



How To Thrive As An MSSP ACO Under The New Regulations



January 22, 2019

EXPECT EXCELLENCE®



Smith Anderson Value Based Care Team



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WHO ARE WE?

- Founded in 1912, Smith Anderson is the largest business and litigation law firm headquartered in the world-renowned Research Triangle region and one of the largest in North Carolina
- 135+ lawyers serve diverse companies ranging in size from large public companies to emerging growth businesses
- Specifically, our Health Care practice has a long history of counseling health care facilities, practitioners and industry interest groups, and we have been integrally involved in launching innovative health care delivery initiatives such as Community Care of North Carolina and accountable care organizations (ACO) across the country.

INTRODUCTION

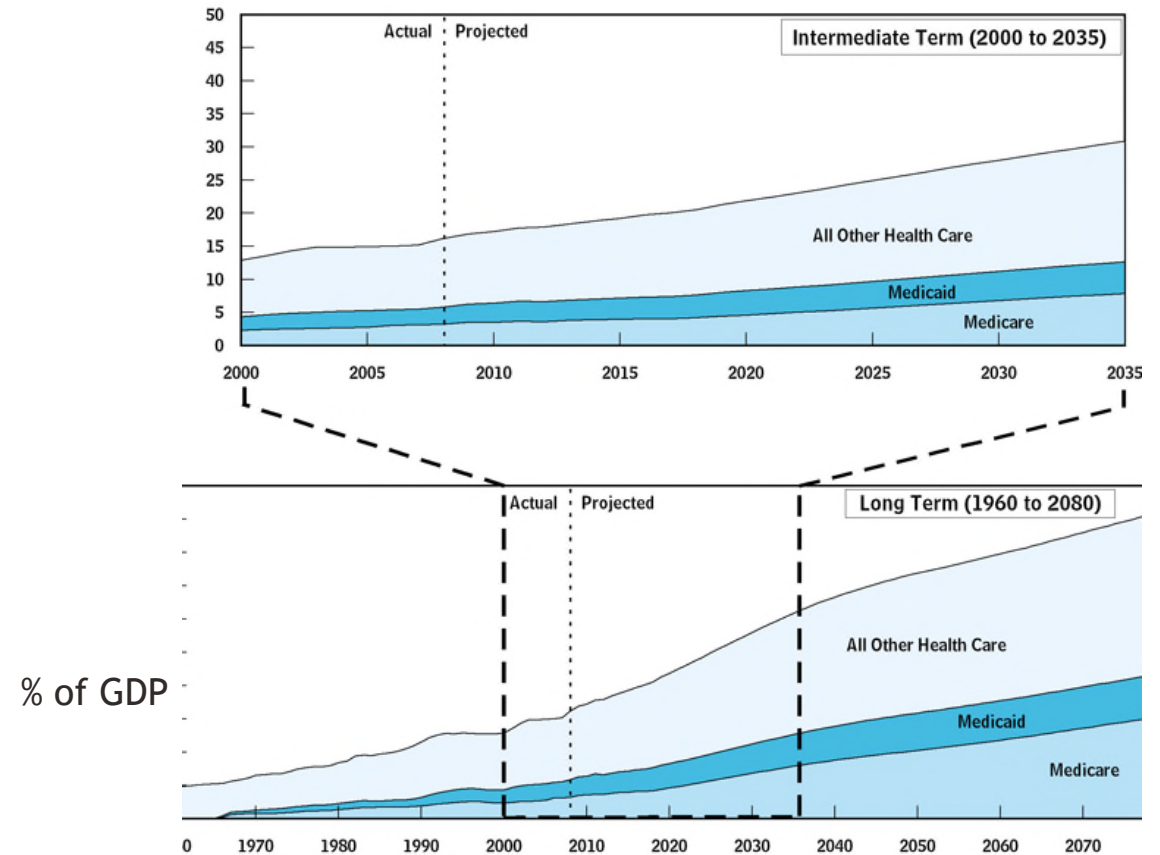
- CMS doubling down on value-based care—not just Medicare ACOs.
- In CMS’s words, it is a “Regulatory Sprint to Coordinated Care.”



INTRODUCTION cont'd

- Self-funded and commercial plans following suit
- There is no Plan B

Total Spending for Health Care Under CBO's Extended-Baseline Scenario



TODAY'S AGENDA

- Overview of key elements of final rule
- How to optimize perhaps the biggest takeaway—preservation of the waivers
- Strategies to optimize new benefits and minimize new negatives in the rule



I. OVERVIEW OF “PATHWAYS TO SUCCESS” FINAL MSSP RULE

Key Dates:

- January 18, 2019
- January 22, 2019
- February 19, 2019
- July 1, 2019
- January 1, 2021

Accelerated Movement to Downside Risk



ACO Designations

- High Revenue ACO
- Low Revenue ACOs
- Experienced
- Inexperienced

Which Track is Right for your ACO?



Which Track is Right For Your ACO?

| | BASIC Track's Glide Path | | | | ENHANCED Track (risk/reward) |
|--|---|---|---|---|---|
| | Level A & Level B (one-sided model) | Level C (risk/reward) | Level D (risk/reward) | Level E (risk/reward) | |
| Shared Savings (once MSR met or exceeded) | 1 st dollar savings at a rate up to 40% based on quality performance; not to exceed 10% of updated benchmark | 1 st dollar savings at a rate of up to 50% based on quality performance, not to exceed 10% of updated benchmark | 1 st dollar savings at a rate of up to 50% based on quality performance, not to exceed 10% of updated benchmark | 1 st dollar savings at a rate of up to 50% based on quality performance, not to exceed 10% of updated benchmark | No change. 1 st dollar savings at a rate of up to 75% based on quality performance, not to exceed 20% of updated benchmark |
| Shared Losses (once MLR met or exceeded) | N/A | 1 st dollar losses at a rate of 30%, not to exceed 2% of ACO participant revenue capped at 1% of updated benchmark | 1 st dollar losses at a rate of 30%, not to exceed 4% of ACO participant revenue capped at 2% of updated benchmark | 1 st dollar losses at a rate of 30%, not to exceed the percentage of revenue specified in the revenue-based nominal amount standard under the Quality Payment Program capped at 1 percentage point higher than the benchmark nominal risk amount (e.g., 8% of ACO participant revenue in 2019 – 2020, capped at 4% of updated benchmark) | No change. 1 st dollar losses at a rate of 1 minus final sharing rate, with minimum shared loss rate of 40% and maximum of 75%, not to exceed 15% of updated benchmark |

Which Track is Right For Your ACO?

| | BASIC Track's Glide Path | | | | ENHANCED Track (risk/reward) |
|---|---|--|---|--|--|
| | Level A & Level B (one-sided model) | Level C (risk/reward) | Level D (risk/reward) | Level E (risk/reward) | |
| Annual choice of beneficiary assignment methodology? | Yes | Yes | Yes | Yes | Yes |
| Annual election to enter higher risk? | Yes, but new low revenue ACOs may elect an additional year under Level B if they commit to completing the remainder of their agreement under Level E. | Yes | No; ACO will automatically transition to Level E at the start of the next performance year, except for July 1, 2019 starters that elect to enter at Level D | No; maximum level of risk / reward under the BASIC track | No; highest level of risk/reward under Shared Savings Program |
| Advanced APM status under the Quality Payment Program? | No | No | No | Yes | Yes |
| Beneficiary Incentive Program | No | Yes, ACOs may establish an approved program starting July 1, 2019, or in subsequent years | Yes, ACOs may establish an approved program starting July 1, 2019, or in subsequent years | Yes, ACOs may establish an approved program starting July 1, 2019, or in subsequent years | Yes, ACOs may establish an approved program starting July 1, 2019, or in subsequent years |
| Expanded Telehealth Services | N/A | Yes, available to ACOs electing prospective assignment methodology for performance year 2020, and subsequent years | Yes, available to ACOs electing prospective assignment methodology for performance year 2020, and subsequent years | Yes, available to ACOs electing prospective assignment methodology for performance year 2020, and subsequent years | Yes, available to ACOs electing prospective assignment methodology for performance year 2020, and subsequent years |
| 3-Day SNF Rule Waiver | N/A | Yes, ACOs may apply to start on July 1, 2019, and in subsequent years | Yes, ACOs may apply to start on July 1, 2019, and in subsequent years | Yes, ACOs may apply to start on July 1, 2019, and in subsequent years | Yes, ACOs may apply to start on July 1, 2019, and in subsequent years |

Risk Mitigators

- Changes to Benchmarking
 - Utilizes regional FFS expenditures for historical cost benchmarks
 - Blend of regional and national growth rates
- Flexibility in Beneficiary Assignment
 - Annual election of prospective or retrospective
- Additional Expanded Waivers
 - Telehealth
 - Expanded SNF 3-Day Acute Stay Waiver Eligibility
 - Beneficiary Incentive Programs

II. OPTIMIZE CURRENT & NEW WAIVERS

Expanding on existing ACO waivers:

- Pre-Participation Waiver
- Participation Waiver
- Shared Savings Distribution Waiver
- Stark Compliance Waiver

II. OPTIMIZE CURRENT & NEW WAIVERS cont'd

Expanding on existing ACO waivers:

- Patient Incentive Waiver
- SNF 3-Day Rule Waiver

II. OPTIMIZE CURRENT & NEW WAIVERS cont'd

Primary care and greater flexibility are keys to success!



II. OPTIMIZE CURRENT & NEW WAIVERS cont'd

Telehealth Waiver

- Removes geographic limitation for ACOs in two-sided risk
- Patient home as originating site



III. MAXIMIZING OPPORTUNITIES & MINIMIZING NEGATIVES IN THE NEW RULE

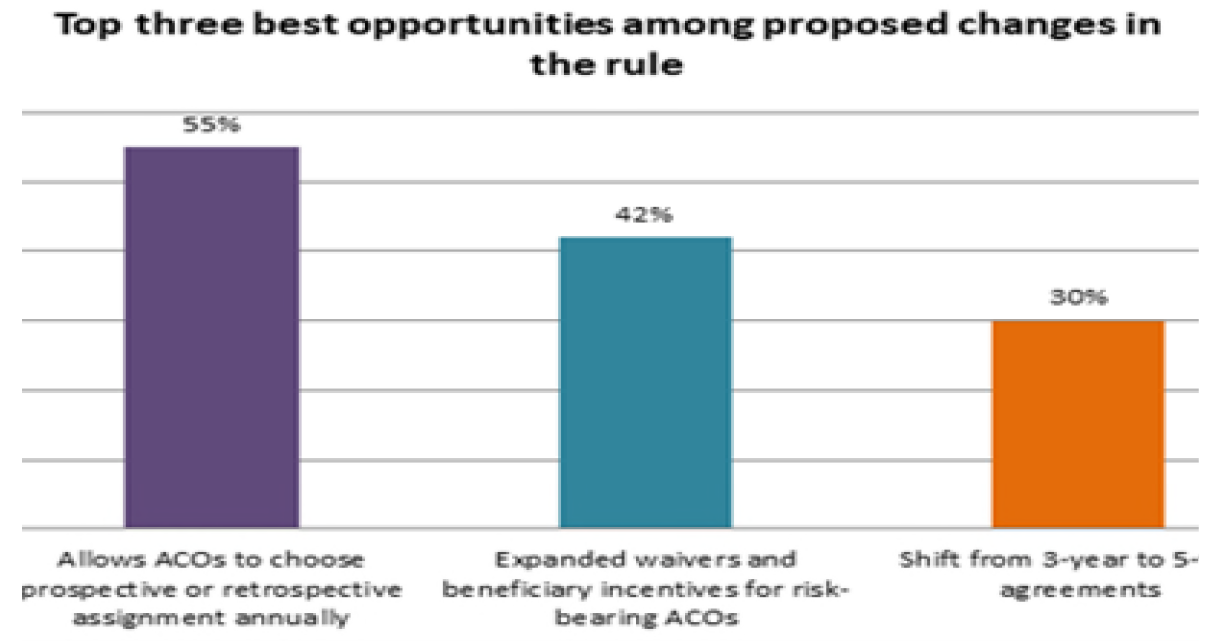
- CMS Administrator Seema Verma emphasized that the new MSSP rule is part of the Administration’s “high priority on accelerating a value-based transformation of America’s healthcare system.”
 - December 21, 2019 blog <https://www.cms.gov/blog/pathways-success-overhaul-medicare-aco-program>
- “[T]wo-sided models ... have shown savings to the Medicare program and are improving quality. Further, ... low revenue ACOs (which are typically comprised of physician practices and rural hospital(s) outperform high revenue ACOs that include hospital(s).”
 - CMS fact sheet <https://www.cms.gov/newsroom/fact-sheets/final-rule-creates-pathways-success-medicare-shared-savings-program>

ELEMENTS OF A SUCCESSFUL ACO



MAXIMIZING THE BENEFITS

- NAACOS' top benefits
- Rankings different if rural, small practices, high performer, etc.



“Key Findings from ACO poll on CMS’s Proposed Pathway’s to Success Rule” https://www.naacos.com/index.php?option=com_content&view=article&id=591:key-findings-from-aco-poll-on-cms-s-proposed-pathways-to-success-rule&catid=20:site-content

MAXIMIZING THE BENEFITS cont'd

- Waivers retained
- Ability to choose assignment methodology
- Telehealth/Beneficiary Incentives
- Shift for 3- to 5-year term
- Normalized risk adjusted
- Regional benchmarking
- Others

MINIMIZE THE NEGATIVES

- Mandatory risk
- Reduced savings
- 3% cap on risk adjustment

CONCLUSION



❖ **THANK YOU!**

❖ **QUESTIONS?**



Today's PowerPoint presentation and recording will be available to view and download by Thursday on SmithLaw.com/Webinar

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