

Thursday, March 31, 2011

To: Congressional Health Staff

From: Amy Hall, Director, Office of Legislation
Centers for Medicare & Medicaid Services

Re: CMS Issues Proposed Rule for the Medicare Shared Savings Program

The Centers for Medicare & Medicaid Services (CMS) today issued a proposed rule that would implement the Medicare Shared Savings Program (Shared Savings Program) created by the Affordable Care Act. This program provides incentives for physicians and hospitals to create “accountable care organizations” (ACOs) that would enter into an agreement with Medicare to take responsibility for improving quality and coordination of care for a group of at least 5,000 beneficiaries, while lowering their costs, in return for a share of the resulting savings. As proposed, ACOs could also face liability to Medicare for failing to provide efficient, cost-effective care.

Under the proposed rule, an ACO would apply to CMS to participate in the Shared Savings Program, and would have to meet certain proposed criteria. The proposed rule includes 65 proposed quality measures focusing on the patient’s satisfaction with care, processes of care (such as appropriate uses of antibiotics), and improving health status. In order to obtain shared savings under the program, ACOs must meet a certain quality performance standard.

The proposed rule would permit the beneficiary to retain complete freedom to choose where and how he or she obtains care. If the beneficiary’s physician belongs to an ACO, the beneficiary can continue getting care from the physician, or seek care from a physician who does not participate in an ACO. At the end of the year, CMS would review a beneficiary’s use of primary care services during the year to determine whether the beneficiary’s care should be attributed to a particular ACO.

CMS has worked closely with other federal agencies, including the Health and Human Services Office of Inspector General to address potential fraud and abuse concerns; the Department of Justice and the Federal Trade Commission to promote competition in the marketplace; and the Internal Revenue Service to address concerns about nonprofit hospitals participating in ACOs without jeopardizing their tax exempt status. In addition to the proposed rule, three notices are also issued today in connection with the development of ACOs:

- 1) A joint CMS and OIG notice, “Notice and Solicitation of Public Comments on Waivers in Connection with Sections 1899 and 1115A of the Social Security Act,” with respect to the application of certain fraud and abuse laws to ACOs, including an ACO’s arrangements for distributing shared savings;
- 2) A joint statement by the Department of Justice and the Federal Trade Commission, “Proposed Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations Participating in the Medicare Shared Savings Program” to ensure that ACOs promote cooperation without opening the door to anticompetitive behavior; and

3) A guidance document by the Internal Revenue Service discussing how nonprofit health care entities can participate in ACOs without jeopardizing their tax exempt status.

The proposed rule was placed on display at the *Federal Register* today and is expected to be published in the *Federal Register* on April 7, 2011. The proposed rule can be found under Special Filings at: <http://www.ofr.gov/inspection.aspx?AspxAutoDetectCookieSupport=1>. Comments on the proposed rule will be accepted until June 6, 2011.

The press release on this announcement will be available on the CMS web site at: http://www.cms.gov/apps/media/press_releases.asp. Fact Sheets, including an overview of the vision for the program, the quality measures, and the federal agency efforts to address legal concerns, will also be available at: http://www.cms.gov/apps/media/fact_sheets.asp.

If you have any questions, please contact the CMS Office of Legislation at 202-690-8220. Thank you.