June 30, 2020

Brad Smith
Senior Advisor for Value-Based Transformation
U.S. Department of Health & Human Services
Director of the Center for Medicare & Medicaid Innovation
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, DC 20201

RE: The Next Generation ACO Model: Performance Year 2020 COVID-19 Adjustments and 2021 Extension

Dear Director Smith:

The National Association of Accountable Care Organizations (NAACOS) writes to express our appreciation and support for your recent announcement to extend the Next Generation (Next Gen) ACO Model through 2021. We are also pleased that the Innovation Center is modifying the program in response to the COVID-19 pandemic, which is part of ongoing policy and regulatory efforts underway by the Centers for Medicare & Medicaid Services (CMS) to address the COVID-19 pandemic. While there are a number of welcome changes for Next Gen ACOs, we urge additional action to fully protect ACOs and ensure continued program success.

As the largest association of ACOs, NAACOS and its ACO members serve more than 12 million beneficiary lives through hundreds of organizations participating in population health-focused payment and delivery models in Medicare, Medicaid, and commercial insurance. NAACOS and its members are deeply committed to the transition to value-based care. NAACOS is an ACO member-led and member-owned non-profit organization that works on behalf of ACOs across the nation to improve the quality of Medicare delivery, population health and outcomes, and healthcare efficiency.

As the Innovation Center considers how it will adapt the Next Gen Model to account for the effects of COVID-19 on Performance Years (PY) 2020 and 2021, we request you implement the following changes to support and protect Next Gen ACOs.

PY 2020 Adjustments

Provide loss protection for all Next Gen ACOs: We appreciate the protections provided via the PY 2020 Next Gen amendment, which is optional. However, we request that the Innovation Center apply those to all Next Gen ACOs, while providing additional changes through the optional amendment. Specifically, we urge the Innovation Center to automatically reduce any Next Gen shared losses by the proportion of months included in the Public Health Emergency (PHE). That protection should be applied to all Next Gen ACOs, not just those that elect the optional amendment which contains other program modifications.

***Clarify approach to removing COVID-19 costs*:** We appreciate the Innovation Center removing all expenses for months including episodes of care for treatment of COVID-19 during the PHE. This is an important protection that will be included in the optional Next Gen amendment. We request the Innovation Center to clarify that an episode can be triggered when a COVID-19 diagnosis code is present and does not need to be the primary diagnosis code to trigger the episode. This will be critical as there has been a large amount of variability in the manner in which COVID-19 diagnoses are listed on claims, due to the often multi-system nature of COVID-related illnesses. We also urge CMS to clarify that an episode will be triggered by acute care inpatient services for treatment of COVID-19 from facilities not paid under the Inpatient Prospective Payment System (IPPS), including skilled nursing facilities (SNFs), when the date of admission occurs within the COVID-19 PHE.

***Revise the shared savings and losses cap*:** The Innovation Center is offering an optional amendment that would place a symmetrical 5 percent cap on an ACO's gross savings and losses. We understand the agency's rationale for the cap, which is to protect ACOs from extreme losses and protect the Medicare Trust Fund from unexpectedly high payments. However, a 5 percent cap will unjustly harm ACOs that have performed well historically but are still affected by COVID-19. For instance, an ACO that achieved 10 percent savings in 2019 may only recognize 7 percent savings in 2020 due to the pandemic. Such an ACO should be able to avail itself of the other protections available through the amendment without being harmed even further by losing another 2 percent of savings as a result of the cap. We ask that the Innovation Center implement a more flexible cap that addresses both considerations. The cap could be based on an ACO's historical savings/losses (e.g., +/- 5 percent from historical savings/losses, where an ACO that historically earned 3 percent savings would have an upside cap at 8 percent). Another important option to provide to ACOs is an opportunity to select a symmetrical cap within a certain range, for example between 2 and 8 percent. We request this flexibility, which would provide different levels of protection to ACOs based on their market dynamics and ability to shoulder risk during this difficult time.

Adjust quality requirements and minimize burdens: The avoidance of care by patients and postponement of certain critical services to preserve PPE will have lasting effects on quality. In addition, well visits and routine preventive care are also being postponed. As a result, ACOs will struggle to manage patients with chronic conditions and provide proper preventive care during this time. For these reasons, it would not be appropriate to compare performance to quality benchmarks, which were established in previous years. Many ACOs are also deploying their quality improvement staff to provide clinical care and assist in triaging patients, detracting them from their more typical quality improvement and care coordination work. As a result, NAACOS urges the Innovation Center to make all measures pay-for-reporting in 2020. There is value in reporting what

data ACOs can during this challenging time. However, ACOs should not be held accountable to typical quality standards during this highly irregular pandemic.

We also urge CMS to continue to study the impact of the pandemic on ACO quality in the months and years to come, as it is likely additional policy changes will be necessary in the future. We are very appreciative that the Innovation Center canceled the 2019 quality audit for Next Gen ACOs and request further burden reductions like this to allow ACOs to focus on other core tasks related to the pandemic.

PY 2021 Adjustments

***Adapt aspects of the financial methodology*:** Looking ahead to 2021, ACOs remain concerned about a financial methodology that fairly accounts for the impacts of the pandemic. Next Gen ACOs are just now beginning to assess the impacts of the proposed 2021 methodology changes. NAACOS welcomes an opportunity to discuss in detail the implications of a prospective, national trend.

Modify beneficiary alignment: NAACOS is very concerned about how beneficiary alignment may be skewed for PY 2021. Beneficiary alignment may be affected in unpredictable ways as a result of widespread disruptions to primary care due to beneficiaries avoiding typical primary care services which drive alignment. Additionally, it is unclear how increased use of telehealth and other changes will affect alignment. NAACOS requests that the Innovation Center use an extended, 24-month alignment window to assign beneficiaries to ACOs for PY 2021.

There should also be an extended opportunity for voluntary alignment to allow beneficiaries to make designations beyond the current cutoff date and have those designations apply for PY 2021. We also request that the Innovation Center consider alternative alignment strategies for future performance years that would assure beneficiaries remain aligned through the providers that provide the preponderance of their care and should be in the role of coordinating their overall care.

Introduce new benefit enhancements and improve existing ones: With the extension of the Next Gen Model through 2021, NAACOS requests that the Innovation Center test select new benefit enhancements that would help in the face of the pandemic which is likely to continue well into 2021. For example, testing a benefit enhancement to allow hospital-based therapists that do not have National Provider Identifiers (NPIs) to provide home-based therapy to patients. By alleviating this billing requirement and allowing hospital-based therapists, who often have helpful experience with Medicare patients in the hospital or SNF setting, patients would more easily be able to receive and benefit from high quality therapy services in the home.

We also recommend improving existing waivers based on stakeholder feedback. For example, extending the timeframe and increasing the number of care management home visits that are permitted through the Care Management Home Visit enhancement.

***Minimize burdens with updating provider lists*:** The Innovation Center intends to require that ACOs use the Provider List Submission Tool (PLST). The PLST is extremely time-consuming and places significant administrative burden on ACOs. Many Next Gen ACOs have to commit two or more full-time equivalents (FTEs) just to submitting and maintaining the PLST. We ask that the Innovation

Center use the ACO User Interface, which offers a much less burdensome way of maintaining provider lists.

Conclusion

NAACOS has been a consistent partner in advancing the Next Gen Model since its formation and appreciates your dedication to ensuring that the model appropriately adjusts to the unexpected impacts of COVID-19. We also commend the extension of the model for an additional year and request the agency consider making it a permanent part of Medicare. If you have any questions, please contact Allison Brennan, Senior Vice President of Government Affairs, NAACOS at abrennen@naacos.com.

Sincerely,

Clif Gaus, Sc.D.
President and CEO
NAACOS