



AMERICA'S ESSENTIAL HOSPITALS

February 20, 2018

Seema Verma, MPH
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Hubert H. Humphrey Building, Room 445-G
200 Independence Ave. SW
Washington, DC 20201

**Ref: CMS-1702-IFC: Medicare Program: Medicare Shared Savings Program:
Extreme and Uncontrollable Circumstances for Performance Year 2017**

Dear Ms. Verma:

Thank you for the opportunity to comment on the above-captioned interim final rule. America's Essential Hospitals appreciates and commends the Centers for Medicare & Medicaid Services (CMS) for responding to the challenges accountable care organizations (ACOs) face in the aftermath of a disaster. Extreme and uncontrollable circumstances—such as Hurricanes Harvey, Irma, and Maria and the California wildfires—could significantly and adversely affect the financial and quality performance of ACOs under the Medicare Shared Savings Program (MSSP). We support CMS' efforts to develop MSSP policies that recognize the effects of extreme and uncontrollable circumstances on ACO quality and financial performance.

America's Essential Hospitals is the leading association and champion for hospitals and health systems dedicated to providing high-quality care to all. Filling a vital role in their communities, our 325 member hospitals provide a disproportionate share of the nation's uncompensated care and devote about half their inpatient and outpatient care to Medicaid or uninsured patients. Through their integrated health systems, members of America's Essential Hospitals offer primary care through quaternary care, including trauma care, outpatient care in ambulatory clinics, public health services, mental health and substance abuse services, and wraparound services vital to disadvantaged patients.

The high cost of providing comprehensive, complex care to low-income and uninsured patients leaves essential hospitals with limited resources, compelling them to find increasingly efficient strategies for providing high-quality care to their patients. Several essential hospitals have made the needed investments to participate in the MSSP as ACOs.

We urge the agency to consider the following comments when finalizing policies related to performance year 2017 and developing permanent policies for the MSSP.

1. CMS should finalize extreme and uncontrollable circumstances policies for the 2017 performance year of the MSSP, with modifications to the quality performance score calculation, to ensure ACOs are not adversely affected.

Essential hospitals in areas affected by extreme and uncontrollable circumstances are concerned about the direct and indirect effects of those events on ACO performance. Performance year expenditures that include disaster-related spikes in costs and utilization are compared with historical benchmarks that do not include the same inflated figures. For example, when faced with Hurricane Irma, essential hospitals in Florida were called on to manage chronically ill patients, deal with trauma, and dispense medications, all among a displaced patient population. Loss of infrastructure from such an event has significant effects on the utilization of services—including increases in emergency department services due to patients being redirected from damaged hospitals—which, in turn, increases overall costs of services at receiving facilities. CMS recognized that ACOs were affected by hurricanes, as well as the California wildfires, during the 2017 performance period and issued the interim final rule outlining extreme and uncontrollable circumstance policies for that period of the MSSP.

CMS proposes to align its automatic extreme and uncontrollable circumstance policies under the MSSP with those established under the Quality Payment Program (QPP). Specifically, CMS will use the determination of an extreme and uncontrollable event under the QPP, including the identification of affected geographic areas, to determine the applicability of the proposed policies with respect to the MSSP. **America's Essential Hospitals supports CMS' goal of alignment across programs, but urges the agency to monitor, evaluate, and modify these temporary policies** to ensure MSSP participants do not experience unintended consequences from the use of QPP determinations to trigger MSSP policies in response to the same events. For example, an extreme and uncontrollable event that is determined under the QPP to have affected certain geographic areas might have a different impact, in terms of scope and severity, on ACOs under the MSSP.

Further, CMS in the interim rule proposes how to adjust the quality performance scores for ACOs in affected areas due to the organization's inability to collect or report the necessary information because of extreme or uncontrollable circumstances. CMS first will determine if the policies apply to the ACO based on whether 20 percent or more of its assigned beneficiaries for the performance year reside in an area affected by an extreme and uncontrollable circumstance, or whether the ACO's legal entity is located in such an area. If the policies do apply, the ACO's minimum quality score will be set to the mean quality score for all MSSP ACOs nationwide for performance year 2017. If the ACO is able to report all quality measures, CMS will use the higher of the ACO's quality score or the nationwide mean score. **We support these policies to ensure adequate adjustment of quality scores for ACOs affected by extreme or uncontrollable circumstances.**

In previous rulemaking, CMS finalized a policy by which ACOs that demonstrate quality improvement year-to-year will be eligible for up to four bonus points per domain. To earn these points, the ACO must show a net improvement in performance on measures within a domain. Given that an ACO might not be able to complete quality reporting for performance year 2017, due to disasters, CMS will not be able to assess such improvement. Thus, if an ACO that is unable to report its quality measures for performance year 2017, and therefore receives a quality score based on the national mean (as outlined in above policies), the ACO is not eligible for quality improvement bonus points. **We urge CMS to recognize and account for quality improvement efforts made by ACOs outside the time period of being affected by an extreme and uncontrollable event—i.e., before and after such an event.** Essential hospitals affected by these natural disasters already are significantly burdened and will be further disadvantaged by not having the opportunity to receive bonus points under the MSSP for factors outside their control.

2. CMS should work to develop proposals for permanent extreme and uncontrollable circumstances policies that include appropriate application thresholds and alternatives to mitigate shared losses so that affected ACOs are better able to rebuild and restore care to the communities they serve.

This interim final rule establishes policies for assessing financial and quality performance of MSSP ACOs affected by extreme and uncontrollable circumstances during performance year 2017. While we applaud CMS for recognizing that the frequency and scope of disasters varies year-to-year, we believe there needs to be consistency within the Medicare program by establishing permanent policies that mitigate the effects of such circumstances. **America's Essential Hospitals supports CMS' efforts to develop proposals for permanent extreme and uncontrollable circumstance policies for future performance years of MSSP.**

- a. CMS should monitor and modify the proposed 20 percent threshold for application of the MSSP policies for extreme and uncontrollable circumstances to mitigate any unintended consequences before proposing to make the policies permanent.

ACOs, their participants, and providers/suppliers often are located across several geographic regions, serving a mix of beneficiaries. As such, CMS intends to apply its MSSP extreme and uncontrollable circumstance policies in a limited manner, based on ACO participants meeting a minimum threshold of beneficiaries affected by a disaster. Specifically, CMS will determine if an ACO was affected by an extreme or uncontrollable circumstance based on whether 20 percent or more of the ACO's assigned beneficiaries resided in counties designated as an emergency declared area in performance year 2017. It is unclear whether 20 percent is the appropriate threshold to fully capture the effect of a disaster and which ACOs will be adversely affected if they do not qualify for these policies. **We urge CMS to observe the effect of the 2017 hurricanes and wildfires on ACOs and to develop flexible permanent policies to fully capture ACOs in which quality performance might have been affected by an extreme or uncontrollable circumstance.**

- b. CMS should consider alternatives to the proposed policy to mitigate shared losses owed by ACOs that are affected by extreme and uncontrollable circumstances. ACOs should have the option to convert to a no-risk model for the affected year to focus resources on post-disaster recovery.

Essential hospitals often face challenges finding the resources necessary to upgrade technology, redesign processes, and develop a care coordination network; these challenges can preclude them from participation as ACOs. Essential hospitals that have taken on downside risk, by entering tracks 2 or 3 of the MSSP, did not do so lightly. In taking on risk, these hospitals have demonstrated a dedication to providing quality care while reducing costs among a vulnerable and complex patient population.

Additionally, there is risk associated with responding to extreme and uncontrollable circumstances. Providers and suppliers could be reluctant to participate in the MSSP under a two-sided risk model because of concerns that ACOs in such models could be required to share losses for expenditures resulting from extreme and uncontrollable circumstances. For performance year 2017, CMS in the interim final rule proposes a methodology to mitigate shared losses owed by ACOs affected by extreme and uncontrollable circumstances. Specifically, the agency will adjust the ACO's losses by two factors: percentage of the total months affected by the disaster, and percentage of the ACO's assigned beneficiaries who reside in an affected area. Under these temporary policies, ACOs remain financially responsible for losses, though to a lesser degree, while they are redirecting scarce resources to disaster recovery, rebuilding infrastructure, and coordinating care for a displaced patient population. While we support CMS' intent to reduce shared losses for the 2017 performance year, **we urge the agency to develop permanent policies that include an alternative proposal for mitigating shared losses.**

We would support proposals that encourage essential hospital participation in risk-bearing tracks of the MSSP by assuring zero shared losses in the event that an ACO is faced with extreme and uncontrollable circumstances. Specifically, for ACOs participating in Tracks 2 and 3 (two-sided risk models) that are faced with extreme and uncontrollable circumstances, **CMS should allow for the option to temporarily convert to a no-risk model—i.e., Track 1—for the performance year affected by extreme or uncontrollable events.** While this option likely would affect the ACO's status as an Advanced Alternative Payment Model for purposes of the QPP, it could provide assurances to participants in Tracks 2 and 3 that might have ceased participation altogether after experiencing a disaster outside their control. Additionally, such a policy offers incentive for more providers to take on downside risk.

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America's Essential Hospitals appreciates the opportunity to submit these comments. If you have questions, please contact Director of Policy Erin O'Malley at 202-585-0127 or eomalley@essentialhospitals.org.

Sincerely,

Bruce Siegel, MD, MPH
President & CEO