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Final ACO Rule Released

On October 20, 2011, the Centers for Medicare and Medicaid Services (CMS) published a final rule on accountable care organizations (ACOs) participating in the Medicare Shared Services program. ACOs are networks of doctors and hospitals that bring together primary care, home health care, specialists, and other types of health care services to meet their member patients' needs. The idea is that by coordinating care and information sharing, patients would receive fewer unneeded tests or procedures, potentially saving Medicare millions of dollars.

The final rule is notably different from the originally proposed rule from earlier in 2011. CMS proposed requiring ACOs to track 65 measures of performance quality, but will now require just 33. Each quarter, CMS will give ACOs a list of Medicare beneficiaries that it expects to be assigned to that ACO, rather than assigning beneficiaries retrospectively based on primary care service usage. While health information sharing will often be an important part of making ACOs effective, CMS is not mandating the use of electronic health records (EHRs). ACOs will have the option of working under a risk model that allows an ACO to accept a lower share of the savings it produces in return for not losing any money if it fails to produce any. Additionally, ACOs will not have to achieve a minimum 2% savings rate to be eligible for shared savings payments from CMS. Finally, ACOs will see some of their Medicare reimbursement switch from fee-for-service to pay-for-reporting after the first year of participation in the program, which is intended to reward the quality of health care ACOs provide over the quantity of services ACOs provide.

CMS will also create an advanced payment program to help some rural and physician-owned providers acquire the staff and IT needed to establish ACOs.

Separately, the Federal Trade Commission (FTC) and Department of Justice's (DOJ's) Antitrust Division have stated that they will not mandate ACO reviews as a condition of program participation. Further, ACOs whose providers offer common services accounting for no more than 30% of services within their primary service areas will fall under a "safety zone" whereby an antitrust challenge is very unlikely. ACOs outside the safety zone may still be legal from an antitrust standpoint, but will need to carefully monitor their compliance with the law. The antitrust agencies will allow an ACO to request an expedited review of its expected impact on competition, with the answer coming in about 90 days.
