



805 15th Street NW, Suite 650 | Washington, DC 20005 | (202) 466-8700
www.CriticalCareRoundtable.org

Final ACO Rule Released Today

Today, the Centers for Medicare & Medicaid Services (CMS) released the final rule for implementing section 3022 of the Affordable Care Act, the Medicare Shared Savings Program. This signature Affordable Care Act delivery reform provision allows health care providers to form Accountable Care Organizations (ACOs), by which providers agree to be responsible for the overall care of at least 5,000 Medicare beneficiaries and share in the savings if the ACO meets specified quality measures and cost reduction targets.

Delegates to the Roundtable's National Summit on Critical Care Policy this past June were joined by a panel of CMS officials who briefed the Roundtable on new payment and delivery programs, including the Medicare Shared Savings Program. Delegates agreed that care provided in the ICU will likely play a key role in the success of an ACO, and urged the CMS officials to consider the impact of delivery reforms on the critical care sector.

As you may recall, CMS released the proposed rule this March which: established eligibility requirements for ACOs to participate in the program; a methodology for assigning beneficiaries to an ACO; a payment methodology for sharing savings (one-sided and two-sided models); and proposed 65 quality measures to determine an ACO's performance. However, the proposed rule was widely criticized for being too prescriptive and risky to incent sufficient provider participation.

In an op-ed published today in the *New England Journal of Medicine*, CMS Administrator Don Berwick writes that "CMS had received over 1,200 formal comments on the proposed rule... and in response CMS is making several significant changes in the final rule to strengthen the ACO program for providers and beneficiaries alike." Indeed, the 696-page rule released today includes several significant changes from the original proposed rule, among them:

- ACOs will be measured against 33 quality measures instead of the previously proposed 65, which span four domains: patient experience of care; care coordination/patient safety; preventative health; and at-risk populations.
- Two sharing arrangement models will still be offered, however ACOs choosing the one-sided model will not be subject to losses in the final year.
- ACOs in both arrangement models that meet quality and minimum savings rates will share in the first dollar of savings.
- ACOs will be told up front which Medicare beneficiaries are assigned to each ACO, as opposed to at the conclusion of the performance measurement period.

- Critical access hospitals, federally qualified health centers and rural health care clinics will be able to participate as independent ACOs.
- More flexible start dates in 2012 for ACOs, with first agreements starting April 1st and July 1st.

Of interest to teaching hospitals and residency programs, the final ACO rule excludes IME and DSH payments from ACO benchmark and performance year expenditures. CMS notes that few comments supported including these payments in the benchmark.

Additionally, CMS announced the final rules for the Advance Payment ACO Model, proposed earlier this year by the Innovation Center. Under this model, physician-owned organizations, critical access hospitals and rural providers will have the opportunity to receive an advance payment to assist with upfront infrastructure investments. More information on the Advanced Payment model can be found [here](#).

These changes are being viewed as concessions to the health care industry to entice providers and health systems to participate in the program. CMS estimates that the federal savings from this initiative could be up to \$940 million over four years, with anywhere from 50-270 organizations participating in the first agreement period.

In conjunction the CMS final rule, the Department of Justice and the Federal Trade Commission issued a joint policy statement detailing how the agencies will enforce antitrust laws with respect to ACOs. For the joint policy statement, please click [here](#).

This Special Alert is an update from The Roundtable on Critical Care Policy. For further information on the Roundtable, please visit our website at www.CriticalCareRoundtable.org.