

<http://www.ama-assn.org/amednews/2011/10/17/qvsf1020.htm>

CMS spotlights physician-friendly changes in final ACO rule

The regulations for Medicare accountable care organizations will increase incentives and streamline the program to extend benefits to a broader range of beneficiaries.

By CHARLES FIEGL, *amednews* staff. *Posted Oct. 20, 2011.*

Washington -- The agency overseeing Medicare has published its final regulations for accountable care organizations, including changes intended to make it easier for physicians to participate in and lead them.

ACOs are organizations designed to coordinate care of Medicare patients so quality of care can be improved while reducing costs. Besides receiving fee-for-service payments, ACOs would share in any savings they produce for Medicare. ACOs can include physicians, hospitals and other health care entities. The Centers for Medicare & Medicaid Services released the new regulations on Oct. 20.

Groups representing organized medicine, including the American Medical Association, had been critical of the ACO proposal after its release on March 31, saying it made participating in an organization too risky and burdensome for physicians.

CMS received more than 1,300 comments on the proposed rule, and several improvements were made to strengthen the model, CMS Administrator Donald M. Berwick, MD, said in an Oct. 20 teleconference. “For example, the final rule will increase the incentives and streamline the shared savings program, extending the benefits of the new program to a broader range of beneficiaries.”

For instance, the initial draft proposed two tracks of risk and reward for participating groups. The first track had less risk and reward. The second track offered the chance for bigger rewards and more risk.

Associations representing physicians argued that the first track should be risk-free. The startup costs alone for an ACO — estimated at \$1.8 million — created enough risk for physicians, they said. CMS responded by eliminating risk in the first track.

Among the other changes intended to be more physician-friendly:

- The number of quality measures physicians would report was decreased to 33 measures from 65 measures.
- All ACOs would share first-dollar savings once a minimum savings rate is achieved. Under the proposed rule, ACOs under the first track would begin sharing savings once a 2% savings threshold was achieved.
- Meaningful use of electronic medical records no longer would be a condition of participation.

The entire 694-page final rule is available online ([www.ofr.gov/\(X\(1\)S\(k3m1pl5bdmyhxmsgfhfdblh\)\)/OFRUpload/OFRData/2011-27461_PI.pdf](http://www.ofr.gov/(X(1)S(k3m1pl5bdmyhxmsgfhfdblh))/OFRUpload/OFRData/2011-27461_PI.pdf)).

The AMA said that after a preliminary review of the final rule, it believes it includes “a number of positive changes.”

“We are pleased that the final rule ... includes many of the important changes recommended by the AMA to allow all interested physicians to lead and participate in these new models of care,” said Peter W. Carmel, MD, the Association’s president. “The AMA has stressed throughout this rule-making process that, if well-implemented, the ACO model offers promise to improve care coordination and quality while reducing costs. This final rule requires a full, in-depth review to ensure it maximizes those potential benefits for Medicare patients and physicians.”

CMS’ Center for Medicare and Medicaid Innovation also announced an initiative that would give small physician practices and rural community hospitals the chance to receive up-front capital to form an ACO. CMS said \$170 million would be available.

“Taken together, these changes and numerous others create a more feasible and attractive on-ramp for a diverse set of providers and organizations to participate as ACOs,” wrote Dr. Berwick in a piece that appeared in *The New England Journal of Medicine* on the day of final rule’s release (www.nejm.org/doi/abstract/10.1056/nejmp1111671).

The ACO shared-savings initiative could yield \$940 million in savings to the Medicare program over four years, CMS officials said.

Physicians and other health professionals forming ACOs still must follow antitrust laws, said Jonathan Blum, CMS deputy administrator. But in concurrence with the release of the final rule, federal agencies also sought to clarify antitrust and other rules so that physicians in separate practices could work together to form ACOs.

The Dept. of Justice and Federal Trade Commission finalized guidance stating they will not challenge ACOs as long as they satisfy certain conditions. For instance, ACOs must satisfy eligibility criteria regarding governance and leadership structure. The agencies said they will “treat joint negotiations with private payers as reasonably necessary to an ACO’s primary purpose of improving health care delivery, and will afford rule of reason treatment to an ACO that meets CMS’s eligibility requirements for, and participates in, the Shared Savings Program” (<http://go.usa.gov/9er>).

Dr. Carmel said the AMA is “very pleased” at the changes made by the DOJ and FTC, including removing a requirement for mandatory antitrust review of ACOs. “These important changes will significantly lower the administrative burden and cost for potential ACOs to comply with the antitrust rules.”

CMS and the HHS Office of the Inspector General jointly issued an interim final rule on Oct. 20 establishing waivers of the physician self-referral law, the anti-kickback statute and certain other federal laws in connection with ACOs and the Medicare shared savings program (go.usa.gov/9e1).

Dr. Carmel said the AMA is still reviewing the agencies’ rule. But he said the AMA is “pleased that CMS and the OIG adopted our recommendations to expand waivers of certain Medicare laws for ACOs,” and that they adopted “the AMA recommendation that the waivers begin sooner so that they will apply during the process of planning Medicare ACOs.”