	\$28	\$32	\$36	\$40	\$45

(iv) Calculates the ACO's quarterly payment amount. The ACO's quarterly payment amount is the sum of the beneficiary payment amounts corresponding to each assigned beneficiary's risk factors-based score, specified in paragraph (f)(2)(iii) of this section, capped at 10,000 beneficiaries. If the ACO has more than 10,000 assigned beneficiaries according to paragraph (f)(2)(i) of this section, CMS will calculate the quarterly payment amount based on the 10,000 assigned beneficiaries with the highest risk factors-

based scores determined according to paragraph (f)(2)(ii) of this section.

(g) *Recoupment and recovery of advance investment payments, and notice of bankruptcy.* (1) CMS will recoup advance investment payments made to an ACO from any shared savings the ACO earns until CMS has recouped in full the amount of advance investment payments made to the ACO. For both renewing and re-entering ACOs, CMS will carry forward any remaining balance owed to subsequent performance year(s) in which the ACO achieves

shared savings, including in any performance year(s) in a subsequent agreement period.

(2) If the amount of shared savings earned by the ACO is revised upward by CMS for any reason, CMS will reduce the redetermined amount of shared savings by the amount of advance investment payments made to the ACO as of the date of the redetermination. If the amount of shared savings earned by the ACO is revised downward by CMS for any reason, the ACO will not receive a refund of any portion of the advance investment payments previously recouped or otherwise repaid.

(3) Except as provided for in paragraphs (g)(4) of this section and § 425.316(e)(3), for each performance year, CMS will not recover an amount of advance investment payments greater than the shared savings earned by an ACO in that performance year.

(4) If an ACO terminates its participation agreement during the agreement period in which it received an advance investment payment, the ACO must repay all advance investment payments it received, unless the ACO terminated its current participation agreement under § 425.220 at the end of performance year 2 or later during the agreement period in which it received advance investment payments and immediately enters a new agreement period to continue its participation in the program. CMS will provide written notification to the ACO of the amount due and the ACO must pay such amount no later than 90 days after the receipt of such notification.

(5) In the event of bankruptcy—

(i) If an ACO has filed a bankruptcy petition, whether voluntary or involuntary, the ACO must provide written notice of the bankruptcy to CMS and to the U.S. Attorney's Office in the district where the bankruptcy was filed, unless final payment for the agreement period has been made by either CMS or the ACO and all administrative or judicial review proceedings relating to any payments under the Shared Savings Program have been fully and finally resolved.

(ii) The notice of bankruptcy must be sent by certified mail no later than 5 days after the petition has been filed and must contain a copy of the filed

bankruptcy petition (including its docket number). The notice to CMS must be addressed to the CMS Office of Financial Management at 7500 Security Boulevard, Mailstop C3-01-24, Baltimore, MD 21244 or such other address as may be specified on the CMS website for purposes of receiving such notices.

(h) *Termination of advance investment payments*—(1) *General*. Except as provided in paragraph (h)(2) of this section, CMS may terminate an ACO's advance investment payments if the ACO—

(i) Fails to comply with the requirements of this section;

(ii) Meets any of the grounds for ACO termination set forth in § 425.218(b); or

(iii) Voluntarily terminates its participation agreement in accordance with § 425.220(a).

(2) *Eligibility sanction*. CMS will terminate an ACO's advance investment payments in accordance with § 425.316(e) if the ACO no longer meets the eligibility requirements specified in paragraphs (b)(3) and (b)(4) of this section.

(3) *No pre-termination actions*. CMS may immediately terminate an ACO's advance investment payments without taking any of the pre-termination actions set forth in § 425.216.

(i) *Reporting information on advance investment payments*. The ACO must report information on its receipt of and use of advance investment payments, as follows:

(1) The ACO must publicly report information about the ACO's use of advance investment payments for each performance year, in accordance with § 425.308(b)(8).

(2) In a form and manner and by a deadline specified by CMS, the ACO must report to CMS the same information it is required to publicly report under § 425.308(b)(8).

[87 FR 70242, Nov. 18, 2022, as amended at 88 FR 79548, Nov. 16, 2023]

**§§ 425.631–425.649 [Reserved]**

**§ 425.650 Benchmarking methodology.**

(a) *Scope and purpose*. The methodology by which CMS establishes, adjusts, updates and resets an ACO's historical benchmark is described within this subpart G. The benchmarking