# COVID-19 and ACOs

NAACOS has developed this fact sheet reviewing information on how ACOs may be affected by policies to help mitigate the impact of the COVID-10 pandemic. ACOs should also refer to the CMS resource, "COVID-19 Frequently Asked Questions (FAQs) on Medicare Fee-for-Service (FFS) Billing" under the Medicare Shared Savings Program section for additional information an updates about ACOs.

**How might ACOs be affected by the COVID-19 pandemic?**
ACOs may see strains on the health system as patients present with COVID-19, particularly those ACOs located in areas with rapid community spread of the disease. Shelter-in-place policies are causing disruptions in chronic care management and delays in care management generally, which create challenges in controlling spending and utilization during and after the pandemic.

**How will CMS adjust financial reconciliations as a result of the COVID-19 pandemic?**
The Medicare Shared Savings Program (MSSP) has an extreme and uncontrollable circumstances policy in place that aims to provide support to ACOs affected by natural disasters and other uncontrollable circumstances. Under this policy, the Centers for Medicare & Medicaid Services (CMS) will mitigate the amount of shared losses an ACO must pay back to CMS should it be affected by an extreme and uncontrollable circumstance by an amount determined by multiplying: (1) the percentage of the total months in the performance year affected by an extreme and uncontrollable circumstance and (2) the percentage of the ACO's assigned beneficiaries who reside in an area affected by an extreme and uncontrollable circumstance.

On March 30, 2020, CMS released an interim final rule with commend period (IFC) invoking the MSSP extreme and uncontrollable circumstances policy for the COVID-19 public health emergency (PHE). This IFC was initially released March 30 and the rule was published in the Federal Register April 6. In this April 6 IFC, CMS specifies that 100 percent of assigned beneficiaries for all MSSP ACOs will be determined to reside in an affected area. Note the IFC policies are now in effect despite the opportunity to provide public comment.

A second IFC was initially issued April 30 and the rule was published in the Federal Register May 8th. This May 8 IFC clarified that the number of affected months will begin with January and continue through the end of the PHE. The PHE was last extended on October 23, 2020 and will last through at least January 21, 2021, unless it is renewed again. Updates on the duration of the PHE can be found on this webpage. As a result of NAACOS advocacy, CMS makes several important updates to the extreme and uncontrollable circumstances policy to provide additional support and relief to ACOs. Key updates include:

- Adjusting MSSP calculations to mitigate the impact of COVID-19 by removing all of a beneficiary's Part A and B expenditures for affected months triggered by an episode of care (identified by inpatient care for treatment of COVID-19) from performance year expenditures and removes

those expenditures from future benchmarks, updates to the historical benchmarks (i.e., trend rates), and revenue calculations for determining loss sharing limits for certain ACOs,
- Canceling the application cycle for new ACOs to enter the MSSP in 2021,
- Allowing ACOs whose current agreement periods expire on December 31, 2020, the option to extend their existing agreement periods by one year (ACOs extending their agreements for an additional year would remain under their existing historical benchmarks for that year),
- Allowing ACOs in the Basic Track's glide path the option to elect to maintain their current level of participation for performance year (PY) 2021, therefore not assuming higher levels of risk,
- Altering the extreme and uncontrollable circumstances policy to specify that the PHE began in January 2020,
- Including services provided virtually through telehealth, virtual check-ins, e-visits or telephone in the definition of primary care services used in the MSSP assignment methodology, effective January 1, 2020, and for any subsequent performance year that starts during the PHE,
- Increasing reimbursement for newly introduced audio-only telehealth services,
- Waiving the video requirement for certain evaluation and management services delivered via telehealth, and
- Easing regulatory requirements for COVID-19 testing, while increasing the availability to get reimbursed for COVID-19 testing.

NAACOS has developed a summary of the May 8 IFC with additional details, available here.

**If certain benefits and protections are tied to the PHE, such as telehealth allowances and financial protections from shared losses, when does the PHE end?**
Declarations last 90 days or until the secretary determines that the emergency no longer exists, whichever occurs first. The secretary may renew the determination for additional 90-day periods, and the opioid crisis was extended multiple times between 2017 and 2019. The current PHE was last extended on October 23 and will expire on January 21, 2021, unless a new Health and Human Services Secretary extends it.

**What does it mean to there be a public health emergency?**
On January 31, HHS Secretary Alex Azar declared a nationwide public health emergency in response to the COVID-19 pandemic. Section 319 of the Public Health Service Act grants the HHS secretary power to determine if a public health emergency exits. The determination triggers certain powers such as suspending or modifying certain legal requirements and making available funds to address the public health emergency. HHS summarizes the powers a PHE grants here. In the past, emergencies have been disease outbreaks and natural disasters. They can be both specific to a locality, such as a site of a tornado or wildfire, or nationwide, such as with the opioid crisis.

**How is MSSP quality adjusted as a result of the COVID-19 pandemic?**
The MSSP has an extreme and uncontrollable circumstances policy in place that aims to provide support to ACOs affected by natural disasters and other uncontrollable circumstances. Under this policy, if an ACO is unable to report quality due to the extreme and uncontrollable circumstance, the ACO's quality score will be set to the mean quality performance score for all MSSP ACOs for the applicable performance year. However, if the ACO is able to completely and accurately report all quality measures, CMS will use the higher of the ACO's quality performance score or the mean quality performance score for all MSSP ACOs. In the April 6 IFC, CMS invoked the MSSP extreme and uncontrollable circumstances policy for the COVID-19 public health emergency (PHE). CMS also notes in this IFC that they may consider making further changes to this policy as it related to quality assessments for 2020, in future rulemaking.

NAACOS is advocating for CMS to make all quality measures pay-for-reporting in 2020 due to the impact of the COVID-19 pandemic.

**How will emergency funding bills passed by Congress assist ACOs financially?**
Congress has taken multiple steps to aide those in the health system who might be adversely impacted by the COVID-19 pandemic. On March 6, President Trump signed an emergency appropriations package that provides $8.3 billion to federal, state, and local agencies to combat the coronavirus. Coronavirus Aid, Relief, and Economic Security (CARES) Act, which was signed into law on March 27, allocated $350 billion for a Paycheck Protection Program (PPP), providing small business zero-free loans. The Paycheck Protection Program and Health Care Enhancement Act, enacted on April 24, replenished that pool of money. All pieces of legislation offered additional support for the health system, including money for testing, emergency response, and disaster relief. Congress has also granted $175 billion in aid that doesn't have to be repaid to make up for lost revenue.

**Can ACOs apply for accelerated and advanced payments through their MAC?**
On April 26, CMS said it was suspending and reevaluating its Accelerated and Advance Payment Program. The program had been expanded by CMS on March 28 to a broader group of both Medicare Part A and Part B providers and suppliers in order to increase cash flow to those affected by COVID-19. This provided expedited advance payments during the period of the PHE to any qualifying provider who submitted a request to their Medicare Administrative Contractor (MAC). Most applicants were able to request up to 100 percent of the Medicare payment amount for a three-month period and up to a six-month period for certain acute care hospitals. CMS extended the repayment of these accelerated/advance payments to begin 120 days after the date of issuance of the payment. More information is available in the CMS press release and fact sheet. Please note these advanced payments are for providers and suppliers, not ACOs and therefore payments would be made directly to the provider.

**Can ACOs take advantage of small business loans from the CARES Act?**
The CARES Act provided funding to small businesses to assist during the COVID-19 pandemic, including a Paycheck Protection Program (PPP), providing forgivable loans to qualifying small businesses of up to $10 million. We believe many of the physician-led ACOs and some medical groups that are part of hospital-based ACOs will be eligible for these loans, they could provide up to eight weeks of payroll, rent, and other expenses. These loan applications are accepted through U.S. Small Business Administration (SBA) approved lenders. Many lending banks require a previous business relationship to make the loan and some banks may not be lending. It is advised that interested organizations contact their bank early, as the demand for the loans will be significant. The SBA's loan guidance and resources are available here. Additionally, the SBA has made available the Economic Injury Disaster Loan Assistance (EIDL) program for small business owners providing up to $2 million to qualifying applicants. The EIDL application is now open and can be accessed here. Businesses are not eligible to receive both loans.

**How will the Center for Medicare and Medicaid Innovation (Innovation Center) help Next Generation Model ACOs strained by the COVID-19 pandemic?**
On June 4, the Innovation Center announced it would give Next Gen ACOs the option to sign an amended participation agreement that provides financial protection from the effects of COVID-19. In exchange for prorated shared losses for the portion of months the PHE is in effect, Next Gens would have their shared savings capped at 5 percent. CMS will also remove COVID-19 episodes from 2020 benchmark and expenditures, apply a regional retrospective trend rather than prospective trend, and allow ACOs to modify existing elections for risk arrangement and stop-loss. Next Gens can elect to maintain their current participation agreement for 2020, including their benchmark, risk arrangement, stop-loss, and

gross savings cap. However, those electing to keep their current agreements will keep COVID-19 episodes in 2020 benchmark and expenditures. CMS will use a retrospective national trend.

NAACOS advocated for the Innovation Center to make such adjustments given the widespread impact of COVID-19, an epidemiological event. CMS also announced it would extend the Next Gen model through 2021, which NAACOS has long advocated for. The model was due to sunset at the end of 2020.

Additionally, according to an email sent to participants on April 28, Next Gen ACOs will be given their 2018 quality performance scores if measure(s) are not reported for 2019 due to the COVID-19 PHE. Specifically, the email notes: "If the ACO participating in the NGACO Model is unable to complete reporting on the Web Interface (WI) measures, CMS will apply the ACO's 2018 performance rates to calculate the ACO's 2019 overall quality score used in determining shared savings and losses. If the ACO completed reporting on some of the WI measures but not all, the 2019 performance rates will be applied to the completely reported measures and 2018 performance rates will be applied to the incompletely reported measures." There have been no model announcements thus far on how quality assessments will be handled for 2020 for the NGACO model.

**What will happen if my ACO is unable to report quality or MIPS data by the deadline due to shifting priorities and staff on quarantine/isolation?**
As a result of NAACOS advocacy, CMS announced ACOs had until April 30, 2020 to report 2019 quality data. Previously, ACOs were required to submit this data by March 31, 2020. Additionally, CMS extended the Merit-Based Incentive Payment System (MIPS) reporting deadline to April 30 and those that did not submit *any* MIPS data by that time will qualify for the automatic extreme and uncontrollable circumstances policy and will receive a neutral payment adjustment for the 2021 MIPS payment year. This announcement came after NAACOS and nine other healthcare organizations submitted a NAACOS-led letter to CMS requesting a delay of the 2019 reporting deadlines. NAACOS also asked for relief around participation in and data reporting options for 2020, and CMS subsequently noted they are evaluating options for providing relief around participation and data submission for 2020. NAACOS will keep members updated of further changes as we continue our advocacy to provide ACOs with relief from regulatory requirements due to COVID-19.

Additionally, as explained above, the MSSP extreme and uncontrollable circumstances policy will assist ACOs who are unable to report quality for performance year 2020. In these cases, the ACO's quality score will be set to the mean quality performance score for all MSSP ACOs for the 2020 performance year. However, if the ACO is able to completely and accurately report all quality measures, CMS will use the higher of the ACO's quality performance score or the mean quality performance score for all MSSP ACOs.

**Has CMS expanded the use of the SNF 3-day payment rule waiver as a result of COVID-19?**
As part of the emergency declaration issued on March 13, CMS is waiving Medicare's requirement that patients have a 3-day inpatient hospitalization prior to admission to a skilled nursing facility (SNF). This effectively makes the SNF 3-day waiver available to all Medicare providers and not just to ACOs who have applied for the waiver. Additionally, CMS is allowing SNF coverage for beneficiaries who have exhausted their SNF benefits, meaning these patients don't have to wait for a new benefit year.

**How has CMS expanded the use of telehealth waiver as a result of COVID-19?**
In multiple COVID-relief packages passed in March, Congress greatly expanded the telehealth services Medicare will cover during public health emergencies. This includes waiving restrictions on sites of care and geographic location, making patients eligible to receive care in their homes. CMS issued a list of frequently asked questions, outlining what services are covered, what providers are eligible for the

expanded telehealth opportunities, and how to bill for these services. Importantly, telehealth can be provided to both new and established patients, following additional changes from Congress. CMS also states telehealth can be performed on all patients, not just those with COVID-19. In a separate notice, the HHS Inspector General said it will allow healthcare providers to reduce or waive beneficiary cost-sharing for telehealth visits paid for by Federal health care programs. The OIG has also released a fact sheet providing more information on this change.

This CMS fact sheet includes various ways to use technology to treat patients, including through the use of "Virtual Check-Ins," which are short patient-initiated communications with a healthcare practitioner, and "E-visits," which are non-face-to-face patient-initiated communications through an online patient portal. As a result of the March and April Interim Final Rules, CMS makes a number of important changes and clarifications related to telehealth, such as specifying new telehealth-eligible services and their reimbursement, billing details and how telehealth services will be used for ACO assignment. NAACOS developed this telehealth resource to help ACOs better understand telehealth and the important policy updates recently made by CMS. Importantly, NAACOS has advocated for telehealth changes or related policy clarifications from CMS. For example, we urged the agency to ensure that documentation for hierarchical condition category risk scores would count if it came from non-face-to-face visits, requested clarification on how to deliver annual wellness visits through telehealth, and urged the agency to explain how telehealth visits affect ACO beneficiary assignment. Updates on these critical issues are included in the NAACOS telehealth resource referenced above.

**Who can I contact to share more information on how COVID-19 is affecting my ACO?**
To share more information regarding how COVID-19 is affecting your ACO, please email us at advocacy@naacos.com.

*Updated on 11/24/2020*