

§ 425.308

purposes of Medicare beneficiary assignment. ACO participant TINs upon which beneficiary assignment is not dependent are not required to be exclusive to one Medicare Shared Savings Program ACO.

§ 425.308 Public reporting and transparency.

For purposes of the Shared Savings Program, each ACO must publicly report the following information regarding the ACO in a standardized format as specified by CMS:

- (a) Name and location.
- (b) Primary contact.
- (c) Organizational information including all of the following:

- (1) Identification of ACO participants.

- (2) Identification of participants in joint ventures between ACO professionals and hospitals.

- (3) Identification of the members of its governing body.

- (4) Identification of associated committees and committee leadership.

- (d) Shared savings and losses information, including:

- (1) Amount of any shared savings performance payment received by the ACO or shared losses owed to CMS.

- (2) Total proportion of shared savings invested in infrastructure, redesigned care processes and other resources required to support the three-part aim goals of better health for populations, better care for individuals and lower growth in expenditures, including the proportion distributed among ACO participants.

- (e) *Results of claims based measures.* Quality measures reported using a CMS web interface and patient experience of care survey measures will be reported on Physician Compare in the same way as for the group practices that report under the Physician Quality Reporting System.

[76 FR 67973, Nov. 2, 2011, as amended at 77 FR 69372, Nov. 16, 2012; 78 FR 74823, Dec. 10, 2013]

§ 425.310 Marketing requirements.

- (a) *File and use.* Marketing materials and activities, as defined in § 425.20, may be used or conducted five business days following their submission to CMS if—

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- (1) The ACO certifies compliance with all the marketing requirements under this section; and

- (2) CMS does not disapprove the marketing materials or activities.

- (b) *Deemed approval.* (1) Marketing materials and activities are deemed approved after expiration of the initial 5 day review period specified in paragraph (a) of this section.

- (2)(i) CMS may issue written notice of disapproval of marketing materials and activities at any time, including after the expiration of the initial 5 day review period.

- (ii) The ACO, ACO participant, ACO provider/supplier, or another individual or entity performing functions or services related to ACO activities as applicable, must discontinue use of any marketing materials or activities disapproved by CMS.

- (c) *Marketing requirements.* Marketing materials and activities must meet all of the following:

- (1) Use template language developed by CMS, if available.

- (2) Not be used in a discriminatory manner or for discriminatory purposes.

- (3) Comply with § 425.304(a) regarding beneficiary inducements.

- (4) Not be materially inaccurate or misleading.

- (d) *Sanctions.* Failure to comply with this section will subject the ACO to the penalties set forth in § 425.216, termination under § 425.218, or both.

§ 425.312 Notification to beneficiaries of participation in shared savings program.

- (a) ACO participants must do all of the following:

- (1) Notify beneficiaries at the point of care that their ACO providers/suppliers are participating in the Shared Savings Program.

- (2) Post signs in their facilities to notify beneficiaries that their ACO providers/suppliers are participating in the Shared Savings Program.

- (3) Make available standardized written notices regarding participation in an ACO and, if applicable, data opt-out. Such written notices must be provided by the ACO participants in settings in which beneficiaries receive primary care services.