

CMS Issues Final ACO Regulations

November 10, 2011

After receiving more than 1,300 public comments on its Proposed Rule for Accountable Care Organizations (ACOs) under the Medicare Shared Savings Program, CMS published its [Final ACO Rule](#) in the Federal Register on November 2. In addition, the FTC and DOJ filed their [Final Statement of ACO Antitrust Enforcement Policy](#) and CMS issued an [Interim Final Rule](#) with a 60-day comment period describing five separate fraud and abuse waivers applied to Stark, the Anti-Kickback Statute and the Civil Monetary Penalty laws. Finally, the IRS also issued Fact Sheet 2011-11 confirming [Notice 2011-20](#) from April 18, 2011, on its expectations regarding ACOs participating in the Shared Savings Program.

As stated by CMS in the Final ACO Rule, the overall intent of CMS, the IRS, FTC and DOJ in modifying their respective rules and statements (collectively, the Final Rules) was to incorporate greater flexibility in terms of eligibility requirements, ACO governance and legal structure, the antitrust review process, and the timing for shared savings evaluations and repayment of losses. These standards also have reduced and simplified the quality performance standards, increased financial incentives to participate in an ACO, eliminated the downside risk and first-dollar sharing in the Track 1 shared savings model, increased the sharing caps and removed the 25% withhold requirement on shared savings.

While initial industry reaction has been positive and the barriers to ACO certification and the risk of participation have been reduced, time will tell as to whether the changes will motivate health care providers to submit applications by the revised due dates of April 1, 2012, or July 1, 2012, pushed back from January 1. A likely outcome will be that many providers will evaluate the Final Rule closely and continue with their various clinical integration, merger, and acquisition strategies, but wait for the U.S. Supreme Court's decision on the constitutional challenges to the Affordable Care Act as well as to see how the Final Rule impacts those ACOs that seek certification in 2012.

The purpose of this Advisory is to provide a high-level summary of the Final Rules, followed by a more detailed analysis of each. We also have offered our comments and recommendations where appropriate.

Click [here](#) to read our Executive Summary of the Final Rules.

Click [here](#) read our Executive Summary and detailed discussion of the Final Rules.

Click [here](#) for a detailed discussion of the FTC/DOJ Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations Participating in the Medicare Shared Savings Program.

Click [here](#) for a detailed discussion of the Interim Final Rule on Waivers of Fraud and Abuse Laws and the IRS Notice on Tax-Exempt Hospitals Participating in ACOs.

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