

“What keeps you up at night?”

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CMS releases Final Rule for ACOs

By Bruce D. Armon

SUMMARY

The Centers for Medicare & Medicaid Services has released a Final Rule, which is designed to reduce the burden and cost for ACOs who wish to participate in the Medicare Shared Savings Program.

On October 20, 2011, the Centers for Medicare & Medicaid Services (CMS) released a Final Rule (http://www.ofr.gov/OFRUpload/OFRData/2011-27461_PI.pdf) for Accountable Care Organizations (ACO) under the Medicare Shared Savings Program. The Final Rule is expected to be published in the Federal Register on November 2, 2011.

The ACO Proposed Rule was published in the Federal Register on April 7, 2011 (<http://edocket.access.gpo.gov/2011/pdf/2011-7880.pdf>). The Proposed Rule was subject to scrutiny by interested parties from virtually all sections of the healthcare industry. CMS received approximately 1,320 comments to the Proposed Rule.

In the preamble to the Final Rule, CMS suggests it has "made significant modifications to reduce burden and cost for participating ACOs." The modifications cited by CMS include multiple 2012 start dates (the statute required a start date of January 1, 2012); increased flexibility in the governance and legal structure of an ACO; reduced the number of quality performance standards; and, increased financial incentives with the goal of encouraging additional parties to participate.

CMS projects in the preamble to the Final Rule that the federal government will have a net savings (after bonus payments to ACOs and its providers) of \$470 million for the calendar years 2012 through 2015 as a result of the Medicare Shared Savings Program.

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In conjunction with the CMS publication of the ACO Final Rule, several other key rules and statements were released:

- CMS and the Department of Health and Human Services Office of Inspector General announced an interim final rule (http://www.ofr.gov/OFRUpload/OFRData/2011-27460_PI.pdf) relating to the various federal fraud and abuse statutes;
- the Department of Justice and the Federal Trade Commission released an ACO antitrust policy statement (<http://www.ftc.gov/os/fedreg/2011/10/111020aco.pdf>)
- the Internal Revenue Service issued a fact sheet for tax-exempt organizations and ACOs (<http://www.irs.gov/pub/irs-news/fs-2011-11.pdf>)

Healthcare Providers and other interested parties have a relatively short period of time to (i) determine if they would like to be a part of an ACO; (ii) select who they would like to partner with in an ACO;

(iii) establish a compliant ACO structure with the other interested parties; (iv) assemble the necessary materials to submit an application to CMS to participate (the application is not yet available) in an ACO; (v) be accepted by CMS as an ACO and then execute a participation agreement with CMS. The ongoing infrastructure challenge will be to ensure the ACO works as it is intended.

Internal and external coordination of efforts by interested participants in an ACO will be critical to ensuring its success as an entity and fulfilling CMS' three-part aim described throughout the Final Rule: (1) better care for individuals; (2) better health for populations; and (3) lower growth in Medicare Parts A and B expenditures.

The Health Law Practice Group (http://www.saul.com/practice_areas/details.aspx?leftnav=1&pracd=1780) will publish additional updates relating to specific elements of the ACO Final Rule and the related documents.

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