

## **CMS Issues New Rules to Mitigate the Effect of COVID-19 on ACOs**

*May 21, 2020*

While the COVID-19 pandemic has created a great deal of uncertainty for Accountable Care Organizations (“ACOs”) and their members, the Centers for Medicare & Medicaid Services (“CMS”) has recently provided relief that should help mitigate some of the effects of the pandemic on ACOs.

### **COVID-19 HAS CAUSED SIGNIFICANT CHALLENGES FOR ACOs**

ACOs participating in the Medicare Shared Savings Program (“MSSP”) or Next Generation ACO Model face significant challenges and lack of predictability regarding spending and utilization in light of the COVID-19 pandemic, particularly as numerous elective procedures and surgeries have been canceled or delayed, some patients have avoided routine care, and patients presenting with COVID-19 symptoms require increased levels of care management. These challenges have left many ACOs concerned about the shared losses they may owe to CMS this performance year.

Indeed, a survey by the National Association of ACOs (“NAACOS”) in early April 2020 indicated that 56 percent of risk-based MSSP ACOs reported they were likely to leave the MSSP in response to concerns about incurring financial losses this year due to COVID-19.<sup>1</sup>

### **NEW CMS RULES PROVIDE SOME RELIEF FOR ACOs**

CMS has responded to these concerns by, among other things, issuing two interim final rules providing some relief for ACOs. On March 30, CMS released an interim final rule invoking the MSSP’s extreme and uncontrollable circumstances policy for the COVID-19 public health emergency. Under this policy, CMS will reduce the shared losses an ACO must pay back to CMS for performance year 2020 by an amount determined by multiplying (1) the shared losses by 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 April 30, CMS issued another interim final rule providing additional support and relief to ACOs, including:

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<sup>1</sup> Press Release, National Association of ACOs, Survey Shows ACOs’ Concerns About the Effect of COVID-19, <https://www.naacos.com/new-survey-acos-covid-19>.

- Providing ACOs with current agreement periods that expire on December 31, 2020, with the option to extend their agreement periods by one year;
- Providing ACOs in the BASIC track's glide path with the option to maintain their current level of participation for performance year 2021, meaning they would not have to assume higher levels of risk in performance year 2021;
- Clarifying that for purposes of the MSSP, the months affected by the extreme and uncontrollable circumstance policy will begin with January 2020 and extend for the duration of the COVID-19 public health emergency;
- Adjusting the program calculations to mitigate the impact of COVID-19 on ACOs by, for example, removing payment amounts for episodes of care for treatment of COVID-19 from MSSP expenditure and revenue calculations; and
- Expanding the definition of primary care services for purposes of determining beneficiary assignment to include telehealth, virtual check-ins, and e-visits.

Notably, the new rule does not allow new ACOs to enroll in the MSSP in 2021. This change means that new ACOs will not be permitted to enter the program until 2022 at the earliest unless CMS amends the new rule or issues another rule.

## **DESPITE THE NEW RULES, ACOs STILL FACE CHALLENGES FROM COVID-19**

These new CMS rules should provide ACOs with some assurance that they may not incur financial losses resulting from COVID-19 as large as they initially feared. This assurance is particularly welcome in advance of the current June 1 deadline for ACOs to decide whether to voluntarily leave the MSSP without financial penalty. But ACOs still face significant uncertainty as the pandemic continues and its effects disrupt previous patterns of care management. The lack of certainty makes it difficult for ACOs to predict the shared savings they may earn or shared losses they may be responsible for during this performance year or beyond.

Hancock Daniel will continue to monitor the latest developments with respect to the impact of the COVID-19 pandemic on ACOs. If you have any questions about the effect of the interim final rules on ACOs, please contact a member of our [ACOs and Bundled Payments](#) team. For any other concerns arising from the pandemic, please contact a member of our [COVID-19 Task Force](#).

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