

Accountable Care Organizations - CMS Issues Proposed Regulations

April 1, 2011

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On March 31, 2011 the Centers for Medicare and Medicaid Services ("CMS") issued online its proposed rule regarding Accountable Care Organizations ("ACO"), the concept first introduced in last year's health reform legislation, the Affordable Care Act of 2010 ("ACA"). The proposed rule, which will be published in the April 7, 2011 Federal Register, outlines the federal government's plan to save up to \$960 million over a three year period through the implementation of the ACO program. The proposed rule calls for a 60 day public comment period.

Two Proposed ACO Risk Models

The proposed rule allows for two risk models. First, there is a "one-sided risk model" where there would be shared savings amongst participants in the first two years of the pilot program and shared savings and losses in the third year. Second, CMS proposes a "two-sided risk model" where participants benefit from shared savings and losses for all three years of the pilot program thus providing a possibly greater economic benefit to the participants. By allowing these two different models, CMS encourages the development of ACOs including those that are not yet prepared to take on shared risk for all three years but would be able to share savings immediately. CMS proposes a flat 2% minimum sharing rate in all cases. However, ACOs in a one-sided model with a smaller population would have a larger sharing rate and ACOs with a larger population would have a smaller rate.

Other Agencies' Input

Additionally, along with the CMS release:

- The Department of Health and Human Services Office of Inspector General ("OIG") released a notice regarding waivers of certain federal fraud and abuse laws for ACOs. By doing so, the OIG acknowledges certain exceptions that would be required as has been noted by the health care community throughout this process.
- The Federal Trade Commission and Department of Justice released a joint statement regarding enforcement of anti-trust laws for ACOs.
- The Internal Revenue Service released Notice 2011-20, which discusses 501(c)(3) entities and ACOs.

The links for the proposed rules cited above may be found below. Comments to the proposed rule are due in to CMS sixty (60) days after the publication date of April 7th (or for IRS Notice 2011-20, by May 31, 2011). Our team at Akerman stands ready to assist you should you be interested in pursuing submission of commentary to the government regarding this proposed program or should you have any questions regarding ACOs and your business.

The proposed rule is at www.ofr.gov/OFRupload/OFRData/2011-07880_PI.pdf. The OIG notice is at www.ofr.gov/OFRupload/OFRData/2011-07884_PI.pdf. The DOJ-FTC statement is at <http://www.ftc.gov/os/fedreg/2011/03/110331acofrn.pdf>. The IRS Notice is at www.irs.gov/charities/charitable/article/0,,id=236275,00.html.

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