



Medicare Shared Savings Program **SKILLED NURSING FACILITY 3-DAY RULE WAIVER**

Guidance

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Version #8

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Revision History (From Version 7 to Version 8)

VERSION	DATE	REVISION/CHANGE DESCRIPTION	AFFECTED AREA
8	April 2020	Updated application process; explained how waiver relates to Medicare beneficiaries enrolled in Medicare Advantage and included on assignment list; incorporated updates regarding inclusion of the demonstration code 77 on claims; clarified transfer policy; removed references to reviewing sample agreements; added attestation statement for sample agreements; added sections on the care management plan and the beneficiary evaluation and admission plan.	All

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1 Executive Summary

The purpose of this document is to describe the policies for waivers of the Skilled Nursing Facility (SNF) 3-Day Rule under the Medicare Shared Savings Program (Shared Savings Program) and the Medicare ACO Track 1+ Model (Track 1+ Model). Specifically, this document provides background on the SNF 3-Day Rule, waiver-eligibility criteria for Accountable Care Organizations (ACOs) and SNF affiliates, as well as information on how to apply for a SNF 3-Day Rule Waiver.

Under the Shared Savings Program, the Centers for Medicare & Medicaid Services (CMS) enters into a participation agreement with each participating ACO. CMS will reward ACOs when they lower growth in Medicare Parts A and B fee-for-service (FFS) costs (relative to their ACO-specific benchmark) if, at the same time, they meet performance standards on quality of care, and otherwise maintain their eligibility to participate in the Shared Savings Program.

The SNF 3-Day Rule Waiver waives the requirement for a 3-day inpatient hospital stay prior to a Medicare-covered, post-hospital, extended-care service for eligible beneficiaries (see [Section 4.2](#) below). Only Shared Savings Program ACOs that are currently participating in or applying to certain Shared Savings Program performance-based risk tracks or the Track 1+ Model have the opportunity to apply for a waiver of the SNF 3-Day Rule, and they must apply separately for the waiver during the annual application process as described in [Section 3.3](#) below.

To apply for a SNF 3-Day Rule Waiver, ACOs must:

- Meet specific eligibility criteria;
- Submit a SNF Affiliate List;
- Submit sample SNF Affiliate Agreement(s);
- Submit an executed SNF Affiliate Agreement for each proposed SNF affiliate;
- Complete the SNF Affiliate Agreement table in the [ACO Management System](#) (ACO-MS); and
- Submit the following documents:
 - Communication plan (see [Section 7](#));
 - Care management plan (see [Section 8](#)); and
 - Beneficiary evaluation and admission plan (see [Section 9](#)).

2 Background

This document is subject to periodic change. Any substantive changes to this document are noted in the [revision history](#).

2.1 STATUTORY & REGULATORY BACKGROUND

An ACO is composed of groups of doctors, hospitals, and other health care providers that come together voluntarily to give coordinated, high-quality care to their Medicare FFS beneficiaries. The Shared Savings Program rewards ACOs that improve the quality and cost efficiency of health care. The authority for the Shared Savings Program is in Section 1899 of the Social Security Act (the Act), which was added by the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010. CMS has published four final rules for the Shared Savings Program. The first final rule was published in November 2011, the second was published in June 2015, the third was published in June 2016, and the fourth was published in December 2018. Additionally, CMS has addressed certain issues related to the Shared Savings Program in the annual Physician Fee Schedule (PFS) rulemaking.

The June 2015 Final Rule established the requirements for use of the waiver of the SNF 3-Day Rule under the Shared Savings Program in 42 CFR § 425.612 of the Shared Savings Program regulations (80 FR 32800). Through the Calendar Year (CY) 2017 PFS Final Rule, CMS finalized additional beneficiary protections related to use of the SNF 3-Day Rule Waiver (81 FR 80510). In the CY 2018 PFS final rule, CMS made further changes to streamline the SNF 3-Day Rule Waiver application requirements by removing certain documentation requirements, with a goal of reducing burden for applicants.¹ In the December 2018 final rule, CMS expanded access to the program's existing SNF 3-Day Rule Waiver by allowing ACOs participating under certain performance-based risk tracks with preliminary prospective assignment to apply to use the waiver, as well as allowing hospitals or critical access hospitals (CAHs) under a swing bed agreement to be eligible to partner with ACOs as SNF affiliates. The complete Shared Savings Program regulations can be found in the Code of Federal Regulations at 42 CFR part 425. Additionally, the [Electronic Code of Federal Regulations website](#) is a useful resource for viewing the program regulations.

3 SNF 3-Day Rule Waiver Overview

The SNF 3-Day Rule Waiver waives the requirement for a 3-day inpatient hospital stay prior to a Medicare-covered, post-hospital, extended-care service for eligible beneficiaries if certain conditions are met (see [Section 4.2](#) below).

¹ Medicare Shared Savings Program: Accountable Care Organizations, 82 FR 52976, 53218-19, 53371 (Nov. 15, 2017) (Amending 42 CFR § 425.612 by removing requirements that ACOs applying for the SNF 3-Day Rule Waiver must submit a narrative describing any financial relationships between the ACO, SNF affiliate, and acute care hospitals, and submit documentation demonstrating that each SNF affiliate has an overall rating of 3 stars or higher under the CMS 5-star Quality Rating System).

3.1 BACKGROUND ON THE SNF 3-DAY RULE WAIVER

Section 1819(a) of the Act defines a SNF, in part, as an institution (or a distinct part of an institution) that is not primarily for the care and treatment of mental diseases but is primarily engaged in providing the following to residents:

- Skilled nursing care and related services for residents who require medical or nursing care.
- Skilled rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

The Medicare SNF benefit applies to beneficiaries who require a short-term intensive stay in a SNF and skilled nursing and/or skilled rehabilitation care. Pursuant to section 1861(i) of the Act, beneficiaries must have a prior inpatient hospital stay of no fewer than three consecutive days to be eligible for Medicare coverage of inpatient SNF care. This requirement is referred to as the SNF 3-Day Rule.

3.2 OVERVIEW OF THE SNF 3-DAY RULE WAIVER

Section 1899(f) of the Act permits the Secretary to waive certain payment or other program requirements as may be necessary to carry out the Shared Savings Program. To support ACOs' efforts to increase quality and decrease costs, CMS finalized a waiver of the SNF 3-Day Rule for eligible ACOs participating in certain performance-based risk tracks (or payment models within a track) of the Shared Savings Program (§ 425.612). Specifically, CMS has used the authority under section 1899(f) to waive section 1861(i) of the Act to allow coverage of certain SNF services that are not preceded by a qualifying 3-day inpatient hospital stay for eligible beneficiaries who are prospectively or preliminarily prospectively assigned to an ACO participating in Levels C, D, or E of the BASIC track, or the ENHANCED track (formerly known as Track 3) of the Shared Savings Program. Similarly, CMS has used the waiver authority under section 1115A(d)(1) of the Act to waive section 1861(i) of the Act for the Track 1+ Model, consistent with the SNF 3-Day Rule Waiver under 42 CFR § 425.612.

Eligible ACOs may apply for the use of a SNF 3-Day Rule Waiver during their agreement period, or at the time of application to participate in the program. ACOs, including those applying for a waiver during the term of an existing participation agreement, must follow the annual application process as described in [Section 3.3](#) below. Applications for a SNF 3-Day Rule Waiver will have an effective date of January 1 of the upcoming performance year. Once approved, an ACO will maintain its SNF 3-Day Rule Waiver for the remainder of its current participation agreement, unless CMS determines it is necessary to revoke the ACO's waiver as provided in § 425.612(d)(3) or under the terms of the Track 1+ Model. If CMS terminates the ACO's participation agreement under § 425.218, the waiver ends on the date specified by CMS in the termination notice or if the ACO terminates its participation agreement, on the effective date of termination, as specified in the ACO's advance written notice to CMS required under § 425.220.

It is important to note that a SNF 3-Day Rule Waiver does not create a new benefit or extend Medicare SNF coverage to patients who could be treated in outpatient settings or who require long-term custodial care. The waiver is intended to provide ACOs that are participating in certain performance-based risk tracks with additional flexibility to increase quality and decrease costs. The SNF benefit itself remains unchanged. The SNF 3-Day Rule Waiver is only applicable for services furnished in SNF affiliates that meet the eligibility requirements in § 425.612, discussed below in [Section 4](#).

The SNF 3-Day Rule Waiver does not restrict a beneficiary's choice of provider or supplier. A beneficiary continues to have the option to seek care from any Medicare FFS provider or supplier, including from a SNF or other facility that is not an affiliate of an ACO that is participating in the Shared Savings Program. In such circumstances, normal Medicare requirements apply, including the requirement for a 3-day, inpatient hospitalization.

3.3 APPLYING FOR A SNF 3-DAY RULE WAIVER

ACOs applying to participate in the Shared Savings Program Levels C, D, or E of the BASIC track or the ENHANCED track, or existing Shared Savings Program ACOs currently participating in the ENHANCED track (formerly known as Track 3), the Track 1+ Model, Levels C, D, or E of the BASIC track or entering Levels C, D, or E of the BASIC track may submit a SNF 3-Day Rule Waiver application during the annual Shared Savings Program application cycle. Refer to the [Application Types & Timeline webpage](#) for details.

ADDITIONAL RESOURCES

- [Application Toolkit webpage](#)
- [Application Types & Timeline webpage](#)

The SNF 3-Day Rule Waiver Application requires the ACO to provide sufficient information to demonstrate that the ACO has the capacity to identify and manage beneficiaries who, under the waiver, would be either directly admitted to a SNF or admitted to a SNF after an inpatient hospitalization of fewer than 3 days.

Applicants must submit their applications through ACO-MS in accordance with the guidance provided on the [Application Toolkit webpage](#). The Shared Savings Program [Application Types & Timeline webpage](#) contains an up-to-date list of all applicable deadlines. Additionally, refer to this webpage to find the latest information concerning the Shared Savings Program application process.

During the application process, ACOs receive multiple request for information (RFI) notifications summarizing CMS' review of submitted application information. ACOs should carefully review the RFIs sent by CMS because they only have a few opportunities to correct deficiencies identified in the submitted application information. Please note that while the application cycle deadlines are subject to change, CMS will not accept late submissions.

3.4 WITHDRAWING A SNF 3-DAY RULE WAIVER APPLICATION

ACOs that submit a SNF 3-Day Rule Waiver application but do not intend to participate in the SNF 3-Day Rule Waiver have the ability to withdraw their SNF 3-Day Rule Waiver application by completing the following steps:

- Submit a written request on its ACO's letterhead, signed by the ACO Executive. The letter must include:
 - The organization's legal entity name;
 - ACO ID;
 - Complete address;
 - Point of contact information (phone number and email address); and
 - Statement indicating the ACO's request to withdraw the SNF 3-Day Rule Waiver application.
- Send the request to withdraw as a PDF to SharedSavingsProgram@cms.hhs.gov with the ACO ID and the phrase "Withdrawal Request" in the subject line of the email.

4 SNF 3-Day Rule Waiver Eligibility

Beneficiaries, SNF affiliates, and ACOs must meet the eligibility requirements specified in § 425.612 or in the Participation Agreement for the Track 1+ Model for Medicare to make payment for services provided pursuant to a SNF 3-Day Rule Waiver.

4.1 ACO ELIGIBILITY FOR THE SNF 3-DAY RULE WAIVER

To be eligible to apply for the SNF 3-Day Rule Waiver, an ACO must be applying to participate or already be participating in the Shared Savings Program Track 1 + Model, Levels C, D, or E of the BASIC track or the ENHANCED track, or entering Levels C, D, or E of the BASIC track. ACOs applying to or participating in Levels A and B (one-sided model) of the BASIC track are not eligible to apply for the SNF 3-Day Rule Waiver until the application cycle preceding their entry into Level C or higher of the BASIC track.

4.2 BENEFICAIARY ELIGIBILITY FOR THE SNF 3-DAY RULE WAIVER

To be eligible to receive covered SNF services under the waiver, a beneficiary must appear on an eligible Assignment List Report:

- For an ACO that has selected preliminary prospective assignment with retrospective reconciliation under § 425.400(a)(2), the beneficiary must appear on the list of preliminarily prospectively assigned beneficiaries at the beginning of the

performance year or on the first, second, or third quarterly preliminary prospective assignment list for the performance year in which they are admitted to the eligible SNF (referred to as a SNF affiliate, described in [Section 5](#)), and the SNF services must be provided after the beneficiary first appeared on the preliminary prospective assignment list for the performance year.

- For an ACO that has selected prospective assignment under § 425.400(a)(3), the beneficiary must be prospectively assigned to the ACO for the performance year in which they are admitted to the eligible SNF.

Additionally, beneficiaries must meet the following requirements under § 425.612(a)(1)(ii):

- Not reside in a SNF or other long-term care setting;
- Be medically stable;
- Not require inpatient or further inpatient hospital evaluation or treatment;
- Have certain and confirmed diagnoses;
- Have an identified skilled nursing or rehabilitation need that they cannot receive as an outpatient; and
- Have been evaluated and approved for admission to the SNF within 3 days prior to the SNF admission by an ACO provider/supplier that is a physician, consistent with the ACO's beneficiary evaluation and admission plan.

As described in the December 2018 Final Rule, consistent with the approach taken under the Pioneer ACO Model and Next Generation ACO Model, CMS does not consider independent or assisted living facilities to be long-term care settings for purposes of determining a beneficiary's eligibility to receive SNF services pursuant to the SNF 3-Day Rule Waiver. Additionally, concerning the requirement that a beneficiary has been evaluated by an ACO provider/supplier that is a physician, this criterion does not preclude review and approval by an ACO provider/supplier that is a physician overseeing an evaluation conducted by another provider/supplier that is involved in the beneficiary's care. That provider can be a nurse practitioner, a physician assistant, or a clinical nurse specialist who has directly evaluated the beneficiary and has found that the beneficiary requires admission to a SNF.

To clarify, if a beneficiary is admitted to a SNF without a qualifying inpatient stay prior to an ACO's termination date, and all requirements of the SNF 3-Day Rule Waiver are met, the SNF services furnished after the ACO's termination date, within the same episode of care, would be covered under the SNF 3-Day Rule Waiver.

4.2.1 PROSPECTIVELY ASSIGNED BENEFICIARIES

ACOs under the prospective assignment methodology will receive an initial assignment list from CMS at the start of each performance year. On a quarterly basis, these ACOs

receive a list of beneficiaries whom CMS has removed from the ACO's prospective assignment list as a result of meeting select assignment exclusion criteria. To learn more about the prospective assignment methodology, refer to the current version of the Shared Savings and Losses and Assignment Methodology Specifications available on the [CMS website](#).

During the performance year, a beneficiary loses their eligibility to receive covered SNF services under the waiver if they appear on a quarterly report excluding the beneficiary from the ACO's original prospective assignment list, unless the 90-day grace period applies (refer to [Section 4.4](#) below). The beneficiaries who remain on the ACO's prospective assignment list continue to be eligible to receive covered SNF services under the applicable SNF 3-Day Rule Waiver. ACOs should notify their SNF affiliates of changes to beneficiary eligibility in a timely manner to comply with the waiver requirements. ACOs should refer to the Assignment List Report and Assignment Summary Report User's Guide, located on the [SSP ACO Portal](#), for more information on the prospective assignment lists and quarterly exclusion reports.

4.2.2 PRELIMINARILY PROSPECTIVELY ASSIGNED BENEFICIARIES

ACOs will receive an initial assignment list from CMS at the start of each performance year. On a quarterly basis, ACOs under the preliminary prospective with retrospective reconciliation assignment methodology receive a new list of beneficiaries whom CMS has preliminarily prospectively assigned to the ACO for the quarter. To learn more about the preliminary prospective assignment methodology, refer to the current version of the Shared Savings and Losses and Assignment Methodology Specifications on the [Program Guidance & Specifications webpage](#).

The SNF 3-Day Rule Waiver is available for all beneficiaries who have been identified as preliminarily prospectively assigned to the ACO on the initial performance year assignment list or on one or more assignment lists for quarters 1, 2, and 3 of the performance year, for SNF services provided after the beneficiary first appeared on one of the assignment lists for the applicable performance year. The beneficiary remains eligible to receive SNF services furnished in accordance with the waiver unless they are no longer eligible for assignment to the ACO because they are no longer enrolled in both Part A and Part B or have enrolled in a Medicare group health plan.

4.3 SNF ELIGIBILITY

ACOs must provide CMS with a list of SNFs (referred to as SNF affiliates) with which the ACO will partner along with executed written SNF Affiliate Agreements between the ACO and each listed SNF affiliate (refer to [Section 5](#)). ACOs submit the SNF Affiliate List and the SNF Affiliate Agreements through [ACO-MS](#).

The SNF affiliates included on the ACO's list (referred to as the "SNF Affiliate List") undergo a program integrity review and CMS reviews the SNF Affiliate Agreements for compliance with the SNF 3-Day Rule Waiver requirements in § 425.612. SNF affiliates that are eligible to be included in the CMS 5-Star Quality Rating System must have and maintain an overall rating of three stars or higher. Beginning July 1, 2019, hospitals and

CAHs operating under swing bed agreements are eligible to partner with ACOs as SNF affiliates. Hospitals and CAHs operating under swing bed agreements are not required to have or maintain a rating on the CMS 5-Star Quality Rating System.

4.4 BENEFICIARY PROTECTIONS AND 90-DAY GRACE PERIOD

CMS determined that additional protections were necessary for beneficiaries receiving services under a SNF 3-Day Rule Waiver and has included the following beneficiary protections.

CMS modified § 425.612(a)(1) to include a 90-day grace period that will permit payment for SNF services provided without a qualifying inpatient stay to certain beneficiaries who were initially included on the ACO's prospective assignment list for a performance year but who were subsequently excluded during the performance year, if such services would otherwise be covered under the SNF 3-Day Rule Waiver. This allows SNF waiver-approved ACOs and SNF affiliates a grace period to update their systems to account for beneficiaries who were previously eligible to receive services under a SNF 3-Day Rule Waiver but were excluded from assignment to the ACO in the most recent quarterly update to the ACO's prospective assignment list. The 90-day grace period begins on the date that CMS delivers the quarterly beneficiary exclusion list to an ACO.

The 90-day grace period does not apply to beneficiaries who have enrolled in a Medicare Advantage Plan or are otherwise no longer enrolled in Part A and Part B. For PY 2020, the initial assignment list is based on the most recent data available and does not include claims processed or beneficiary changes after September 30, 2019. Therefore, beneficiaries newly enrolled in a Medicare Advantage Plan or no longer enrolled in Part A and Part B may appear on the initial assignment list. However, as described in [Section 10](#), a SNF 3-Day Rule Waiver does not change FFS billing requirements (other than the 3-day inpatient stay requirement). ACOs should verify a beneficiary's eligibility for the SNF 3-Day Rule Waiver prior to admission to a SNF affiliate. As stated in the CY 2018 PFS final rule, "[p]roviders and suppliers are expected to confirm a beneficiary's health insurance coverage to determine if they are eligible for FFS benefits."

Beneficiaries who are preliminarily prospectively assigned to a waiver-approved ACO remain eligible to receive services furnished in accordance with the SNF 3-Day Rule Waiver for the remainder of that performance year unless they enroll in a Medicare group health plan or are otherwise no longer enrolled in Part A and Part B; therefore, these beneficiaries do not require a grace period.

ACOs should educate SNF affiliates and ACO providers/suppliers about the 90-day grace period. ACOs are expected to communicate information contained in the assignment list and quarterly exclusion reports in a timely and accurate manner to their SNF affiliates and ACO providers/suppliers that rely on this information during their evaluation of a beneficiary for admission under a SNF 3-Day Rule Waiver.

In the event that a SNF affiliate of an ACO that has been approved for the SNF 3-Day Rule Waiver admits an FFS beneficiary who was never prospectively or preliminarily prospectively assigned to the ACO (or was prospectively assigned but was later excluded and the 90-day grace period has lapsed), and the claim is rejected only for lack of a qualifying inpatient hospital stay, CMS will make no payment to the SNF, and the SNF may not charge the beneficiary for the non-covered SNF services and must return to the beneficiary any monies collected for such services. In this circumstance, the SNF affiliate will be prohibited from charging a beneficiary for non-covered SNF services, even in cases where the beneficiary explicitly requested or agreed to being admitted to the SNF in the absence of a qualifying 3-day inpatient hospital stay, if all other requirements for coverage are met.

5 SNF Affiliate List

An ACO must notify CMS of changes to its SNF Affiliate List in the form and manner specified by CMS.

5.1 SNF AFFILIATE LIST REQUIREMENTS

The SNF Affiliate List must include the proposed SNF affiliate's legal business name (LBN), taxpayer identification number (TIN), CMS Certification Number (CCN), and CCN LBN for each SNF, and/or hospital or CAH operating under a swing bed agreement that wishes to partner with the ACO for purposes of the SNF 3-Day Rule Waiver. Each proposed SNF affiliate must be Medicare-enrolled and have signed a valid SNF Affiliate Agreement with the ACO that meets the requirements in § 425.612.

Additionally, for SNF affiliates eligible to be included in the CMS 5-Star Quality Rating System, the SNF affiliate must have and maintain an overall quality rating of three or more stars. The only exceptions to this requirement are hospitals and CAHs operating under swing bed agreements, as they are not eligible to have a rating on the CMS 5-Star Quality Rating System. SNF affiliates that are eligible for the CMS 5-Star Rating System but that have no rating, for example new SNFs, are not eligible to partner with an ACO for purposes of the SNF 3-Day Rule Waiver. If a SNF, or hospital or CAH operating under a swing bed agreement, does not meet all of these requirements, CMS will reject the ACO's request to include the facility on its SNF Affiliate List.

ACOs are responsible for ensuring their SNF Affiliate Lists are accurate and include only eligible SNF affiliates that have executed valid SNF Affiliate Agreements to partner with the ACO. After CMS approves a SNF 3-Day Rule Waiver Application, the ACO:

- Must maintain, update, and annually provide the list of SNF affiliates to CMS using [ACO-MS](#) at the beginning of each performance year and at other times as specified by CMS;
- Must certify the accuracy of the SNF Affiliate List prior to the start of each performance year and at other times as specified by CMS; and

- May add or remove SNF affiliates during the term of the Shared Savings Program ACO Participation Agreement.²

SNF affiliates are not required to be ACO participants or ACO providers/suppliers. SNF affiliates may partner with more than one Shared Savings Program ACO. In addition, SNF affiliates that are not ACO participants or ACO providers/suppliers may partner with entities participating in other shared savings initiatives. Note that SNF affiliates that are ACO participants or ACO providers/suppliers do not automatically qualify to offer services under the applicable SNF 3-Day Rule Waiver. A SNF, or hospital or CAH operating under a swing bed agreement, must appear on the certified SNF Affiliate List and have entered the required SNF Affiliate Agreement with the ACO, as well as meet all other applicable requirements, in order to be eligible for payment for services provided under the SNF 3-Day Rule Waiver.

CMS encourages ACOs to validate the proposed SNF affiliate TINs and CCNs by submitting them through ACO-MS. To ensure the SNF 3-Day Rule Waiver is applied and claims are processed correctly, the correct TIN and CCN must appear in the Provider Enrollment, Chain, and Ownership System (PECOS) and CMS claims data. If a SNF, or hospital or CAH operating under a swing bed agreement, using a CCN that does not appear on the SNF Affiliate List admits a beneficiary without a qualifying 3-day inpatient stay, CMS will reject the claim.

CMS also encourages ACOs and SNF affiliates to discuss any changes to the SNF affiliates' TINs and/or CCNs that appear on the certified SNF Affiliate List. The SNF affiliate TIN/CCN should match with PECOS. If a SNF affiliate's TIN and/or CCN changes (e.g., digits change) during a performance year, the ACO must report the changes to CMS through ACO-MS. Such changes will result in the SNF affiliate no longer being eligible to use the SNF 3-Day Rule Waiver for that performance year, because an entity that changes its TIN and/or CCN is considered a new SNF affiliate. Any new SNF affiliate needs to be evaluated and approved by CMS before being eligible, in the upcoming performance year, to use a SNF 3-Day Rule Waiver. Any new SNF affiliate (TIN and/or CCN) is subject to the SNF Affiliate List review cycle described below.

5.1.1 SNF AFFILIATE LIST REVIEW CYCLE

ACOs already approved for a SNF 3-Day Rule Waiver may make changes, referred to as "change requests," to their SNF Affiliate Lists annually for the upcoming performance year during established review cycles. These review cycles coincide with the Shared Savings Program application review cycles. Allowable changes include adding or modifying SNF affiliates on the SNF Affiliate List. These review cycles enable ACOs to receive CMS feedback and provide an opportunity for the ACO to correct any issues that may be identified in advance of the upcoming performance year. Please note: ACOs may delete a SNF affiliate off their SNF Affiliate list at any time during the performance year.

² Additions to a SNF Affiliate List will be reviewed during a CMS review cycle.

5.1.2 SNF AFFILIATE LIST CHANGE REQUEST PROCESS

ACOs can make changes by submitting change requests in [ACO-MS](#). Change requests for the SNF Affiliate List must include accurate TINs, CCNs, and SNF Affiliate Agreements.

5.1.3 SNF AFFILIATE LIST ADDITIONS

During the performance year, an ACO that has been approved for a SNF 3-Day Rule Waiver that is in an agreement period and not yet eligible to request renewal may make changes to its SNF Affiliate List for the upcoming performance year. Change requests to add SNF affiliates for an upcoming performance year will be reviewed during an established CMS review cycle. These review cycles include the provision of CMS' feedback and the opportunity for an ACO to correct certain deficiencies CMS may find in advance of the upcoming performance year. Though an ACO may request an addition to its SNF Affiliate List during the change request review cycle for the upcoming performance year, there are deadlines for submitting change requests for consideration for the upcoming performance year.

It is important to note that any changes in a digit or digits of a required identifier (TIN or CCN) are considered to be a new request to add an entity to the SNF Affiliate List and are not permitted after the deadline. For example, if an ACO submits a change request to its SNF Affiliate List and a required identifier is submitted incorrectly (e.g., the digits of the TIN are typed incorrectly), the error can only be corrected by submitting a new change request. ACOs should ensure that all information submitted for SNF Affiliate List changes is correct.

5.1.4 SNF AFFILIATE LIST DELETIONS

When a SNF Affiliate Agreement terminates, the ACO must notify CMS within 30 days of the end of the agreement by deleting the SNF affiliate in ACO-MS. SNF waiver-approved ACOs may delete SNF affiliates from their SNF Affiliate List at any time during the performance year. Deletions are made directly in ACO-MS. When a SNF waiver-approved ACO terminates a SNF affiliate record, ACO-MS will prompt the ACO to enter the date on which it intends to terminate the SNF Affiliate Agreement. The SNF Affiliate Agreement end date entered by the ACO will be the date the SNF affiliate is no longer eligible for payment for services under the waiver. The ACO should alert the former SNF affiliate that as of the SNF Affiliate Agreement end date it will no longer be a SNF affiliate under the SNF 3-Day Rule Waiver. Once a SNF Affiliate Agreement is terminated, CMS will begin denying claims for lack of a 3-day inpatient stay that formerly would have been covered under the SNF 3-Day Rule Waiver. However, if a beneficiary is admitted to a SNF without a qualifying inpatient stay prior to a SNF Affiliate's Agreement end date, and all requirements of the SNF 3-Day Rule Waiver are met, the SNF services furnished after the Agreement end date, within the same episode of care, would be covered under the SNF 3-Day Rule Waiver.

5.2 SNF AFFILIATE LIST DATA VALIDATION TOOLS

ACOs can use the following tools to improve the quality of the SNF affiliate data provided to CMS.

5.2.1 VERIFYING MEDICARE ENROLLMENT

All SNF affiliates included on an ACO's SNF Affiliate List must be Medicare-enrolled. CMS makes available a listing of all Medicare-enrolled providers/suppliers. Using the [Medicare Revalidation Lookup Tool](#), users can search for a provider/supplier by last name, first name, organization name, National Provider Identifier (NPI), or download a list of revalidation due dates. Providers/suppliers that are due for revalidation must display a revalidation due date; all other providers/suppliers that are not up for revalidation will display "TBD" (to be determined) in the due date field. The revalidation due date is posted up to 6 months in advance of the revalidation due date to provide sufficient notice and time for the provider/supplier to comply. For more information on provider/supplier revalidation, please visit the Medicare Revalidation webpage or have the provider/supplier contact its Medicare Administrative Contractor (MAC).

5.2.2 CMS 5-STAR QUALITY RATING SYSTEM

Each SNF affiliate eligible for inclusion in the [CMS 5-Star Quality Rating System](#) must have and maintain an overall rating of 3 stars or higher to participate in the SNF 3-Day Rule Waiver. ACOs should check their SNF affiliates' star rating on the Nursing Home Compare website before submitting their proposed SNF Affiliate List during the application or change request period. A SNF affiliate change request will be denied if the eligible SNF affiliate does not have a minimum 3-star rating at the time of CMS' final check. CMS also verifies that each eligible SNF affiliate has at least a 3-star rating during the Shared Savings Program agreement period. CMS recommends that ACOs integrate a periodic star rating check into their compliance processes.

For ACOs currently approved for the SNF 3-Day Rule Waiver, CMS will periodically review each SNF affiliate's star rating. CMS will notify ACOs of SNF affiliates that have dropped below the required 3-star rating. If a SNF affiliate does not have a star rating of 3 stars or higher at CMS' last check, CMS will request that the ACO remove the SNF affiliate from the ACO's SNF Affiliate List. If the ACO does not remove the SNF affiliate, CMS will remove the SNF affiliate.

6 SNF Affiliate Agreements

CMS requires that ACOs execute contractual agreements with each SNF affiliate to ensure that the ACO clearly articulates the requirements, and the SNF understands and agrees to comply with the requirements regarding the SNF 3-Day Rule Waiver. An ACO may not include a SNF on its SNF Affiliate List unless an individual authorized to bind the SNF affiliate's Medicare-enrolled TIN has signed a SNF Affiliate Agreement with the ACO. ACOs must submit sample SNF Affiliate Agreement(s) with their SNF 3-Day Rule Waiver Applications. The sample SNF Affiliate Agreement(s) must match each agreement that the ACO executes with a SNF affiliate and must comply with the SNF

Affiliate Agreement requirements. CMS does not provide a “boilerplate” agreement for ACOs.

All ACOs that are eligible to apply for a SNF 3-Day Rule Waiver must submit their sample SNF Affiliate Agreement(s), attest that the sample SNF Affiliate Agreement(s) meet the six requirements of § 425.612(a)(1)(iii), and submit all executed SNF Affiliate Agreements in ACO-MS (first page and completed signature page).

When an ACO submits its sample agreement(s), it must complete the SNF Affiliate Agreement table in ACO-MS (see [Appendix A](#)) to identify where the agreement requirements for the applicable SNF 3-Day Rule Waiver are met.

6.1 SNF AFFILIATE AGREEMENT REQUIREMENTS

The SNF Affiliate Agreement with the ACO includes all SNF affiliates under the Medicare-enrolled TIN that agree to partner with the ACO for purposes of a SNF 3-Day Rule Waiver. While the TIN signs the SNF Affiliate Agreement on behalf of the SNF affiliates, the TIN should notify all providers and suppliers billing through each of the CCNs on the SNF Affiliate List of the SNF 3-Day Rule Waiver requirements of the Shared Savings Program and Track 1+ Model, as applicable, before the SNF affiliates begin to admit beneficiaries under a SNF 3-Day Rule Waiver. Section 425.612(d)(2) authorizes CMS to monitor and audit the use of the SNF 3-Day Rule Waiver in accordance with § 425.316. Such monitoring includes review of the sample SNF Affiliate Agreement submitted by the ACO (original or revised version) at any time to determine compliance with program requirements set forth at § 425.612(a)(1)(iii).

Other agreement requirements should:

- Expressly state the only parties to the agreement are the ACO and the SNF affiliate.
- Be signed on behalf of the ACO and the SNF affiliate by individuals who are authorized to bind the ACO and the SNF affiliate, respectively. The Medicare-enrolled TIN is authorized to bind the SNF affiliate CCN(s) billing under the TIN.
- Include the LBNs of the parties on the SNF Affiliate Agreement. These must match those provided in ACO-MS and on the SNF Affiliate List.
- On the signature page (see [Appendix B](#)) of the sample SNF Affiliate Agreement, include a section to list the SNF affiliate CCN numbers and CCN LBNs under the Medicare-enrolled TIN, and in each executed SNF Affiliate Agreement, list the SNF affiliate’s CCN number and CCN LBN for each SNF affiliate under the Medicare-enrolled TIN that agrees to be a SNF affiliate of the ACO. ACOs should also include a statement that the Medicare-enrolled TIN agrees to the terms and conditions of the SNF Affiliate Agreement on behalf of the CCN of each listed SNF affiliate.

CMS strongly recommends ACOs include the following information in their sample SNF Affiliate Agreements and executed SNF Affiliate Agreements to ensure that each SNF affiliate understands how participating in a SNF 3-Day Rule Waiver may impact them. If this information is not included in the SNF Affiliate Agreement, ACOs should clearly

discuss the following with each SNF affiliate during the ACO's SNF 3-Day Rule Waiver SNF affiliate education and onboarding process before an authorized representative of the SNF affiliate signs the SNF Affiliate Agreement:

- Training requirements on both the ACO's beneficiary evaluation and admission plan and the care management plan for beneficiaries admitted to the SNF affiliate pursuant to the waiver.
- Express requirement that the ACO is to notify the SNF affiliate when the SNF 3-Day Rule Waiver has ended.

6.2 EXECUTED SNF AFFILIATE AGREEMENT REQUIREMENTS

Each executed SNF Affiliate Agreement must match the sample SNF Affiliate Agreement and include the first page of the agreement and the signature page signed by individuals who have the legal authority to bind the SNF affiliate or ACO. The signature page must reflect information (such as contact information) for both the ACO and the SNF affiliate and must be consistent with the ACO's legal entity name and SNF affiliate's LBN listed on the first page of the SNF Affiliate Agreement. The Shared Savings Program refers to the legal name of the ACO as the "legal entity name" and the legal name of a SNF affiliate as the "legal business name." The signature page must list the SNF affiliate's CCN and CCN LBN for each SNF affiliate under the Medicare-enrolled TIN that agrees to be a SNF affiliate of the ACO, and include a statement that the Medicare-enrolled TIN agrees to the terms and conditions of the SNF Affiliate Agreement on behalf of the CCN of each listed SNF affiliate.

CMS must receive a copy of each executed SNF Affiliate Agreement (first page and signature page) that includes either a digital signature (see [Appendix C](#)) or a wet signature,³ and a signature date, from both the ACO and SNF affiliate. CMS strongly encourages ACOs to include the information indicated in the format referenced in [Appendix B](#). Renewal/early renewal applicants entering into a new Shared Savings Program agreement period are not required to submit a newly executed SNF Affiliate Agreement for any SNF affiliates the ACO wishes to carry over into the new agreement period, provided the current agreement meets the Shared Savings Program requirements under § 425.612(a)(1)(iii).

ACOs that choose to include their communication plan, beneficiary evaluation and admission plan, and care management plan as appendices to their agreements, or that incorporate them by reference into their agreements, should amend or update and re-execute their SNF Affiliate Agreements whenever any of these plans are revised to ensure that SNF affiliates are aware of all modifications to these important documents.

³ Wet signatures are handwritten signatures (i.e., not stamped).

7 ACO and SNF Affiliate Communication Plan

As part of the application for a SNF 3-Day Rule Waiver, ACOs that are eligible to apply must provide a narrative detailing the communication plan between the ACO and its SNF affiliates. ACOs should include the following information in their communication plan:

- The process that the ACO will use to evaluate and periodically update its communication plan with its SNF affiliates;
- Designated person(s) at the ACO with whom SNF affiliates will communicate and coordinate admissions (include job positions/job titles);
- Designated person(s) at the SNF affiliate with whom the ACO will communicate and coordinate admissions, including monitoring SNF length of stay (include job positions/job titles);
- How information will be shared across sites of care and made available to all members of the care team for optimal care integration, including identification of Health Insurance Portability and Accountability Act (HIPAA)-compliant communication tools that will be used by the care team to ensure that the designated person(s) at the ACO is aware of admissions to SNF affiliates pursuant to the waiver and appropriately involved in the clinical management of the beneficiary, including a plan for communicating necessary information when key contacts are not available;
- How the ACO will timely share the prospective or preliminary prospective beneficiary assignment list, as well as the quarterly exclusion lists, with SNF affiliates to ensure ACOs and SNF affiliates are able to correctly identify the beneficiaries eligible to receive covered SNF services under the SNF 3-Day Rule Waiver;
- How frequently communications will take place between the ACO and its SNF affiliates for purposes of such activities as administering the waiver, data sharing, education, and compliance monitoring;
- How the ACO will communicate the beneficiary evaluation and admission plan and care management plan to the SNF affiliates and other individuals or entities responsible or involved in providing or coordinating services under the waiver; and
- How the ACO will respond to questions and complaints related to the ACO's use of the SNF 3-Day Rule Waiver from SNF affiliates, ACO participants, ACO providers/suppliers, beneficiaries, acute care hospitals, and other stakeholders.

8 ACO and SNF Affiliate Care Management Plan

As part of the application for a SNF 3-Day Rule Waiver, ACOs that are eligible to apply must provide a narrative detailing the ACO's care management plan. ACO care management plan narratives should include the following:

- Provisions for designating the ACO provider/supplier responsible for initiating the admission and care management plan;
- Provisions for designating a person from the SNF affiliate responsible for accepting the beneficiary and implementing the care management plan;
- A certification by the designated ACO provider/supplier and the designated person from the SNF affiliate that the beneficiary meets requirements to receive covered SNF services under the waiver;
- A plan for how the beneficiary's care will be managed at the SNF affiliate, including how the beneficiary's care will seamlessly transition upon discharge from the SNF affiliate to the beneficiary's primary care provider or other health care provider as determined by the care team and beneficiary;
- Provisions to ensure high-quality and efficient care delivery (including facilitating optimum length of stay);
- Designation of the aspects of the communication plan to be implemented by the providers and suppliers responsible for the beneficiary before, during, and after the SNF admission; and
- Contact information for the ACO's medical director and the health care professional responsible for the ACO's quality assurance and improvement program as resources to respond to inquiries about the care management plan from the designated ACO provider/supplier, designated person from the SNF affiliate, beneficiary, and other stakeholders.

9 ACO and SNF Affiliate Beneficiary Evaluation and Admission Plan

As part of the application for a SNF 3-Day Rule Waiver, ACOs that are eligible to apply must provide a narrative detailing the beneficiary evaluation and admission plan. The beneficiary evaluation and admission plan narratives should include the following:

- A protocol for an ACO provider/supplier who is a physician to evaluate and approve admissions to a SNF affiliate pursuant to the waiver and consistent with the beneficiary eligibility requirements;

- A protocol for educating and training SNF affiliates regarding waiver requirements and the ACO's communications plan, beneficiary evaluation and admission plan, and care management plan for purposes of the SNF 3-Day Rule Waiver;
- A protocol for admitting beneficiaries to a SNF directly from home or an outpatient setting under the waiver;
- A protocol for admitting beneficiaries to a SNF when it has been determined that the beneficiary does not need the full 3-day inpatient hospital stay; and
- A protocol for informing beneficiaries about the waiver and their options for care settings.

10 SNF 3-Day Rule Waiver Medicare Claims Processing

SNF waiver-approved ACOs must comply with all Medicare claims submission requirements, except the requirement for a 3-day inpatient hospital stay prior to a Medicare-covered, post-hospital, extended care service (42 CFR § 425.612(a)). A SNF 3-Day Rule Waiver does not change FFS billing requirements (other than the 3-day inpatient stay requirement).

Beginning with admissions on or after January 1, 2020, SNF affiliates (including hospitals and CAHs operating under swing bed agreements and partnering with ACOs as SNF affiliates) are required to include demonstration code 77 in the treatment authorization code field on claims when the SNF affiliate intends for CMS to waive the 3-day qualifying stay requirement.

Including demonstration code 77 in the treatment authorization code field provides an attestation on behalf of the SNF affiliate that the eligibility requirements specified in § 425.612 have been met and helps ensure payment only when those requirements are met. Such eligibility requirements include, but are not limited to, the patient having been evaluated and approved for admission to the SNF within 3 days prior to the SNF admission by an ACO provider/supplier that is a physician, consistent with the ACO's beneficiary evaluation and admission plan.

A SNF claim must meet the following conditions:

- "Received" date on the claim is on or after January 1 of the calendar year indicated on the claim's "From" date;
- A CCN (first 6 digits) is found on the claim that is also found on the ACO's certified SNF Affiliate List;
- Medicare Beneficiary Identifier (MBI) found on the claim is also found on the ACO's assignment list;

- The admission date on the claim is on or after the effective start date of a waiver; and
- The beneficiary is admitted to a SNF prior to an ACO's termination date as well as the termination date of the SNF Affiliate's Agreement.

A SNF claim that meets the above criteria, but that does not include demonstration code 77 in the treatment authorization code field will be returned to the provider. Additionally, a SNF claim that includes demonstration code 77 and does not meet the above criteria shall be rejected.

Note that beneficiaries maintain their freedom of choice to select any SNF they choose. If a beneficiary selects a SNF that is not on an ACO's approved SNF Affiliate List and that SNF admits the beneficiary without a qualifying hospital stay, CMS will reject the claim for failing to meet one of the required elements (SNF must be a SNF affiliate on the approved SNF Affiliate List). If the selected SNF is not a SNF affiliate, current Medicare SNF coverage requirements apply for SNF services. CMS only reimburses the SNF for services furnished to beneficiaries without a prior 3-day inpatient stay if the SNF is on the ACO's SNF Affiliate List for the performance year in which it admits the beneficiary, and all other criteria for eligibility under the SNF 3-Day Rule Waiver are satisfied. If CMS rejects a SNF claim for lack of a 3-day inpatient hospital stay and the ACO, SNF affiliate, and/or the beneficiary did not meet the eligibility requirements (described in [Section 4](#) above), CMS may require the SNF waiver-approved ACO to submit a corrective action plan (CAP) addressing what actions the ACO will take to ensure appropriate use of the waiver in the future and take other remedial actions, as appropriate.

SNF 3-Day Rule Waiver-approved ACOs must comply with all Medicare claims submission requirements, except the requirement for a 3-day inpatient hospital stay prior to a Medicare-covered, post-hospital, extended care service (42 CFR § 425.612(a)). A SNF 3-Day Rule Waiver does not change FFS billing requirements (other than the 3-day inpatient stay requirement), and therefore does not change the SNF transfer/readmission requirements outlined in 42 CFR § 409.36 and the Medicare Benefit Policy Manual, Chapter 8 - Coverage of Extended Care (SNF) Services, Section 20.2.3 - Readmission to a SNF. In part, these Manual requirements state: "If an individual who is receiving covered post-hospital extended care, leaves a SNF and is readmitted to the same or any other participating SNF for further covered care within 30 days after the day of discharge, the 30-day transfer requirement is considered to be met. The same is true if the beneficiary remains in the SNF to receive custodial care following a covered stay, and subsequently develops a renewed need for covered care there within 30 consecutive days after the first day of non-coverage. Thus, the period of extended care services may be interrupted briefly and then resumed, if necessary, without hospitalization preceding the resumption of SNF coverage."

Therefore, a beneficiary who is assigned to an ACO that is approved for the SNF 3-Day Rule Waiver and has been receiving covered SNF services in a SNF affiliate pursuant to that waiver who is transferred from the SNF affiliate to another SNF within 30 days of discharge from the SNF affiliate, would not need to be "re-waived." The circumstances

surrounding the initial SNF admission would be considered for purposes of determining Medicare coverage for SNF services. The beneficiary would be eligible to be transferred to any Medicare-enrolled SNF without regard to whether the receiving SNF is approved as a SNF affiliate of the ACO to which the beneficiary is assigned.

11 SNF 3-Day Rule Waiver Beneficiary Communications

For SNF waiver-approved ACOs, it is important to highlight that CMS has certain rules and policies governing communications to beneficiaries. Of note, hospital discharge planning conditions of participation standards found at §§ 482.13 and 482.43(c)(6)–(8) continue to apply. In part, these rules require hospitals to include a list of Medicare-participating SNFs in the discharge plan for those patients for whom the plan indicates post-hospital extended care services are required. During the discharge planning process, the hospital must inform the patient of their freedom to choose from among Medicare-participating, post-hospital providers and must not direct the patient to specific provider(s) or otherwise limit the pool of qualified providers from which the patient may choose. Additionally, under the Patient’s Rights Condition of Participation at § 482.13, the hospital must always respect the patient’s right to make informed decisions.

CMS has developed a SNF 3-Day Rule Waiver Notice template for SNF waiver-approved ACOs to use to describe the waiver to the eligible beneficiaries. For example, a participating physician can use the waiver notice to supplement the discharge planning conversation and aid eligible beneficiaries in making an informed decision about whether and where to receive SNF services. The latest version of this template is available in the Marketing subtab in [ACO-MS](#). ACOs are not permitted to modify template content, except in the spaces that CMS provides for ACO-specific information.

Please note that only SNF waiver-approved ACOs have the option to use the waiver notice template to educate their assigned beneficiaries who may be eligible to receive covered services under a SNF 3-Day Rule Waiver about the waiver. This notice is not intended as general information and could lead to confusion if shared with Medicare beneficiaries who are not eligible for such services.

12 SNF 3-Day Rule Waiver Public Reporting Requirements

Consistent with the requirements of § 425.612(d)(1), SNF waiver-approved ACOs must report their use of a SNF 3-Day Rule Waiver (reporting “yes” or “no”) as part of Shared Savings Program public reporting requirements.

13 SNF 3-Day Rule Waiver Compliance

CMS monitors and may audit the use of SNF 3-Day Rule Waivers. Misuse of a SNF 3-Day Rule Waiver may result in CMS taking remedial action against the ACO up to and including termination of the ACO from the Shared Savings Program. This would include,

if applicable, termination from the Track 1+ Model. Additionally, CMS reserves the right to periodically review claims data, beneficiary medical records, and/or Minimum Data Set Nursing Home Assessments to confirm whether the ACO and its SNF affiliates appropriately confirm beneficiary eligibility prior to admission to a SNF. CMS may take remedial action if it finds that Medicare beneficiaries admitted to a SNF affiliate under the SNF 3-Day Rule Waiver did not meet beneficiary eligibility requirements.

Appendix A: Sample SNF Affiliate Agreement Requirements Table

Sample SNF Affiliate Agreement Requirements Table	
(a) Must expressly require providers eligible to be included in the CMS 5-Star Quality Rating System to have and maintain an overall rating of 3 stars or higher. 42 CFR § 425.612(a)(1)(iii)(A)	
Agreement Section	Page Number
(b) Must expressly require that the SNF affiliate agrees to comply with the requirements and conditions of the Shared Savings Program (42 CFR Part 425) and the SNF 3-Day Rule Waiver, including but not limited to, those specified in the participation agreement with CMS. 42 CFR § 425.612(a)(1)(iii)(B)(1)	
Agreement Section	Page Number
(c) Must include effective dates of the SNF Affiliate Agreement. 42 CFR § 425.612(a)(1)(iii)(B)(2)	
Agreement Section	Page Number
(d) Must expressly require the SNF affiliate to implement and comply with the ACO's beneficiary evaluation and admission plan and the care management plan. 42 CFR § 425.612(a)(1)(iii)(B)(3)	
Agreement Section	Page Number
(e) Must expressly require the SNF affiliate to validate the eligibility of a beneficiary to receive covered SNF services in accordance with the waiver prior to admission. 42 CFR § 425.612(a)(1)(iii)(B)(4)	
Agreement Section	Page Number
(f) Must include the remedial processes and penalties that will apply for non-compliance. 42 CFR § 425.612(a)(1)(iii) (B)(5)	
Agreement Section	Page Number

Appendix B: Sample SNF Affiliate Agreement Introductory Paragraph and Signature Page

This ACO SNF Affiliate Agreement (“Agreement”) is by and between Accountable Care Organization of ABC, LLC DBA ABC ACO (“ACO”), and XYZ Group Practice P.C. (“SNF Affiliate”) and is effective [Month, Day, Year] (“Effective Date”).

< Body of Agreement >

Sample Signature Page:

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by the duly authorized representatives as of the dates below.

<u>For the ACO</u>	<u>For the SNF Affiliate</u>
_____ Legal Entity Name	_____ Legal Business Name
_____ DBA Name	_____ DBA Name
_____ Signature (on behalf of the ACO)	_____ Signature (on behalf of the SNF Affiliate)
_____ Name	_____ Name
_____ Title	_____ Title
_____ Date	_____ Date
_____ Address	_____ Address
_____ City, State ZIP Code	_____ City, State ZIP Code
_____ Business Phone	_____ Business Phone

Individual signing for the SNF affiliate(s) agrees to the terms and conditions of this Agreement on behalf of the following SNF affiliate CCNs:

< List of each CCN and CCN legal business name >

Appendix C: Information on Digital Signature Requirements

General Overview of Digital Signatures

If an ACO and SNF affiliate both consent to the use of digital signatures to execute a SNF Affiliate Agreement, they must use industry-accepted software to verify that the digital signatures represent the signers' consent to the terms of the agreement.

Generally, a digital signature requires two components: the signature generation process (i.e., when a signer embeds a unique signature in the electronic document, thus legally executing the document), and the signature verification process (i.e., the mechanism by which an auditing party is able to verify the signature's authenticity).

ACOs should maintain all physical and/or electronic records necessary to verify each digital signature that they submit for CMS review and provide these records to the Shared Savings Program upon request.

Digital Signature Programs

The Shared Savings Program does not require the use of any particular software product to execute a SNF Affiliate Agreement, and any software that employs digital signature algorithms and that fulfills the two requirements—signature generation and signature verification—may be employed. Should CMS question the integrity of the software used, it may send the ACO an RFI. Should an ACO receive an RFI, it should provide CMS with documented evidence of the verification process for the signature in question.

Regulation of Digital Signatures

The [Electronic Signatures in Global and National Commerce Act \(E-Sign Act\)](#), which was enacted on June 30, 2000, promotes the use of electronic contract formation, signatures, and recordkeeping in private commerce by establishing legal equivalence between paper and electronic contracts; pen and ink signatures and electronic signatures; and other legally required written documents (termed “records”) and their electronic equivalents.

Additional Questions

Q1. What is the difference between a digital signature and an electronic signature?

Per Section 106 of the E-Sign Act, an electronic signature is defined as “an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.” A digital signature consists of both the electronic signature itself and the verification process used to authenticate it. Digital signatures require the signer to use a digital certificate that links the signer with the document being

signed, and a unique digital “fingerprint” is embedded in the document once signed. An electronic signature that lacks an authentication verification process will not be accepted. Any non-handwritten signature must be verifiable according to industry standards.

Q2. Do both parties to the Agreement have to use digital signatures to sign the SNF Affiliate Agreement?

No. So long as both parties agree that a digital signature has the full force and effect of a handwritten signature, one party may use a digital signature while the other uses a handwritten signature.

However, if only one party will be executing the document by a handwritten signature, then that party must sign the document first. The remaining party should then scan in the signed document and embed their digital signature upon that scanned document. Printing out a document that contains a digital signature hinders validation of the encryption required for authentication in this format.

Q3. What if a party needs to amend or change an agreement that was executed with digital signatures?

Should an agreement containing a digital signature need to be amended, it must be re-executed with a new digital signature to indicate consent to the changes.

Q4. Can CMS recommend any digital signature programs for ACOs to use in executing agreements with SNF affiliates?

The E-Sign Act does not permit agencies to require the use of specific products and/or manufacturers. Therefore, CMS cannot recommend any specific products or companies. However, in choosing a digital signature program, an ACO should review the E-Sign Act requirements and focus on the particular product’s signature generation and verification capabilities.