

**Medicare Shared Savings Program Waivers:
Special ACO Pre-Participation Waiver Guidance for the 2019 Application Cycle**

(Issued: August 9, 2018)

This document provides guidance on the start date and end dates of the ACO Pre-Participation Waiver for parties acting with the good faith intent to develop an ACO to participate in the Shared Savings Program in 2019 and to submit a completed application to participate in 2019. This guidance is effective as of the issuance date of this document.

BACKGROUND

The final rule entitled “Final Waivers in Connection With the Shared Savings Program” sets forth the conditions for the ACO Pre-Participation Waiver. See 80 FR 66726, 66742-43 (Oct. 15, 2015). The ACO Pre-Participation Waiver protects “start-up arrangements” that pre-date an ACO’s participation agreement provided all of the conditions of the waiver are met. For arrangements that meet all such conditions, the ACO Pre-Participation Waiver period starts one year preceding an application due date (the “selected application date”)¹ for a target year of 2013 or later. 80 FR 66742. The waiver period ends on one of three dates, depending on whether an ACO’s² application is approved or denied, or whether an ACO fails to submit an application. See 80 FR 66742-43.

Generally, the application due date for participation in the Medicare Shared Savings Program occurs in late July or early August of the year preceding the relevant performance year. CMS is postponing the application due date for the 2019 application cycle,³ however, from Summer 2018 until a later date. CMS expects to announce the application due date for the 2019 application cycle in the coming months.

¹ For ease of reference throughout this document, we use the term “selected application date,” but we intend for that term to also encompass “selected application due date.” See 80 FR 66742.

² For ease of reference throughout this document, we use the term “ACO,” but we intend for that term to encompass a party or parties developing an ACO.

³ For purposes of this guidance, the term “2019 application cycle” means the process for obtaining a Shared Savings Program Participation Agreement that will become effective in 2019.

START DATE

In light of the application due dates established for previous application cycles, we recognize that parties preparing to participate in the 2019 application cycle could have reasonably relied on a selected application date as early as July 29, 2018. Waiver protection for arrangements that meet all required waiver conditions could have therefore begun as early as July 29, 2017. Accordingly, for parties preparing to participate in the 2019 application cycle, CMS and OIG will recognize July 29, 2017, as the earliest potential start date for ACO Pre-Participation Waiver protection. Of course, waiver protection would not begin until the arrangement at issue complies with all conditions of the waiver.

END DATES

Because CMS is postponing the application due date for the 2019 application cycle, the new “selected application date” for purposes of the waiver period end date provisions will be the final application due date for the 2019 application cycle, which will be specified by CMS. Thus, the ACO Pre-Participation Waiver will end in accordance with the existing waiver, with any reference to “selected application date” meaning such final application due date for the 2019 application cycle. For example, for parties preparing to participate in the 2019 application cycle, the ACO Pre-Participation Waiver would end as follows if CMS specifies a final application due date of February 28, 2019:

- For an ACO that submits an application by February 28, 2019 and enters into a participation agreement for performance year 2019, the waiver period will end on the start date for that agreement.
- For an ACO that submits an application by February 28, 2019 but whose application is denied, the waiver period will end on the date of the denial notice, except with respect to any arrangement that qualified for the waiver before the date of the denial notice, in which case the waiver period will end on the date that is six months after the date of the denial notice.
- For an ACO that fails to submit an application by February 28, 2019, the waiver period will end on the earlier of February 28, 2019 or the date the ACO submits a statement of reasons for failing to submit an application, unless the ACO applies for and receives an extension of waiver protection pursuant to the terms of the ACO Pre-Participation Waiver.

See 80 FR 66742-43 and the February 12, 2015 Medicare Shared Savings Program Waivers Additional Guidance at <https://www.cms.gov/Medicare/Fraud-and-Abuse/PhysicianSelfReferral/Downloads/Additional-MSSP-Waiver-Guidance.pdf>.