

# Insights

## ACO Final Rule Released

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On June 4, 2015, the Centers for Medicare and Medicaid Services (“CMS”) issued a Final Rule for the “Medicare Shared Savings Program: Accountable Care Organizations.” The Final Rule follows the December 2014 Proposed Rule and the review of more than 270 public comments. The Medicare Shared Savings Program was initially implemented under the Affordable Care Act in 2011 in order to “promote accountability for a population of Medicare beneficiaries, improve the coordination of fee-for-service items and services, encourage investment in infrastructure and redesigned care for high quality and efficient service delivery and promote higher value care.”[1] In addition to maintaining the initial purposes, the 2015 Final Rule also aims to “advance the ACO models, codify existing guidance, reduce administrative burden and improve program function and transparency in a number of program areas.”[2] The Final Rule contains the following notable revisions:

- More efficient data sharing to allow Accountable Care Organizations (“ACOs”) improved access to Medicare beneficiary claims data, while leaving the option for beneficiaries to deny sharing of the data intact.
- The addition of Track 3, a third performance-based risk option that offers a higher sharing rate than Tracks 1 and 2, as well as a waiver for the three-day Skilled Nursing Facility Rule, beginning in 2017.
- Modifications to Track 2 that provide ACOs with additional choices for setting their minimum savings and loss rates, including the option of a symmetric threshold for savings and losses under the performance based risk tracks.
- The option to renew Track 1 Participation Agreements for an additional three-year agreement period. This option is available to ACOs that have met the quality performance standard in at least one of the first two years of their initial Track 1 agreement period and maintain good standing with the program.
- Increased significance on primary care services in the beneficiary assignment methodology by removing “specialist physicians” from step two of the methodology and adding primary care services provided by nurse practitioners, clinical nurse specialists and physician assistants to step one of the methodology.
- Modification to the financial benchmark resetting methodology by allocating equal weight to the historical benchmark years of the ACO, as well as applying savings produced by the ACO in its prior agreement years.
- Updated eligibility standards, including the expansion of the requirements for agreements between ACOs and Medicare-enrolled entities, updated governing body and leadership qualifications and a requirement for

the ACO to detail how they will encourage the use of “enabling technologies” to improve care coordination.[3]

All revisions in the Final Rule become effective on August 3, 2015, with the exception of three amendments. The data sharing amendment that modifies how beneficiaries may deny the sharing of claims and the amendment revising the requirements for notification of participation in a shared savings program both go into effect on November 1, 2015. Additionally, the amendment modifying the methods ACOs may use to request beneficiary identifiable data will go into effect on January 1, 2016. With more than 400 participating organizations in the shared savings program, the Final Rule will affect a large number of health care entities throughout the country.

If you have any questions or concerns, please feel free to contact Brian Heaton at [bheaton@kdlegal.com](mailto:bheaton@kdlegal.com) or Meghan McNab at [mmcnab@kdlegal.com](mailto:mmcnab@kdlegal.com).

[1] Medicare Program; Medicare Shared Savings Program: Accountable Care Organizations, 80 Fed. Reg. 32692, 32694 (June 9, 2015)(amending 42 C.F.R. pt. 425).

[2] Id.

[3] Finalized Changes to the Medicare Shared Savings Program Regulations, CMS, June 4, 2015 <http://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2015-Fact-sheets-items/2015-06-04.html> (last visited June 16, 2015).