

Accountable Care: CMS Issues Proposed ACO Rules

Article By:

David J. Edquist

The Centers for Medicare & Medicaid Services today (3/31/11) released the long-awaited proposed regulations that would implement key provisions of last year's healthcare reform legislation relating to shared saving programs, and in particular accountable care organizations (ACOs). CMS is promoting value-based purchasing programs as key components in its efforts to improve quality and lower the pace of growth in government expenditures. The Medicare shared saving program is intended to promote accountability for a patient population and coordinate items and services under Medicare parts A and B, as well as encourage investment in infrastructure and redesigned care processes for high quality and efficient service delivery.

The proposed rules cover a broad range of issues that are key to implementation of the shared saving program, including ACO eligibility and governance, procedures for establishing 3-year agreements with DHHS, the process for assigning Medicare fee-for-service beneficiaries to an ACO, measures for assessing quality and other reporting requirements, benchmarking and other considerations in the determination of shared savings, risk-based payment models, monitoring and termination of ACOs, and overlap with other shared saving initiatives such as physician group practice demonstration sites and the the new CMS Innovation Center.

The proposed rule also addresses coordination with other agencies on such key areas as waivers of CMP, antikickback and physician self-referral ("Stark") laws; IRS guidance on tax-exempt organizations; and antitrust agencies relative to competition, price, access to care, and quality of care.

The proposed rule may be accessed at www.ofr.gov/OFRUpload/OFRData/2011-07880_PI.pdf.
Public comments are due by May 30.

Also today, the Federal Trade Commission and the Antitrust Division of the Department of Justice issued a proposed statement of enforcement policy relating to entities that participate in ACOs, indicating that the agencies would employ a rule of reason analysis to ACOs meeting the requirements set forth in the policy. The analysis will focus on the ACO's share of services in each ACO participant's primary service area; the higher the PSA share, the greater the risk that the ACO will be anti-competitive.

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