



CMS Proposes Rule with Changes to Medicare ACO Program

On August 9, the Centers for Medicare and Medicaid Services (CMS) released a Notice of Proposed Rulemaking (NPRM), titled *Medicare Program; Medicare Shared Savings Program; Accountable Care Organizations--Pathways to Success*, containing significant changes to the Medicare Shared Savings Program (MSSP). The rule can be accessed [here](#) and CMS also released a related [factsheet](#).

In this rule, CMS proposes a number of complex changes to overhaul the MSSP. One key proposal would shorten the amount of time an ACO can remain in a shared savings only model to two years. NAACOS has repeatedly expressed concerns to CMS about pushing ACOs into risk before they are ready, and we have [advocated](#) to allow more time in a one-sided model for ACOs that meet certain cost and quality requirements. This spring NAACOS conducted a [survey](#) of ACOs that are required to move from Track 1 to a two-sided model in 2019. When asked about what ACOs will do as a result of having to assume risk next year, over 70 percent of the survey respondents said they are likely to leave the program. The proposed policy change to shorten shared savings only model participation will be a key issue for NAACOS in our comments to the agency in response to the NPRM.

There are a myriad of proposed program changes, including proposals to:

- Provide flexibility to allow ACOs that are ready to accelerate their move to higher risk within agreement periods, and enable such ACOs to qualify as Advanced Alternative Payment Model (APM) entities for purposes of the Quality Payment Program.
- Modify the participation options by retiring Track 1 and Track 2 and introducing a new BASIC track that includes a gradual shift to risk. The glide path to risk in the BASIC track includes five levels, with a one-sided model available only for the first two years to eligible ACOs.
- Retain Track 3, which would be renamed as the ENHANCED track, to encourage ACOs that are able to accept higher levels of potential risk and reward to drive the most significant systematic change in providers' and suppliers' behavior.
- Modify agreement periods from three years to five years.
- Establish policies to deter gaming by limiting more experienced ACOs to higher-risk participation options.
- Modify methodologies related to benchmarking, including accelerating the use of factors based on regional fee-for-service expenditures, and risk adjustment.
- More rigorously screen for good standing among ACOs seeking to renew their participation in the program or re-enter the program after termination or expiration of their previous agreement.
- Identify ACOs re-forming under new legal entities as re-entering ACOs if greater than 50 percent of their ACO participants have recent prior participation in the same ACO in order to hold these ACO accountable for their ACO participants' experience with the program; and holding ACOs in two-sided models accountable for partial-year losses if either the ACO or CMS terminates the agreement before the end of the performance year.
- Implement provisions of the Bipartisan Budget Act (BBA) that allow for certain telehealth waivers and beneficiary incentive programs and broaden access to the current Skilled Nursing Facility (SNF) 3-day waiver for risk bearing ACOs.
- Seek feedback on changes to quality measurement approaches for ACOs.

The 2019 MSSP application process has been delayed as a result of this NPRM, and in this rule CMS announces they would forego a January 1, 2019 start date for the first agreement period under the new proposed participation options. Instead, the agency proposes a July 1, 2019 start date. NAACOS staff is currently reviewing the 600-page regulation and will provide a more thorough analysis to members shortly. **As we move forward with advocacy efforts surrounding this NPRM, it will be critical for ACOs to be active in communicating concerns about the rule with the Administration and Congress.**

NAACOS members and business partners can access our [on-demand webinar](#) summarizing the NPRM. Non-member ACOs may be eligible for a free trial membership that allows access to the entire NAACOS webinar archive. Email membership@naacos.com for more information.