February 6, 2015

Administrator Marilyn Tavenner
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS–1461–P
Mail Stop C4–26–05
7500 Security Boulevard
Baltimore, MD 21244–1850

RE: Medicare Program; Medicare Shared Savings Program: Accountable Care Organizations; Proposed Rule

Dear Administrator Tavenner:

The American College of Radiology (ACR), representing more than 36,000 diagnostic radiologists, interventional radiologists, radiation oncologists, nuclear medicine physicians and medical physicists, appreciates the opportunity to submit comments to the Centers for Medicare & Medicaid Services (CMS) on the Medicare Shared Savings Program (MSSP) Proposed Rule published December 8, 2014. In general, the ACR supports the changes in this proposed rule and offers comments on the following important issues:

- ACO participant agreements
- Fiduciary Duties of Governing Body Members
- Beneficiary assignment
- Shared Savings and Losses
- Public Reporting and Transparency

ACO Participant Agreements

CMS proposes to add new requirements for agreements between an ACO and an ACO participant or ACO provider/supplier. This would require that ACO participant agreements satisfy nine criteria, and that direct agreements between an ACO and ACO providers/suppliers satisfy seven criteria. The ACR would like to comment specifically on criteria number five, which would require that *the agreement describe how the opportunity to receive shared savings or other financial arrangements will encourage the ACO participant to adhere to the quality assurance and improvement program and evidence-based medicine guidelines established by the ACO.*

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The ACR agrees that this type of transparency is essential so that ACO participants and ACO providers/suppliers understand how sharing in the savings specifically benefits them and the expectation of how they can achieve success. Radiologists have been participating in Pioneer ACOs and other ACOs with the understanding that a major goal is to reduce expenditures. However, as far as ACR can determine, radiologists have yet to receive any portion of shared savings payments. Often there is no explanation upfront of how the radiologists are expected to contribute to the ACO's success or how they and their patients will benefit in the process. Radiologists currently are implementing computerized clinical decision support programs with their hospital systems and in their communities as a contribution to the triple aim of better quality, lower costs and better care for patients. Better transparency among ACOs and their ACO participants and ACO providers/suppliers will make the MSSP more sustainable, successful and fruitful for all stakeholders.

Fiduciary Duties of Governing Body Members

CMS proposes to remove the flexibility for ACOs to deviate from the requirement that at least 75 percent control of an ACO's governing body must be held by ACO participants. CMS notes that experience has shown that MSSP applicants do not have difficulty meeting this requirement.

The ACR supports this proposed change and feels that it is important for ACO participants to be representative of the broad spectrum of medical professionals contracted with the ACO and to be involved at the governing body level.

Consideration of Physician Specialties and Non-Physician Practitioners in the Assignment Process

CMS proposes to change the current two-step methodology for beneficiary assignment. Our particular area of interest is CMS' proposal to split out the physician specialty types that would standardly bill an evaluation and management (E/M) code and therefore should be included in the methodology for beneficiary assignment (Table 2) and then to identify a list of physician specialty types that would be excluded from the assignment process because they very rarely, if ever, provide primary care services to beneficiaries (Table 3).

The ACR agrees that Diagnostic Radiology (30), Nuclear Medicine (36), Radiation Oncology (92) and Interventional Radiology (94) belong on Table 3. We agree that even where one of these specialties, such as interventional radiology, furnishes E/M services, they are not providing the type of primary care services that should govern Medicare beneficiary assignment under the MSSP. Thus, they should have the option of participating in more than one ACO if they so choose.

Shared Savings and Losses

CMS is proposing to allow ACOs participating in the one-sided shared savings-only Track 1 to renew under the one-sided model for one additional, 3-year agreement period, but at a lower shared savings rate. Further, CMS is also proposing to reduce the risk of incurring shared losses under Track 2 by using a minimum loss rate (MLR) that varies from 2 to 3.9 percent, based on the number of assigned beneficiaries. CMS further proposes to add a new two-sided risk model,

called Track 3, which would involve prospective assignment of Medicare beneficiaries and higher shared savings and shared loss rates.

The ACR appreciates CMS' proposals to make it easier for ACOs to continue to participate in the MSSP and allow them more time to prepare for taking on more risk. Given the attrition rate of ACOs to date, we feel this effort is important to keep the MSSP stable and to encourage it to grow.

Additional Program Requirements and Beneficiary Protections

Public Reporting and Transparency

CMS requires each ACO to publicly report certain organizational information such as the identification of ACO participants and governing body members, the amount of any shared savings or shared losses incurred, the proportion of shared savings invested in resources that support the triple aim and certain quality performance information. Because ACO webpages used to publicly report all this information constitute "marketing materials and activities," if an ACO changes any of the information on the webpage, such as adding an ACO participant, the ACO currently must submit the changes to CMS for marketing review.

The ACR feels that requiring an ACO to report every change to its webpage could be cumbersome and possibly over-burdensome to CMS. We, therefore, support CMS' proposal to no longer require marketing review if an ACO discloses required information using a specific template developed by CMS.

Conclusion

The ACR appreciates the opportunity to provide comments on the MSSP proposed rule. We encourage CMS to continue to work with physicians and their professional societies as well as ACOs to insure that the proposed changes to the MSSP incentivize continued mutually beneficial participation. If you have any questions or comments on this letter or any other issues with respect to radiology, please contact Pam Kassing at 800-227-5463 ext. 4544 or via email at pkassing@acr.org.

Respectfully Submitted,

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Chief Executive Officer

Cc: Rick Ensor, CMS
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