has received a letter stating that the reviewing Agency is likely to challenge or recommend challenging the ACO if it proceeds.  

Appendix

This Appendix explains how to calculate the PSA shares of common services discussed in this Policy Statement. There are three steps:

1. Identify each service provided by at least two independent ACO participants (i.e., each common service). A service is defined as follows:
   a. For physicians, a service is the physician’s primary specialty, as designated on the physician’s Medicare Enrollment Application. Each specialty is identified by its Medicare Specialty Code (“MSC”), as defined by CMS.
   b. For inpatient facilities (e.g., hospitals), a service is an MDC.
   c. For outpatient facilities (e.g., ASCs or hospitals), a service is an outpatient category, as defined by CMS.

2. Identify the PSA for each common service for each participant (e.g., physician group, inpatient facility, or outpatient facility) in the ACO. For each common service and each participant, the PSA is defined as the lowest number of contiguous postal zip codes from which the participant draws at least 75 percent of its patients for that service.

3. Calculate the ACO’s PSA share for each common service in each PSA from which at least two ACO participants serve patients for that service. For physician services, the ACO applicant should calculate its shares of Medicare fee-for-service allowed charges (i.e., the amount that a provider is entitled to receive for the service provided) during the most recent calendar year for which data are available. For outpatient services, the ACO applicant should calculate its shares of Medicare fee-for-service payments during the most recent calendar year for which data are available. CMS will make public the data necessary to identify the

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37 CMS NPRM on ACOs.
38 Any ACO participant that wants to determine whether it meets the dominant provider limitation of the safety zone should calculate its PSA share in a similar manner.
39 CMS will make publicly available the most current list of applicable specialties. Specialty Codes 01 (general practice), 08 (family practice), 11 (internal medicine), and 38 (geriatric medicine) are considered “Primary Care” specialties, and are treated as a single service for the purposes of this Policy Statement.
40 CMS will make publicly available the most current list of MDCs.
41 CMS will make publicly available a list of applicable outpatient categories as well as data necessary to assign procedure codes to the appropriate category.
full range of services and the aggregate fee-for-service allowed charges or payments for each service, by zip code. For inpatient services, the ACO applicant should calculate its shares of inpatient discharges, using state-level all-payer hospital discharge data where available, for the most recent calendar year for which data are available. For ACOs located in a state where all-payer hospital discharge data are not available, the ACO applicant should calculate its shares of Medicare fee-for-service payments during the most recent federal fiscal year for which data are available (CMS will make public the necessary data). For those services that are rarely used by Medicare beneficiaries (e.g., pediatrics, obstetrics, and neonatal care), the ACO may use other available data to determine the relevant shares. For example, for services where Medicare data are not applicable, data on the number of actively participating physicians within the specialty and within the PSA may be a reasonable alternative for the purposes of calculating shares of physician services.

Example of How to Calculate an ACO’s PSA Shares

The following example illustrates how to calculate the ACO’s relevant PSA shares. Assume that two independent physician practices, two independent hospitals, and an ASC propose to form an ACO. For purposes of this example, further assume that the hospitals do not directly employ physicians. If they do, then services provided by the hospitals’ employed physicians would need to be taken into account in calculating the ACO’s shares for each common service.

For the physician groups:

1. Identify the Physician Groups’ common MSCs. In this example, Physician Group A (“PG A”) has physicians with general surgery (MSC 02) and orthopedic surgery specialties (MSC 20). Physician Group B (“PG B”) has physicians with orthopedic surgery (MSC 20) and cardiology (MSC 06) specialties. The common service is orthopedic surgery, not general surgery or cardiology, because PG A does not have cardiologists and PG B does not have general surgeons.

2. Identify the PSAs by zip code for orthopedic surgery for each Physician Group. In this example, there will be two PSAs: one for PG A’s orthopedic surgery practice (“PSA A”) and one for PG B’s orthopedic surgery practice (“PSA B”).

3. Determine the ACO’s share in each of the relevant PSAs. In this example, both PG A’s and PG B’s orthopedic surgeons serve patients located in both PSAs. Thus, shares need to be calculated in PSA A and PSA B. The ACO’s share of orthopedic surgery in PSA A would be the total Medicare allowed charges for claims billed by the ACO’s orthopedic surgeons (which are PG A’s and PG B’s total allowed charges for claims billed by orthopedic surgeons for Medicare beneficiaries in PSA A’s zip codes) divided by the total allowed charges for orthopedic surgery for all Medicare beneficiaries in PSA A. Likewise, the ACO’s share of orthopedic surgery services in PSA B would be the total Medicare...
allowed charges for claims billed by the ACO’s orthopedic surgeons (which are PG A’s and PG B’s total allowed charges for claims billed by orthopedic surgeons for Medicare beneficiaries in PSA B’s zip codes) divided by the total allowed charges for orthopedic surgery for all Medicare beneficiaries in PSA B.

For the inpatient services:

1. Identify the hospitals’ common MDCs. In this example, Hospital 1 and Hospital 2 each provide services in 10 MDCs, but only two are common services: cardiac care (i.e., services related to diseases and disorders of the circulatory system—MDC 05) and orthopedic care (i.e., services related to diseases and disorders of the musculoskeletal system and connective tissue—MDC 08).

2. Identify the PSAs by zip codes for cardiac care and orthopedic care for each hospital. In this example, there will be four PSAs: Hospital 1 PSA for cardiac care, Hospital 1 PSA for orthopedic care, Hospital 2 PSA for cardiac care, and Hospital 2 PSA for orthopedic care.

3. Determine the ACO’s share in each of the relevant PSAs. In this example, Hospital 1 and Hospital 2 both serve cardiac patients located in each hospital’s PSA for cardiac care, and both serve orthopedic patients in each hospital’s PSA for orthopedic care. Thus, shares need to be calculated in all four PSAs. The ACO’s share of cardiac care in Hospital 1’s PSA would be the ACO’s total number of inpatient discharges for MDC 05 (which are Hospital 1’s and Hospital 2’s total inpatient discharges for cardiac care in Hospital 1’s PSA) divided by the total number of inpatient discharges for MDC 05 for all residents of this PSA. Use the same process for the other three PSAs.

For the outpatient services:

1. Identify the hospitals’ and ASC’s common outpatient categories. In this example, Hospital 1 does not provide outpatient services, while Hospital 2 and the ASC each provide services in 10 outpatient categories, but only two are common services: cardiovascular tests/procedures (outpatient category 2) and musculoskeletal procedures (outpatient category 5).

2. Identify the PSAs by zip codes for cardiovascular tests/procedures and musculoskeletal procedures for each facility. In this example, there will be four PSAs: Hospital 2 PSA for cardiovascular tests/procedures, Hospital 2 PSA for musculoskeletal procedures, ASC PSA for cardiovascular tests/procedures, and ASC PSA for musculoskeletal procedures.

3. Determine the ACO’s share in each of the relevant PSAs. In this example, Hospital 2 and ASC both provide cardiovascular tests/procedures to patients located in each facility’s PSA for cardiovascular tests/procedures, and both provide musculoskeletal procedures to patients located in each facility’s PSA for
musculoskeletal procedures. Thus, shares need to be calculated in all four PSAs. The ACO’s share of cardiovascular tests/procedures in Hospital 2’s PSA would be the ACO’s total Medicare fee-for-service payments for outpatient category 2 (which are Hospital 2’s and the ASC’s total payments for outpatient cardiovascular tests/procedures for Medicare beneficiaries in Hospital 2’s PSA) divided by the total payments for outpatient category 2 for all Medicare beneficiaries in this PSA. Use the same process for the other three PSAs.

**Application to the Safety Zone:** In this example, the ACO would calculate ten PSA shares. If all of the shares are 30 percent or below and the hospital inpatient and outpatient services are non-exclusive to the ACO, then the ACO would fall within the safety zone. In other words, the 30 percent threshold must be met in each relevant PSA for each common service. If that condition is not met, then the ACO does not fall within the safety zone.

**Application to the Mandatory Review Threshold:** If only one of the ten PSA shares in this example exceeds 50 percent, the ACO would be required to obtain an antitrust review from one of the Agencies before participating in the Shared Savings Program. In other words, mandatory review is necessary even if the share for only one common service exceeds 50 percent in any PSA in which another ACO participant provides that service.