

Next Generation ACO Model Participation Agreement

First Amended and Restated Participation Agreement for 2018 Starters
Second Amended and Restated Participation Agreement for 2017 Starters
Third Amended and Restated Participation Agreement for 2016 Starters

Amendment to Sections VIII.C and XIV.C of the Agreement, Appendix B, Appendix L

2020 Amendment No. 1

This amendment is made to the Next Generation ACO Model Participation Agreement (the "Agreement") between V116 Thedacare ACO, LLC ("ACO") and the Centers for Medicare & Medicaid Services ("CMS").

The United States is responding to an outbreak of a respiratory disease caused by a novel coronavirus, referred to as "coronavirus disease 2019" ("COVID-19"), which creates serious public health threats that have greatly impacted the U.S. health care system, presenting significant challenges for the health care community. On January 31, 2020, the Secretary of Health and Human Services declared a public health emergency ("PHE") for the United States, retroactively effective from January 27, 2020, to aid the nation's health care community in responding to COVID-19. CMS wishes to incorporate certain flexibilities into the Agreement to enable the ACO and its Next Generation Participants and Preferred Providers to respond to the serious public health threats posed by the spread of COVID-19.

Specifically, as the COVID-19 outbreak continues to strain health care resources, CMS understands that the ACO may have limited capacity to continue normal operations, including meeting existing standards related to quality measure reporting under the Agreement. Accordingly, CMS has allowed the ACO additional time to report quality measures for Performance Year (PY) 2019, and wishes to amend the Agreement to memorialize this extension.

In addition, while the severity of illness among Beneficiaries with COVID-19 varies greatly, in many cases, the disease presentation is quite severe, resulting in significant utilization of health care resources. This is particularly true for COVID-19 cases that result in an inpatient admission. This increased utilization was not contemplated in designing the methodology for calculating Shared Savings and Shared Losses, as set forth in the Agreement. In particular, the localized nature of outbreaks and the increased utilization of acute care occurring during PY 2020 and the associated costs are not reflected in the ACO's Performance Year Benchmark for PY2020. Accordingly, CMS wishes to amend the Agreement to remove payment amounts for episodes of care for treatment of COVID-19 from the accrued expenditures used to calculate Shared Savings and Shared Losses for PY 2020 and to apply a retrospective regional trend in calculating the Performance Year Benchmark for PY 2020. Moreover, in light of the unexpected and unprecedented scope of the PHE, CMS wishes to amend the Agreement to incorporate an extreme and uncontrollable circumstances policy to adjust the Shared Losses calculation for PY 2020 based on the duration of the extreme and uncontrollable circumstance and the percentage of Next Generation Beneficiaries who reside in an affected area. And, because these amendments will reduce the scope of the ACO's financial liability for PY2020, CMS further wishes to amend the Agreement to remove the ACO's obligation to obtain a financial guarantee for PY2020.

The parties therefore agree to amend the Agreement as set forth herein:

1. **Effect of Amendment.** All other terms and conditions of the Agreement shall remain in full force and effect. In the event of any inconsistency between the provisions of this amendment and the provisions of the Agreement, the provisions of this amendment shall prevail.
2. **Effective Date.** This amendment shall be effective when it is signed by the last party to sign it (as indicated by the date associated with that party's signature).
3. **Quality Measure Reporting.**
 - a) Section VIII.C.1 of the Agreement is hereby amended to insert "and Section VIII.C.5" after "Section VIII.C.2".
 - b) Section VIII.C is hereby amended to add after paragraph 4 the following new paragraph 5:

5. The parties acknowledge that CMS extended the deadline by which the ACO must completely and accurately report the quality measures for Performance Year 2019 from March 31, 2020 to April 30, 2020.

4. Savings/Losses Cap, Risk Arrangement, and Expenditure Cap for Performance Year 2020.

- a) The definition of "Savings/Losses Cap" in Section II of the Agreement is hereby amended in its entirety to read as follows:

"Savings/Losses Cap" means the maximum allowable percentage of the ACO's Performance Year Benchmark that will be paid to the ACO as Shared Savings or owed by the ACO as Shared Losses, as selected by the ACO in accordance with Section X.A.2., or assigned to the ACO pursuant to Section X.D, and subject to the application of the Risk Arrangement selected by the ACO in accordance with Section X.A.1 or Section X.D.

- b) Section X of the Agreement is hereby amended to add after Section X.C the following new Section X.D:

D. Performance Year 2020

1. Notwithstanding the Savings/Losses Cap selection for Performance Year 2020 made by the ACO pursuant to Section X.A.2 and deemed approved by CMS pursuant to Section X.B, the ACO's Saving/Losses Cap for Performance Year 2020 will be set at 5.0%.

2. For Performance Year 2020, the ACO's selections under Section X.A.1 and X.A.6 will apply unless, by a deadline and in a form and manner determined by CMS, the ACO submits to CMS its new selections for one or both of the following:
(a) The ACO's selected Risk Arrangement from the alternatives described in Appendix B; and

(b) The ACO's expenditure cap selection (capped expenditures or uncapped expenditures) as described in Appendix B of this Agreement. The ACO's expenditure cap selection will apply to the calculation of Performance Year expenditures and will be reflected in any reports provided to the ACO after the effective date of any such selection.

5. **Financial Guarantee.** Section XIV.D.1 of the Agreement is hereby amended in its entirety to read as follows:

1. *The ACO must have the ability to repay all Shared Losses and Other Monies Owed for which it may be liable under the terms of this Agreement and, with the exception of Performance Year 2020, shall provide a financial guarantee for each Performance Year in accordance with the terms set forth in Appendix L.*

6. **Prospective Base Year Trend.** Section 2.1.7 of Appendix B is hereby amended in its entirety to read as follows:

For Performance Year 2019, the Prospective Base Year Trend is the projected trend in the Adjusted USPCC approved by the CMS Actuary prior to the start of Performance Year 2019. Under limited circumstances, CMS may adjust the Prospective Base Year Trend during or after the Performance Year in response to unforeseeable events such as legislative actions that have a substantial impact on Medicare FFS expenditures.

For Performance Year 2020, the Prospective Base Year Trend will be adjusted by applying the projected trend in the Adjusted USPCC approved by the CMS Actuary prior to the start of Performance Year 2020 between Base Year One (calendar year 2017) and Base Year Two (calendar year 2018) and between Base Year Two and calendar year 2019, and by then applying the regional retrospective trend between calendar years 2019 and 2020.

The regional retrospective trend will be equal to the growth rate in the NGACO's regional PBPM expenditures from calendar year 2019 to calendar year 2020, where the NGACO's regional PBPM expenditures for a year are defined as the average of PBPM expenditures during the year for all counties in which the NGACO's aligned beneficiaries reside, weighted by the number of aligned beneficiary months during the year for each county. CMS will determine the regional retrospective trend following the end of Performance Year 2020.

7. **Application of Extreme and Uncontrollable Circumstances Policy to Shared Losses Calculation.** Section 3.0 of Appendix B is hereby amended to include the following new paragraph after the paragraph describing the application of the risk arrangement chosen by the NGACO to the Gross Savings (Loss) after the application of the Savings/Losses Cap:

For PY2020, after the application of the NGACO's selected risk arrangement, the Shared Losses, if any, will be reduced prior to recoupment by an amount determined by multiplying the Shared Losses by the percentage of total months during the Performance Year affected by an extreme and uncontrollable circumstance, such as the Public Health Emergency (PHE) for the COVID-19 pandemic as defined in 42 C.F.R. § 400.200, and the percentage of Next Generation Beneficiaries who reside in an area affected by the extreme and uncontrollable circumstance. CMS applies determinations made under the Quality Payment Program with respect to whether an extreme and uncontrollable circumstance has occurred and the affected areas. CMS has sole discretion to determine the time period during which an extreme and uncontrollable circumstance occurred and the percentage of the ACO's assigned beneficiaries residing in the affected areas.

8. **Removal of Episodes of Care for Treatment of COVID-19 from Accrued Experience.** Section 4.0 of Appendix B is hereby amended to add at the end the following new paragraph:

CMS will exclude all months of an episode of care for treatment of COVID-19 from the experience accrued to both the AD Benchmark and the ESRD Benchmark. CMS will identify an episode of care for treatment of COVID-19 as described in Section 4.3.

9. **Removal of Payment Amounts for Episodes of Care for Treatment of COVID-19 from Accrued Expenditures.** Section 4.3 of Appendix B is hereby amended to add at the end the following new paragraph:

CMS will exclude from the Accrued Expenditure calculations for the Performance Year all Parts A and B payment amounts for an episode of care for treatment of COVID-19, as specified on Parts A and B claims with dates of service during the episode. All Parts A and B payment amounts with dates of service during the months in a COVID-19 episode of care will be removed from Accrued Expenditure calculations. CMS will identify an episode of care for treatment of COVID-19 based on the criteria specified in 42 C.F.R. § 425.611(b)(1). Episodes of care for treatment of COVID-19 will be triggered by an inpatient admission for acute care either at an acute care hospital or other healthcare facility, which may include temporary expansion sites, Medicare-enrolled ambulatory surgical centers (ASCs) providing hospital services to help address the urgent need to increase hospital capacity to treat COVID-19 patients, CAHs, and potentially other types of providers. CMS will define the episode of care as starting in the month in which the inpatient stay begins as identified by the admission date, all months during the inpatient stay, and the month following the end of the inpatient stay as indicated by the discharge date.

10. **Aggregate Stop-Loss Charge.** Section 7.2 of Appendix B is hereby amended to add at the end the following new paragraph:

For Performance Year 2020, if the total Stop-Loss Charge across all NGACOs that both selected to participate in the Stop-Loss Arrangement for Performance Year 2020 and signed the first amendment offered for calendar year 2020, exceeds the total Stop-Loss Payout across those NGACOs, CMS may reduce the amount of each such NGACO's Stop-Loss Charge on a per-aligned beneficiary basis such that the net impact of the Stop-Loss Charge and Stop-Loss Payout is cost neutral to CMS for all such ACOs.

11. **Financial Guarantee.** Section 2.1 of Appendix L is hereby amended in its entirety to read as follows:

2.1. For each Performance Year during which the ACO participates in the Model, with the exception of Performance Year 2020, the ACO shall obtain a financial guarantee in an amount to be specified by CMS in the written notice furnished to the ACO under paragraph 2.2 of this Appendix L.

Next Generation ACO Model Participation Agreement - 2020 Amendment No. 1

The signatory for the ACO certifies that he or she is authorized by the ACO to execute this amendment and to legally bind the ACO. This amendment may be signed by autopen or electronic signature (e.g., DocuSign or similar electronic signature technology) and may be transmitted by electronic means. A copy of this amendment that is so executed and delivered has the same force and effect as if executed with handwritten signatures and physically delivered. Each party is signing this amendment on the date stated opposite that party's signature. If a party signs but fails to date a signature, the date that the other party receives the signing party's signature will be deemed to be the date that the signing party signed this amendment.

ACO: ThedaCare ACO LLC

Date: 9/2/2020

DocuSigned by:
By: Tom Arquilla
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Tom Arquilla

Name of authorized signatory

Chief Strategy Officer

Title

CMS:

Date: 9/28/2020

By: Amy Bassano

Amy Bassano

Name of authorized signatory

CMMI Deputy Director

Title

Next Generation ACO
Re-Selection of Risk Arrangement and Expenditure Cap - Performance Year 5

Risk Arrangement*

Choose only one of the following two risk arrangements.

| Risk Arrangement | |
|--|--------------------------|
| Arrangement A: Shared Risk 80% Sharing Rate | <input type="checkbox"/> |
| Arrangement B: Full Performance Risk 100% Risk | <input type="checkbox"/> |

Expenditure Cap*

Choose only one of the following two expenditure cap arrangements.

| Risk Arrangement | |
|--|--------------------------|
| Capped Expenditure (Selects Stop-Loss) | <input type="checkbox"/> |
| Uncapped Expenditure (Declines Stop-Loss) | <input type="checkbox"/> |

ACO ID and Name

ACO Signature and Date

Printed Name and Title