February 20, 2018

Ms. Seema Verma
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, DC 20201

Re: (CMS-1702-IFC) Medicare Program; Medicare Shared Savings Program: Extreme and Uncontrollable Circumstances Policies for Performance Year 2017

Dear Administrator Verma:

The National Association of ACOs (NAACOS) appreciates the opportunity to submit comments on the interim final rule, "Medicare Shared Savings Program: Extreme and Uncontrollable Circumstances Policies for Performance Year 2017." As the largest association of ACOs, representing more than 5 million beneficiary lives through more than 330 Medicare Shared Savings Program (MSSP), Next Generation, and commercial ACOs, NAACOS and its members care deeply about this issue. NAACOS is an ACO member-led and member-owned non-profit organization that works on behalf of ACOs across the nation to improve the quality of Medicare delivery, population health and outcomes, and health care cost efficiency.

This interim final rule with comment period establishes policies for assessing the financial and quality performance of Medicare Shared Savings Program (MSSP) ACOs affected by extreme and uncontrollable circumstances during performance year (PY) 2017, such as Hurricanes Harvey, Irma, and Maria, and the California wildfires. We appreciate the agency taking action to provide relief to ACOs impacted by these events, as CMS does not currently have policies for addressing ACO quality performance scoring and the determination of the shared losses owed by ACOs participating under performance-based risk tracks in the event of an extreme or uncontrollable circumstance.

Determination of Extreme or Uncontrollable Event

In this interim final rule, CMS establishes a policy whereby the agency will use the determination of an extreme and uncontrollable circumstance as established under the Quality Payment Program (QPP), including the identification of affected geographic areas and applicable time periods, for purposes of determining the applicability of the extreme and uncontrollable circumstances policies with respect to both financial performance and quality reporting under the MSSP. NAACOS supports this approach which maintains consistency across programs. However, we urge CMS to more clearly and directly communicate to ACOs specifically regarding the options being made available to those in affected areas as well as which areas have been established as affected geographic areas and the corresponding time periods established

under the QPP. It is critical that ACOs clearly understand these policies and how they will impact their quality and financial performance.

Establishing Thresholds for Determining Whether an ACO Has Been Affected by an Extreme and Uncontrollable Circumstance

In this interim final rule CMS establishes a policy to determine whether an ACO has been affected by an extreme and uncontrollable circumstance. CMS establishes two criteria that must be met in order for an ACO to be determined to have been affected by an extreme and uncontrollable circumstance. Specifically, the agency will evaluate whether 20 percent or more of the ACO's assigned beneficiaries resided in counties designated as an emergency declared area in PY 2017, as determined under the Quality Payment Program (82 FR 53898), or if the ACO's legal entity is located in such an area. CMS will determine what percentage of the ACO's performance year assigned population was affected by a disaster based on the final list of beneficiaries assigned to the ACO for the performance year. NAACOS supports this patient threshold criteria as it will incorporate most ACOs impacted by the 2017 extreme and uncontrollable events. CMS estimates 92 percent of ACOs impacted by the disasters in 2017 will have more than 20 percent of their assigned beneficiaries residing in emergency declared areas. For those ACOs impacted by such events that have fewer than 20 percent of their assigned beneficiaries residing in affected areas, CMS analysis shows that the ACO has a legal entity that is located in an emergency declared area.

While CMS's analysis predicts these policy options will capture the majority of affected ACOs, we urge CMS to also provide an option for ACOs who do not meet either of these standards but feel they were significantly affected by such an event. Specifically, we urge CMS to allow ACOs to submit a hardship request for CMS to review and approve on a case-by-case basis should the ACO not meet the established criteria but still feel a significant hardship has been incurred. For example, an ACO may fall just short of the 20 percent beneficiary threshold while still incurring major costs and obstacles to data collection. These ACOs should also be provided an opportunity for relief and we urge CMS to add such an option for these organizations.

Determination of Quality Performance Scores for ACOs in Affected Areas

CMS establishes a policy whereby for purposes of determining quality performance scoring for PY 2017, if 20 percent or more of an ACO's assigned beneficiaries reside in an area impacted by the disaster or the ACO's legal entity is located in such an area, the ACO's minimum quality score will be set to the mean MSSP ACO quality score for all ACOs for PY 2017. Further, CMS establishes that if an ACO receives a quality score based on the mean quality score, the ACO is not eligible for MSSP quality bonus points awarded based on quality improvement. If the ACO is able to completely and accurately report all quality measures despite being located in an affected area, CMS will use the higher of the ACO's quality score or the mean MSSP ACO quality score for PY 2017. While the mean reflects the full range of quality performance scores across all ACOs in the MSSP for PY 2017, NAACOS believes an ACO who has achieved quality performance well above average in the prior performance year should be provided with an alternative which would not penalize the organization by lowering their quality score in 2017. Therefore, in instances where an ACO is unable to report quality data due to an extreme or uncontrollable event, NAACOS urges CMS to establish a policy where the ACO's quality score would be set to either the higher of the ACO's prior performance year quality score (PY 2016) or the mean MSSP ACO quality score for all ACOs for PY 2017. We feel this option would provide ACOs with excellent quality performance a more equitable solution should they be unable to report quality data due to extreme and uncontrollable circumstances.

In addition to MSSP quality evaluation, certain ACOs are also subject to Merit-Based Incentive Payment System (MIPS) performance standards and evaluated under the MIPS APM scoring standard specifically. In this interim final rule for purposes of the MIPS APM scoring standard, CMS establishes a policy where MIPS

eligible clinicians (ECs) in MSSP ACOs that do not completely report quality for 2017 as a result of being impacted by an extreme or uncontrollable event and therefore receive the mean ACO quality score under the MSSP would receive a score of zero percent in the MIPS quality performance category. NAACOS strongly opposes this policy and urges CMS to instead use the higher of the mean quality score or the organization's PY 2016 quality performance score to evaluate the ACO's quality performance category score under the MIPS APM scoring standard. While the PY 2017 MIPS minimum performance threshold has been set at a very minimal standard (three points), when looking to future program years, it is unfair to establish a policy that would recognize the ACO's hardship for purposes of the ACO program quality evaluation but not for MIPS, thereby potentially penalizing ACOs in MIPS in future program years when performance thresholds are increased. Further, by giving ACOs a quality score in the MSSP but not MIPS, CMS will skew performance data and hamper the ability to evaluate and compare performance.

Mitigating Shared Losses for ACOs Participating in a Performance-based Risk Track

In this interim final rule CMS establishes a policy which will reduce the ACO's shared losses, if determined to be owed under the existing methodology for calculating shared losses in MSSP by an amount determined by multiplying the shared losses by two factors: (1) the percentage of the total months in the performance year affected by an extreme and uncontrollable circumstance; and (2) the percentage of the ACO's assigned beneficiaries who reside in an area affected by an extreme and uncontrollable circumstance. CMS will determine the percentage of the ACO's performance year assigned beneficiary population that was affected by the disaster based on the final list of beneficiaries assigned to the ACO for the performance year. This policy would not affect the calculation of shared savings payment amounts. NAACOS appreciates the agency establishing a policy to reduce an ACO's shared losses should they be impacted by an extreme or uncontrollable event. Establishing such policies will alleviate the impact of the disasters on an ACO's financial performance which could be unpredictable and have multiple effects on the organization beyond ACO performance. By continuing to support ACOs in such circumstances, the agency will foster continued participation in the program.

CMS does not make changes to historical benchmark methodologies but will consider making changes in the future as they continue to monitor the effect of the extreme and uncontrollable events. We appreciate the challenges of appropriately adjusting benchmarks to reflect the myriad of possible situations and the potential for unintended consequences resulting from extreme and uncontrollable events. We request that CMS provide more data on affected ACOs so that we may evaluate potential benchmarking adjustments and can provide a more thoughtful response backed by our own analysis. CMS assumes that any effect of including these additional expenditures in determining the ACO's benchmark for the subsequent agreement period could be mitigated in part because the ACO's expenditures during the three base years included in the benchmark are weighted equally, and regional expenditures would also increase as a result of the disaster. We request that CMS provide more information and data for affected ACOs so that we can further explore and model the impact of these disasters on rebased benchmarks and provide informed feedback to the agency. Finally, CMS also notes that in future rulemaking the agency intends to propose permanent policies under the MSSP to address extreme and uncontrollable circumstances in future performance years. We look forward to having additional opportunities to comment on how further changes could support ACOs impacted by extreme and uncontrollable circumstances.

Conclusion

In conclusion, we support the agency's efforts to provide further policy options to ACOs impacted by extreme and uncontrollable events such as Hurricanes Harvey, Irma, and Maria, and the California wildfires. For ACOs impacted by these events, organizations could be at risk of incurring financial losses due to the costs associated with these events in addition to the negative impacts on the ACO's MSSP performance. It is critical that CMS provide relief to impacted organizations so they can continue participate in the ACO

program and thereby provide high quality, coordinated care for the Medicare patients they serve. Such disasters have multiple effects on ACOs, including impacts on the infrastructure of the ACO Participants, providers and suppliers as well as the ACO entity. Impacted organizations face many challenges ahead and we appreciate the agency's acknowledgement of the work the ACOs have done in the MSSP program by continuing to foster their success during difficult times. We look forward to commenting on future rulemaking related to establishing permanent policies to address extreme and uncontrollable circumstances for MSSP ACOs.

Sincerely,

Allison Brennan
Vice-President of Policy
National Association of ACOs