

Repayment Mechanism Arrangements Guidance

Appendix C: Surety Bond Sample

The surety bond sample satisfies the repayment mechanism requirements for an Accountable Care Organization (ACO) participating in the Medicare Shared Savings Program. Use of the surety bond sample will expedite CMS' review and should minimize the potential need for revision but does not guarantee CMS approval of the ACO's surety bond (particularly if it has been modified). If the ACO and/or surety company chooses to modify the sample, the ACO and/or surety company should use Track Changes in a Word document when submitting the draft to CMS for review. Note that any changes made to the sample will lengthen the CMS review time.

Instructions:

- Complete fields marked in bracketed and bolded text as instructed.
- According to the preferences of the surety company issuing the surety bond, provide documentation on letterhead or security paper with surety's logo.
- Original documentation should include the notarized power of attorney or electronic seal.

For additional information, review the [Repayment Mechanism Arrangements Guidance](#).

Disclaimers: The contents of this document do not have the force and effect of law and are not meant to bind the public in any way, unless specifically incorporated into a contract. This document is intended only to provide clarity to the public regarding existing requirements under the law.

This communication material was prepared as a service to the public and is not intended to grant rights or impose obligations. It may contain references or links to statutes, regulations, or other policy materials. The information provided is only intended to be a general summary. It is not intended to take the place of either the written law or regulations. We encourage readers to review the specific statutes, regulations, and other interpretive materials for a full and accurate statement of its contents.

BOND NUMBER: **[Surety Bond #]**

Surety Bond
MEDICARE SHARED SAVINGS PROGRAM
ACCOUNTABLE CARE ORGANIZATION

KNOW ALL PERSONS BY THESE PRESENTS, that subject to the terms, conditions and limitations of this Bond, **[ACO Legal Entity Name]**, as Principal, and **[Surety Company Legal Entity Name]** of **[Surety Company's Address]**, a corporation organized and existing under the laws of **[State in which Surety Company is licensed]**, as Surety, are held and firmly bound unto the Centers for Medicare & Medicaid Services ("CMS"), an agency of the United States Department of Health and Human Services, of 7500 Security Boulevard, Mail Stop C5-15-12, Baltimore, MD 21244, as Obligor, in the Penal Sum of **[required written dollar amount]** USD (\$) **[numerical dollar amount]** for the payment of which Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assignees, jointly and severally, by these presents.

WHEREAS, the Principal has entered into the Medicare Shared Savings Program Accountable Care Organization Participation Agreement ("Agreement") with Obligor, effective **[date of first day of the ACO's agreement period]** pursuant to which the Principal agreed to participate in the Medicare Shared Savings Program ("Shared Savings Program") and to comply with the regulations at 42 CFR Part 425 ("Regulations").

WHEREAS, pursuant to the Regulations, the Principal must pay Obligor the amount of shared losses that Obligor determines are owed upon annual reconciliation of each Performance Year ("Shared Losses").

WHEREAS, pursuant to the Regulations, the Principal must guarantee its ability to pay the Shared Losses by providing a repayment mechanism in an amount determined by Obligor.

NOW THEREFORE, the condition of this Bond is that the Obligor determines that Principal owes Shared Losses under the Regulations, and the Principal fails to pay the Shared Losses in full to Obligor, subject, however, to the following:

1. The Surety is liable under this Bond for only the Shared Losses determined by the Obligor to be owed by the Principal for the Performance Year(s) under a two-sided model covered by the Agreement, and the Obligor may collect on this Bond up to the Penal Sum.
2. Surety agrees to pay the Shared Losses within 30 days of receiving from Obligor written notice of the Shared Losses and sufficient evidence to establish Surety's liability under this Bond. Surety agrees to not contest the amount owed as reflected in the documents provided by Obligor to the Principal. For purposes of this paragraph, the term "sufficient evidence" means the documents Obligor may supply to the Surety to establish that the Principal has failed to pay the Shared Losses in full.
3. CMS is the sole Obligor of this Bond, and no action may be brought on it by, or for the use or benefit of, any person or entity other than CMS.
4. Surety shall notify Obligor promptly in writing if there is a lapse in the Bond coverage or change in the amount of the Bond.

5. After the Bond has been used to pay any portion of Shared Losses owed to Obligee, the Principal must replenish the amount of funds available through the Bond within 90 days. Furthermore, the failure or inability of the Principal to replenish the Bond required by Obligee shall not itself constitute a loss to the Obligee recoverable under this Bond.

6. The Surety may cancel this Bond and terminate its liability by giving written notice to the Obligee; provided, however, that such notice must be received by the Obligee at least ninety (90) days prior to the date of termination or cancellation of the Bond. Cancellation or termination shall not itself constitute a loss to the Obligee recoverable under this Bond. The Surety will remain liable for any and all indebtedness of the Principal to the Obligee which accrued prior to the effective date of cancellation or termination of the Bond.

7. The term of this Bond shall commence on **[date of first day of the ACO's first Performance Year under a two-sided model]**. As indicated, the end date of the term of the Bond is as follows (select one):
 - The term of this Bond shall end on **[Date]**, which is 12 months following the conclusion of the last performance year of the Principal's Agreement.

 - The term of this Bond shall end on 12/31/ **[Date that is the last day of the ACO's second performance year under a two-sided model covered by this surety bond, i.e. the second calendar year from the issuance date of this surety bond]**, provided that this Bond will be automatically extended for an additional 12-month period from the initial expiration date and annually thereafter, such that the term of this Bond will eventually cover all remaining Performance Year(s) of the Principal's Agreement under a two-sided model and end on 12/31/ **[Final expiration year]**, which is 12 months following the conclusion of the last Performance Year of Principal's Agreement. If Surety elects not to automatically extend this Bond for any additional period, it must provide Obligee with at least ninety (90) days advance written notice of non-extension.

In witness whereof, the undersigned Principal and Surety have set their hands and seals on **[# of this day]** of **[Month, Year]**.

[ACO Legal Entity Name]

By: _____

Name: _____
[Printed Name]

Title: _____
[Title]

[Surety Company Name]

By: _____

Name: _____
[Printed Name] Attorney in Fact