Accountable Care Organizations: The Proposal and The Basics

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It is no surprise that on March 31, 2011 the Centers for Medicare and Medicaid Services (CMS) released its long awaited Medicare Shared Savings Program proposed rule. The Shared Savings Program establishes financial incentives for forming accountable care organizations (ACOs) that meet certain efficiency standards with respect to Medicare services. CMS' development of the Proposed Rule revolved around its three-part aim for the Shared Savings Program: (1) better care for individuals, (2) better health for populations, and (3) lower growth in expenditures.

Participation

ACOs are legal entities that may be structured in any manner that is recognized under state law (eg, corporation, limited liability company, partnership, etc). Notably, ACOs need not be enrolled in Medicare, but must have their own tax identification numbers. The ACO participants, on the other hand, must be enrolled in Medicare. The Proposed Rule provides that the following entities are eligible to participate in the Shared Savings Program as ACOs if all applicable requirements are satisfied:

- ACO professionals (defined as physicians or practitioners) in group practice arrangements;
- Networks of individual practices of ACO professionals;
- Partnerships or joint venture arrangements between hospitals and ACO professionals;
- Hospitals employing ACO professionals;
- Critical access hospitals; and
- Such other groups of providers of services and suppliers as the Secretary of the U.S. Department of Health and Human Services deems appropriate.

The Shared Savings Program will become operational on January 1, 2012. The application to participate in the Shared Savings Program will require the ACO to certify that "the ACO's participants are willing to become accountable for, and to report . . . on, the quality, cost, and overall care of the Medicare [fee for service] beneficiaries assigned to the ACO." For this reason, those radiologists and other imaging providers and suppliers who strive to continuously improve the quality and efficiency of patient care will be well-prepared for future success under the Shared Savings Program if they decide to participate.

ACO Beneficiaries and Professionals

Participation in an ACO requires assignment of at least 5000 fee for service (FFS) beneficiaries. CMS' assignment of a beneficiary to an ACO will take into account, for example, the beneficiary's utilization of primary care services and where the beneficiary utilizes a plurality of his/her primary care services. Beneficiaries will not be required to obtain all of their services from the ACO to which they are assigned.

Since assignment of patients to an ACO is based upon the primary care physicians participating in the ACO, it is anticipated that, as a practical matter, primary care physicians will have the most influence within the their respective ACOs. Therefore, it is likely that primary care physicians will be restricted from participating in and benefiting from more than one ACO. In contrast, it is likely that specialists, such as radiologists, will have greater flexibility to belong to more than one ACO.

Shared Savings Based on Risk

CMS will continue to reimburse all providers and suppliers for specific items and services under the FFS payment system irrespective of their participation in the Shared Savings Program. Under the Proposed Rule, ACOs meeting quality performance thresholds would be eligible to receive an additional shared savings if their Medicare expenditures in each year of their participation fall below benchmarks established by CMS.

Under the Proposed Rule, all ACOs will eventually need to assume risk; however, initially, ACOs will have an opportunity to elect how much risk they choose to assume by choosing either the one-sided or the two-sided risk model during the first two years of an ACO's participation in the Shared Savings Program. However, the Proposed Rule would require all ACOs to assume risk after such initial two year period. The one-sided risk model allows less experienced, smaller ACOs to limit their downside risk by choosing not to be responsible for any portion of the losses above the expenditure target. While the one-sided risk model limits downside risk, it also has a more limited opportunity to share in savings to that of the two-sided risk model.

Moving Forward

During this time of change, radiologists and other imaging providers and suppliers should remain attentive to Shared Savings Program developments and strategies by reaching out to their professional organizations and legal advisors. Comments to the Proposed Rule are due no later than June 6, 2011. Further, even prior to participating in an ACO, radiologists and other imaging providers and suppliers who desire to participate in an ACO need to acquire a solid understanding of their own financial data and performance. It is also advisable to maintain as much flexibility as possible until the federal government issues further guidance, including its Final Rule with respect to the Shared Savings Program, which is anticipated to be published later this year.