

# United States Senate

WASHINGTON, DC 20510

April 21, 2020

The Honorable Seema Verma  
Administrator  
Centers for Medicare & Medicaid Services  
U.S. Department of Health and Human Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Administrator Verma:

As Members of the Senate Finance Committee with jurisdiction over Medicare, we have a responsibility to ensure that programs such as the Medicare Shared Savings Program (MSSP) for Accountable Care Organizations (ACOs) continue to meet their goals of increasing quality and decreasing costs. We urge CMS to work with the ACO community and provide solutions to the unique problems that MSSP participants face as they bear costs beyond their control due to the COVID-19 pandemic.

Under the financial evaluation methodologies of MSSP and other advanced Alternative Payment Models (APMs) under the Medicare Access and CHIP Reauthorization Act (MACRA), physician and hospital groups who participate in these programs are being held responsible for the enormous costs that we expect to result from the COVID-19 pandemic, which are outside their control. Some stakeholders estimate that the ongoing COVID-19 pandemic could cost Medicare between \$38.5 billion and \$115.4 billion over the next year, depending on factors such as severity of disease and hospitalization rates.

Healthcare providers in value-based arrangements will feel the impact of these costs twice: once at the onset and again when their spending is evaluated in the context of their performance in MSSP or another APM. The underlying uncertainty for these providers comes at a critical time, as they are both struggling to meet the workforce and patient needs resulting from COVID-19 and to make strategic decisions in anticipation of swiftly approaching MSSP and APM application deadlines and a May 31 deadline to exit the MSSP.

While we were pleased that CMS recently applied its extreme and uncontrollable circumstance policy for ACOs to provide relief during the COVID-19 public health emergency, our understanding is that this policy would only partially address the costs associated with the COVID-19 pandemic and the total financial impact to ACOs. The CMS policy would prorate the 2020 annual losses based on the duration of the Public Health Emergency (PHE), so if the PHE lasts for six months, ACOs would be liable for half of the losses for the year. The policy does not adequately adjust losses for ACOs in hard-hit COVID areas and still holds ACOs accountable for the abnormally high costs of providing care during a global pandemic. According to a survey<sup>1</sup> conducted *after* this change was made, 56 percent of

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<sup>1</sup> <https://www.naacos.com/survey-shows-acos-concerns-about-the-effect-of-covid-19>

risk-bearing MSSP ACOs said they are likely to leave the program absent additional relief. Given the dramatic shifts in utilization and care delivery that have occurred in 2020 as a result of the pandemic, we also understand that it will be impractical to adequately adjust ACO program methodologies such as benchmarks, risk scores, and quality bonuses.

Therefore, to ensure that risk-based ACOs that have taken on risk for the total cost of care due to longstanding encouragement and program requirements instituted by CMS are not unduly penalized by the COVID-19 pandemic, we urge you to waive the shared loss repayment for ACOs for performance year 2020. In addition, and in order to provide immediate assurances to ACOs about CMS' intent to formalize in regulation a 2020 waiving of losses, we recommend the agency push back the upcoming MSSP termination deadline for risk-based ACOs.

Sincerely,



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Sheldon Whitehouse  
United States Senator



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Bill Cassidy, M.D.  
United States Senator