

ACO's regional service area. If the resulting sum is a net negative value, the ACO is considered to have higher spending compared to the ACO's regional service area.

(iv) If during the term of the agreement period CMS adjusts the ACO's benchmark, as specified in § 425.652(a)(9), CMS redetermines whether the ACO is considered to have lower spending or higher spending compared to the ACO's regional service area for purposes of determining the percentage in paragraphs (e)(1) through (3) of this section used in calculating the regional adjustment.

(f) *Special rules for determining the weights used in the regional adjustment calculation for a re-entering ACO.* For a re-entering ACO whose prior agreement period benchmark was calculated according to § 425.603(c), CMS determines the weight used in the regional adjustment calculation described in paragraphs (b) through (e) of this section by considering the agreement period the ACO is entering into according to § 425.600(f) in combination with either of the following—

(1) The weight previously applied to calculate the regional adjustment to the ACO's benchmark under § 425.603(c)(9) in its most recent prior agreement period; or

(2) For a new ACO identified as a re-entering ACO, CMS considers the weight previously applied to calculate the regional adjustment to the benchmark under § 425.603(c)(9) in its most recent prior agreement period of the ACO in which the majority of the new ACO's participants were participating previously.

[87 FR 70246, Nov. 18, 2022, as amended at 88 FR 79550, Nov. 16, 2023]

§ 425.658 Calculating the prior savings adjustment to the historical benchmark.

(a) *General.* For agreement periods beginning on January 1, 2024, and in subsequent years, CMS calculates an adjustment to the historical benchmark to account for savings generated in the 3 years prior to the start of the ACO's current agreement period for renewing or re-entering ACOs that were reconciled for one or more performance

years in the Shared Savings Program during this period.

(b) *Calculate average per capita savings amount.* (1) Calculate total per capita savings or losses for each performance year during the 3 years prior to the start of the ACO's current agreement period. CMS applies the following requirements in determining the amount of per capita savings or losses for each performance year:

(i) Per capita savings or losses will be set to zero for a performance year if the ACO was not reconciled for the performance year.

(ii) If an ACO generated savings for a performance year but was not eligible to receive a shared savings payment for that year due to noncompliance with the requirements of this part, per capita savings for that year will be set to zero.

(iii) For a new ACO identified as re-entering ACO, per capita savings or losses will be determined based on the per capita savings or losses of the ACO in which the majority of the ACO's ACO participants were participating.

(2) Take the simple average of the per capita savings or losses calculated in paragraph (b)(1) of this section, including values of zero, if applicable.

(3) Determine the ACO's eligibility for the prior savings adjustment as follows:

(i) If the average per capita amount computed in paragraph (b)(2) of this section is less than or equal to zero, the ACO is not eligible to receive an adjustment for prior savings.

(ii) If the average per capita amount computed in paragraph (b)(2) of this section is positive, apply a proration factor to account for any upward growth in the ACO's assigned population in the benchmark years of the ACO's current agreement period as compared to the size of the assigned population when the ACO was reconciled for the corresponding performance years in its prior agreement period.

(c) *Calculate the per capita prior savings adjustment.* (1) If an ACO is eligible for the prior savings adjustment as determined in paragraph (b)(3) of this section, the prior savings adjustment will equal the lesser of the following:

(i) 50 percent of the pro-rated average per capita amount computed in paragraph (b)(3)(ii) of this section.

(ii) 5 percent of national per capita expenditures for Parts A and B services under the original Medicare fee-for-service program in BY3 for assignable beneficiaries identified for the 12-month calendar year corresponding to BY3 using data from the CMS Office of the Actuary and expressed as a single value by taking a person-year weighted average of the Medicare enrollment type-specific values.

(2) [Reserved]

(d) *Applicability of the prior savings adjustment.* CMS compares the per capita prior savings adjustment determined in paragraph (c)(1) of this section with the regional adjustment, expressed as a single value as described in § 425.656(d), to determine the adjustment, if any, that will be applied to the ACO's benchmark in accordance with § 425.652(a)(8).

(e) *Recalculation of the prior savings adjustment during an agreement period.*

(1) The ACO's prior savings adjustment is recalculated for changes to the ACO's savings or losses for a performance year used in the prior savings adjustment calculation in accordance with § 425.316(b)(2)(ii)(B) or (C) due to compliance action to address avoidance of at-risk beneficiaries or as a result of issuance of a revised initial determination under § 425.315.

(2) For a new ACO identified as a re-entering ACO, the prior savings adjustment is recalculated for changes to savings or losses for a performance year used in the prior savings adjustment calculation, if the savings or losses of the ACO in which the majority of the new ACO's participants were participating change in accordance with § 425.316(b)(2)(ii)(B) or (C) due to compliance action to address avoidance of at-risk beneficiaries or as a result of issuance of a revised initial determination under § 425.315.

[87 FR 70248, Nov. 18, 2022, as amended at 88 FR 79551, Nov. 16, 2023]

§ 425.659 Calculating risk scores used in Shared Savings Program benchmark calculations.

(a) *General.* CMS accounts for differences in severity and case mix of the

ACO's assigned beneficiaries and assignable beneficiaries (as defined under § 425.20) in calculations used in establishing, adjusting, and updating the ACO's historical benchmark.

(b) *Prospective Hierarchical Condition Category (HCC) risk score calculation.* In determining Medicare FFS beneficiary prospective HCC risk scores for a performance year and each benchmark year of the ACO's agreement period, CMS does the following:

(1) CMS specifies the CMS-HCC risk adjustment methodology used to calculate prospective HCC risk scores for Medicare FFS beneficiaries (as defined under § 425.20) for use in Shared Savings Program calculations as follows:

(i) In calculating risk scores for Medicare FFS beneficiaries for a performance year, CMS applies the CMS-HCC risk adjustment methodology applicable for the corresponding calendar year.

(ii) For agreement periods beginning before January 1, 2024, CMS applies the CMS-HCC risk adjustment methodology for the calendar year corresponding to the benchmark year in calculating risk scores for Medicare FFS beneficiaries for each benchmark year of the agreement period.

(iii) For agreement periods beginning on January 1, 2024, and in subsequent years, CMS applies the CMS-HCC risk adjustment methodology for the calendar year corresponding to the performance year, as specified under paragraph (b)(1)(i) of this section, in calculating risk scores for Medicare FFS beneficiaries for each benchmark year of the agreement period.

(2) CMS does the following to calculate the prospective HCC risk scores identified in paragraph (b)(1) of this section for a benchmark or performance year:

(i) Removes the Medicare Advantage coding intensity adjustment, if applicable.

(ii) Renormalizes prospective HCC risk scores by Medicare enrollment type (ESRD, disabled, aged/dual eligible Medicare and Medicaid beneficiaries, and aged/non-dual eligible Medicare and Medicaid beneficiaries) based on the national assignable FFS population for the relevant benchmark or performance year.