2019 APPLICATION CONSIDERATIONS FOR ACOs

ACOs may apply to the Medicare Shared Savings Program (MSSP), the Medicare Track 1+ Model, and/or for a Skilled Nursing Facility (SNF) 3-Day Rule Waiver, if applicable based on the model selected. The annual application process begins in the spring by completing the Notice of Intent to Apply (NOIA). Applications are then submitted in the summer, and participation agreements will ultimately be signed in late 2018.

The Centers for Medicare and Medicaid Services (CMS) provides materials relevant for the 2018 application cycle on its website, including sample applications in each application category. CMS will update this page with specific information on the 2019 application cycle.

Application Types

CMS currently offers the following application types:

Initial Application: Available for ACOs not currently participating in the Shared Savings Program (initial applicants).

Renewal Application: Available for currently participating ACOs with a 2015 start date that intend to renew their participation agreement with CMS (renewal applicants).

Track 1+ Model Application: An additional application available for initial and renewal applicants applying to the Shared Savings Program under Track 1 and ACOs currently participating in the Shared Savings Program under Track 1. Applications will be accepted for 2018, 2019, and 2020 program start dates. More information on this model is available here.

SNF 3-Day Rule Waiver Application: An additional application available for initial and renewal applicants applying to the Shared Savings Program under Track 3, ACOs currently participating in the Shared Savings Program under Track 3, and initial and renewal applicants for the Track 1+ Model.

Please note that the Centers for Medicare and Medicaid Innovation (CMMI) does not offer an additional opportunity to apply for the Next Generation ACO program at this time.

Considerations for ACOs

There are many considerations for ACOs looking at their 2019 participation options. Currently, Track 1 ACOs who have completed two, three-year contracts under this model will be required to apply for a risk-based risk option (Track 1+, 2 or 3). Though NAACOS has advocated for more time in Track 1 for ACOs that meet certain cost or quality criteria, CMS has not made any changes related to this policy. There are several things to consider when selecting a downside risk model. We encourage ACOs to refer to our ACO Comparison Chart to understand some of the key differences in each ACO model. Additionally

NAACOS's paper, *Differences Between Medicare ACO Tracks That May Impact ACO Financial Results*, is a good resource for those contemplating which model option may be best for their organizations. NAACOS also developed an interactive table for ACOs to input their own projected values to help ACOs illustrate how they may perform under the various tracks. Finally, NAACOS members may also access a memo developed by Dentons LLP for NAACOS regarding considerations for existing Track 1 ACOs who would like to apply for participation as a new Track 1 ACO in future program years.

NAACOS also offers a variety of educational webinars as well as recorded and live educational events to assist ACOs in considering various participation options. NAACOS members can view conference sessions on-demand here, as well as on-demand webinars here. NAACOS is also offering a live Bootcamp, "Choosing the Right Medicare Track for Your ACO's Success: A Deep Dive into Assignment and Risk-Taking" June 14 and 15 in Nashville, Tenn. More information including registration details is available here. Please note space is limited to 100 participants for this event.

Track 1+ Model Considerations

It is important to keep in mind some of the participation limitations around the Track 1+ model. Significantly, according to CMS, an ACO must concurrently participate in Track 1 of the MSSP in order to be eligible to participate in the Track 1+ Model. The Track 1+ Model will be open to MSSP Track 1 ACOs that are within their current agreement period, new applicants, and Track 1 ACOs renewing their participation agreement that meet the eligibility criteria of the Track 1+ Model. Track 2 and 3 ACOs are not eligible for the Track 1+ Model. Further, CMS will limit an ACO's participation in the Track 1+ Model to one full three-year agreement period. New entrants and renewing ACOs could enter one, three-year agreement period under the Track 1+ Model, and ACOs that transition to the Track 1+ Model during their existing Track 1 agreement period could have the opportunity to renew for a subsequent three-year agreement under the Track 1+ Model.

Finally, for Track 1+ specifically, because Medicare ACOs that have previously participated in risk-based ACO initiatives (MSSP Track 2 or 3, as well as Pioneer or Next Generation ACO Models) are not eligible to participate in the Track 1+ Model, CMS has prohibitions around the composition of legal entities that may apply for the Track 1+ model. Specifically, the same legal entity that participated in one of these performance-based risk ACO initiatives cannot participate in the Track 1+ Model. Furthermore, an ACO would not be eligible to participate in the Track 1+ Model if 40 percent or more of its ACO participants had participant agreements with an ACO that was participating in one of these risk-based ACO initiatives in the most recent prior performance year.

Repayment Mechanism Arrangements

Certain ACO models require the ACO to establish a repayment mechanism to assure CMS that they can repay losses for which they may be liable upon reconciliation for each performance year of an agreement period under which they accept performance-based risk. In their application or for renewal of their participation agreement, ACOs must select from one or more of the following three types of repayment arrangements:

- Funds placed in escrow;
- A line of credit as evinced by a letter of credit that the Medicare program could draw upon; or
- Surety bond.

ACOs may use a combination of the designated repayment mechanisms, if needed, such as placing certain funds in escrow, obtaining a surety bond for a portion of remaining funds, and providing a letter of credit for the remainder. The type of repayment mechanism selected will determine the signatory requirements

of the ACO. An ACO is required to sign the final surety bond, escrow agreement, and/or amendment to a letter of credit documentation. An original letter of credit does not require an ACO signatory. The following authorized users in the Health Plan Management System (HPMS) meet the signatory requirements of the repayment mechanism: ACO Executive, Authorized to Sign (primary), Authorized to Sign (secondary), and financial contact. The CMS Guidance on Repayment Mechanism Arrangements document provides more information on the requirements for establishing an adequate repayment mechanism.

Track 2 and 3 repayment mechanism requirements:

For Track 2 and Track 3 ACOs, the repayment mechanism must be equal to at least 1 percent of the ACO's total per capita Medicare Parts A and B fee-for-service expenditures for its assigned beneficiaries, as determined based on expenditures used to establish the ACO's benchmark.

Track 1+ repayment mechanism requirements:

Under the Track 1+ Model, the ACO's composition will determine the ACO's eligibility for either a benchmark-based or revenue-based loss sharing limit. For Track 1+ ACOs eligible for a benchmark-based loss sharing limit, CMS will apply a repayment mechanism estimation methodology similar to that used for Tracks 2 and 3 (based on one percent of estimated benchmark expenditures).

For Track 1+ Model ACOs eligible for a revenue-based loss sharing limit, the repayment mechanism must be equal to at least 2 percent of ACO participants Medicare fee-for-service revenue (total Parts A and B fee-for-service revenue). If this repayment mechanism amount based on ACO participant Medicare revenue exceeds the repayment mechanism amount for the ACO based on benchmark expenditures, then the amount will be capped at 1 percent of the ACO's total per capita Medicare Parts A and B fee-for-service expenditures for its assigned beneficiaries, as determined based on expenditures used to establish the ACO's benchmark. CMS estimates the amount of an ACO's repayment mechanism based on available historical data and will give this estimate to the ACO during the application review process.

Many ACOs find that securing repayment mechanism arrangements is a challenge. As a result of NAACOS advocacy, CMS revised the original Track 1+ repayment mechanism requirements for revenue-based Track 1+ ACOs to reduce burdens on these ACOs and NAACOS continues to advocate for further changes to the repayment mechanism requirements.

Program Changes on the Horizon

CMS typically makes certain changes and updates to the MSSP through the Medicare Physician Fee Schedule (MPFS) rule. CMS typically releases the proposed MPFS rule by July 1 each year. Following a 60-day public comment period, the agency typically releases a final rule on or before November 1. This year, we anticipate seeing a number of proposed changes to the ACO program included either in the MPFS or in a separate MSSP rule. Additionally, based on NAACOS conversations with the agency, we anticipate a new model will be proposed to replace the Next Generation Model going forward. Given the timing of finalized policies, this will make decision-making challenging. NAACOS will be analyzing any proposed changes and providing member education on the impact of such changes to ACOs. Stay tuned to more information by reading your bi-weekly NAACOS newsletter.

Frequently Asked Questions
Below is a list of frequently asked questions NAACOS and CMS have received from ACOs as they prepare for the upcoming application cycle.

How does the Track 1+ application process differ from other models?

New program entrants and ACOs seeking renewal of their Shared Savings Program participation agreement would need to complete the MSSP application process. All ACOs interested in participating in the Track 1+ Model will need to complete an additional application process for the Track 1+ Model to ensure they meet the requirements for Track 1+ Model participation, including ensuring that the ACO has established an adequate repayment mechanism to assure CMS of its ability to repay shared losses.

- Existing Track 1 ACOs that seek to enter the Track 1+ Model for their 2nd or 3rd performance year of their current agreement period will need to complete the Track 1+ Model application and may also elect to apply for a SNF 3-Day Rule Waiver.
- Initial applicants applying to the Track 1+ Model must complete the Shared Savings Program Track 1 application and the Track 1+ Model application and may also elect to apply for a SNF 3- Day Rule Waiver.
- Renewing Track 1 ACOs applying to the Track 1+ Model must complete the Shared Savings Program Track 1 renewal application and the Track 1+ Model application and may also elect to apply for a SNF 3-Day Rule Waiver.

Which ACO models qualify as Advanced Alternative Payment Models (Advanced APMs)s under MACRA?

The MSSP Track 1+, 2 and 3 Models will qualify as Advanced APMs under MACRA. The Next Generation ACO Program also qualifies as an Advanced APM, however CMS is not currently accepting new applicants for this program.

Are there restrictions on the composition of a newly formed Track 1 ACO that wants to apply as a new ACO in its first agreement period?

For a Track 1 ACO, there are no specific limitations regarding providers who have previously participated in the MSSP. There are a number of potential ACO participants or combinations of ACO participants that are eligible to form an ACO that may apply to participate in the MSSP, such as (1) ACO professionals in group practice arrangements, (2) Networks of individual practices of ACO professionals, (3) Partnerships or joint venture arrangements between hospitals and ACO professionals, (4) Hospitals employing ACO professionals, (5) Critical Access Hospitals (CAHs) that bill under Method II, (6) Rural Health Centers (RHCs), and (7) Federally Qualified Health Centers (FQHCs). However, as part of the application CMS requires disclosure of prior participation, and as part of that requirement the ACO must disclose to CMS whether the ACO, its ACO participants, or its ACO providers/suppliers have participated in the MSSP under the same or a different name or share if the ACO is related to or has an affiliation with another MSSP ACO. Presently, this information is not used to prohibit Track 1 participation, though this could be an area CMS examines more closely especially as ACOs consider new opportunities in the face of risk requirements. We encourage members to review this memo developed by Dentons LLP for NAACOS regarding considerations for existing Track 1 ACOs who would like to apply for participation as a new Track 1 ACO in future program years.

Who can apply for Track 1+?

ACOs in a current MSSP Track 1 agreement period may apply to participate in the Track 1+ Model for the remainder of their current agreement period. Additionally, new ACOs and renewing MSSP Track 1 ACOs may also apply to participate in the Track 1+ Model. As explained above, ACOs are not eligible if they previously participated in risk-based ACO models or if 40 percent or more of the ACO's participants had

participant agreements with an ACO that was in one of these risk-based ACO initiatives in the most recent prior performance year. Additionally, Track 1+. ACOs cannot be owned or operated by a health plan (consistent with the definition of health plan under 45 CFR §160.103).

Can current Track 1 ACOs apply to transition to the Track 1+ Model during their current agreement period?

Yes, existing Track 1 ACOs may apply to complete their current agreement period under Track 1+ and may be eligible to renew for one additional agreement period under Track 1+ if they are renewing in 2019 or 2020.

For ACOs currently participating in Track 1 for a second agreement period, what are the track options for renewal?

ACOs must operate under a risk-based model for their third agreement period. These ACOs can apply to renew in Track 2, Track 3, or the Track 1+ Model.

If a new ACO is not sure whether they will meet the requirement to have at least 5,000 beneficiaries, will CMS calculate the beneficiary size or should the ACO do that?

During the application review process, CMS will perform a preliminary prospective assignment based on the ACO Participant List submitted. The agency will provide the total number of estimated assigned beneficiaries for each of the benchmark years (three years prior to the agreement start date). These estimates will be provided in each of the Request for Information (RFI) emails sent during the application review process and the ACO will ultimately need to have 5,000 beneficiaries.

Can current or former Track 2, Track 3, Pioneer Model ACO, or Next Generation Model ACOs apply to participate in the Track 1+ Model?

No. Medicare ACOs that have previously participated in these performance-based risk ACO initiatives are not eligible to participate in the Track 1+ Model. The same legal entity that participated in one of these performance-based risk ACO initiatives cannot participate in the Track 1+ Model. Furthermore, an ACO would not be eligible to participate in the Track 1+ Model if 40 percent or more of its ACO participants had participant agreements with an ACO that was participating in one of these performance-based risk ACO initiatives in the most recent prior performance year.

Are there any restrictions on Next Generation ACOs applying to other model options?

According to CMS staff, CMS does not currently restrict Next Generation ACOs from applying to other Medicare ACO Model options such as MSSP Track 1, 2, or 3. Specifically, according to CMS, "There are no specific limitations regarding ACOs who are currently participating in the Next Generation Model ACO. The ACO would not be precluded from applying for Track 1 of the Medicare Shared Savings Program for Performance Year 2019. However, you cannot participate in the Next Generation Model at the same time you participate in the MSSP."

Can an ACO owner have multiple ACOs?

According to CMS, the regulation is silent on ownership. In regard to a single entity ACO, where the ACO and the ACO participant is the same, the ACO participant would be required to be enrolled in Medicare. An ACO participant (42 C.F.R. §425.20) is defined as an entity identified by a Medicare-enrolled billing Tax Identification Number (TIN) through which one or more ACO providers/suppliers bill Medicare, that alone

or together with one or more other ACO participants compose an ACO, and that is included on the list of ACO participants that is required under §425.118.
In regard to ACO governance, the ACO governing body must be the same as the governing body of the legal entity that is the ACO. The ACO's governing body must also retain the ultimate authority to execute the functions of the ACO §425.106. Note that the governing body of a traditional ACO that includes multiple TINs is precluded from being the same as the governing body of an ACO participant.

Please refer to the Application Reference Manual, Appendix C — ACO Organizational Structure for additional guidance on acceptable ACO structures.

What requirements should be considered when setting up the structure of the ACO (legal entity and participants)?

Each ACO participating in the MSSP must be its own legal entity. If an ACO is formed by more than one provider or supplier, the ACO must be a legal entity separate from the providers or suppliers that formed it. An ACO formed by a single Medicare provider or supplier need not form a separate legal entity to participate in the Shared Savings Program as an ACO, as long as it satisfies the same organization and governance requirements applicable to all ACOs.

Each ACO is required to have contractual agreements with ACO participants, which are entities identified by a Medicare-enrolled billing TIN that, alone or together with one or more other ACO participants compose an ACO. Each ACO is required to have a written agreement (referred to as the ACO Participant Agreement) with each ACO participant, in which the ACO participant agrees to participate in, and comply with the requirements of the MSSP. This agreement ensures that the ACO participant, and each ACO provider/supplier billing through the TIN of the ACO participant, agrees to the requirements of the MSSP.

"Accountable Care Organization (ACO)" (42 C.F.R. §425.20) means a legal entity that is recognized and authorized under applicable State, Federal, or Tribal law, is identified by a TIN and is formed by one or more ACO participants(s) that is (are) defined at §425.102. "ACO participant" (42 C.F.R. §425.20) means an entity identified by a Medicare-enrolled billing TIN through which one or more ACO providers/suppliers bill Medicare, that alone or together with one or more other ACO participants compose an ACO, and that is included on the list of ACO participants that is required under §425.118. CMS uses the TINs provided on the ACO's Participant List to determine the providers and suppliers that will be considered part of the ACO, or more specifically, the CMS Certification Numbers (CCNs) and individual National Provider Identifiers (NPIs) that will be considered part of the ACO. Please see the ACO Participant List and Participant Agreement Guidance Document for more information.

If my ACO terminates during the performance year to avoid financial reconciliation, can we apply to the program for a future year?

According to CMS regulations at §425.222 the ACO may be eligible to participate in the MSSP again only after the date on which the term of the original participation agreement would have expired had the ACO not terminated from the program. To be eligible in the future, an ACO would have to demonstrate that it has corrected the deficiencies that caused it to leave the program and that there are processes in place to ensure it will remain in compliance with the terms of the new participation agreement. If the termination occurred less than half the way through the agreement period, an ACO that was previously under a one-sided model may reenter the program under the one-sided model or a risk-based model. If the ACO reenters the program under the one-sided model, the ACO will be considered to be in the same agreement period under the one-sided model as it was at the time of termination.

If the termination occurred more than half way through the agreement period, an ACO that was previously in its first agreement period under the one-sided model may reenter the program under the one-sided model or a risk-based model. If the ACO reenters the program under the one-sided model, it will be considered to be in its second one-sided agreement period. An ACO that was previously in its second agreement period under the one-sided model must reenter the program under a risk-based model. Finally, regardless of the date of termination, an ACO that was previously under a risk-based model may only reapply for participation in a risk-based model.

If my ACO moves to a two-sided MSSP track, at what point during the performance year could we quit the program without facing potential repayment of losses?

MSSP regulations require ACOs to provide at least 60 days advance written notice to CMS and its ACO participants of its decision to terminate the participation agreement and the effective date of its termination. ACOs with an effective date of termination before December 31 of a performance year will not be reconciled for any portion of the year and will not be eligible for shared savings or liable for shared losses. However, ACOs that request to terminate effective at a later date would be financially reconciled for that particular performance year. Additionally, §425.221 stipulates close-out procedures and payment consequences of early termination. While the official rule requires 60 days advance notice, during PY 2017 CMS revised its typical approach and allowed ACOs to provide termination notice with as little as 30 days advance notice without having financial reconciliation for PY 2017. This later date was a result of ACO concerns about delayed data and unexpected results and is not likely to be standard practice for future performance years.