



Medicare Shared Savings Program

REQUESTING TECHNICAL ASSISTANCE AND RECONSIDERATION REVIEW

Guidance

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Version 10

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MEDICARE
SHARED SAVINGS
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Revision History – Version 10

Title of Section & Revisions/Changes Description (since last version)	Link to Affected Area
Technical Assistance Resources: Added Shared Savings Program email address for ACO applicants submitting inquiries.	Section 2
Requests for Reconsideration Review: Revised to remove fax and mailing options for submitting a request for reconsideration review, and to include instructions to request a mailing address if necessary.	Section 4
Requests for Reconsideration Review: Updated language to reference reconsideration official reviews documentation submitted according to the terms of the docketing notice.	Section 4
ACO May Withdraw a Request for Reconsideration Review: Removed language from Section 4 and created new Section 5 to clarify that requests for reconsideration review may be withdrawn at any time prior to the reconsideration official's recommendation.	Section 5
Requests for Review of the Reconsideration Official's Recommendation: Renumbered section to reflect addition of Section 5.	Section 6
Effect and Effective Date of Decision: Moved bullet regarding the effect of the decision of the independent CMS office from Request for Review of the Reconsideration Official's Recommendation (formerly Section 5) to Section 7. Renamed section to "Effect and Effective Date of Decision" and included additional language from 42 CFR § 425.808.	Section 7

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1 Introduction

This guidance describes actions that initial, re-entering and renewal applicants to—and Accountable Care Organizations (ACOs) currently participating in—the Medicare Shared Savings Program (Shared Savings Program) may take to raise questions or concerns regarding a Centers for Medicare & Medicaid Services (CMS) initial determination, using existing Shared Savings Program technical assistance processes and/or the formal reconsideration review process. This guidance document describes the process specified in [42 CFR 425 Subpart I](#).

ACOs may only request a reconsideration review of a CMS initial determination under limited circumstances.¹ The reconsideration review process is not an opportunity for ACOs to seek exceptions to CMS requirements and/or deadlines or to request relief from their own errors. We encourage ACOs to use our technical assistance resources (refer to [Section 2](#)), including submitting their questions or concerns to their ACO Coordinators or the Shared Savings Program Helpdesk for follow-up.

2 Technical Assistance Resources

CMS makes several technical assistance resources available to ACOs requesting help with any questions and/or concerns before, during, and after the Shared Savings Program application cycle and/or performance year. These resources may allow ACOs to receive timely responses to their questions and eliminate the need to file a formal request for reconsideration review (refer to [Section 4](#)). Requesting technical assistance does not preclude an ACO from submitting a formal request for reconsideration review. ACOs typically receive answers to their questions and/or concerns in a timely manner when using the following CMS resources:

- Reviewing Shared Savings Program technical information and guidance (e.g., about the application process, program participation, shared savings and losses calculations, assignment methodology, and quality reporting) available on the [Shared Savings Program website](#).
- Participating ACOs should contact their ACO Coordinator as their first point of contact.
- ACO applicants should send an email to: SharedSavingsProgram@cms.hhs.gov. Inquirers should include the ACO ID and ACO name.
- Sending questions to the Shared Savings Program in the [ACO Management System \(ACO-MS\)](#) via the SSP Helpdesk feature. This functionality is available to anyone within an ACO that has an ACO-MS account.

¹ See section 1899(g) of the Social Security Act, 42 U.S.C. 1395jjj(g), and the Shared Savings Program regulations at 42 CFR part 425 subpart I.

When submitting questions to CMS, ACOs must verify whether the questions and/or documents they submit contain any protected health information (PHI) or personally identifiable information (PII). If any documents contain PHI and/or PII, ACOs must use safeguards to protect and encrypt the file(s)/document(s) in question (e.g., de-identify data, password protect (do not email password; CMS will contact the ACO for the password)) prior to submission.

3 Preclusion of Administrative and Judicial Review

An ACO may only request a reconsideration review of an initial determination² that is not precluded from administrative or judicial review under 42 CFR § 425.800(a). Specifically, there is no reconsideration, appeal, or other administrative or judicial review of the following Shared Savings Program determinations:

- Specification of quality and performance standards under 42 CFR §§ 425.510 and 425.512.
- Assessment of the quality of care furnished by an ACO under the performance standards established in 42 CFR § 425.512, as applicable.
- Assignment of Medicare fee-for-service (FFS) beneficiaries under subpart E of 42 CFR part 425.³
- Initial or revised determination of whether an ACO is eligible for shared savings and the amount of such shared savings, including the initial determination or revised initial determination of the estimated average per capita Medicare expenditures under the ACO for Medicare FFS beneficiaries assigned to the ACO and the average benchmark for the ACO in accordance with section 1899(d) of the Social Security Act, as implemented under 42 CFR §§ 425.601, 425.602, 425.603, 425.604, 425.605, 425.606, and 425.610.⁴
- Percent of shared savings specified by the Secretary of Health and Human Services and the limit on the total amount of shared savings under 42 CFR §§ 425.604, 425.605, 425.606, and 425.610.
- Termination of an ACO for failure to meet the quality performance standards established under 42 CFR § 425.512, as applicable.
- The termination of a beneficiary incentive program established under 42 CFR § 425.304(c).

² CMS will clearly state in any notice containing an initial determination that the communication is an initial determination.

³ Including the determination that the ACO has under 5,000 assigned beneficiaries.

⁴ Including certain calculations used in determining the ACO's performance year financial reconciliation results (e.g., calculation of risk adjustment for newly assigned and continuously assigned beneficiaries and of hierarchical condition category risk scores).

4 Requests for Reconsideration Review

Pursuant to 42 CFR § 425.802, an ACO may only request a reconsideration review⁵ of an initial determination that is not precluded from administrative or judicial review under 42 CFR § 425.800(a) (refer to [Section 3](#)). The burden of proof is on the ACO to demonstrate to the reconsideration official with convincing evidence that the initial determination is not consistent with the requirements of 42 CFR part 425 or the applicable statutory authority (42 CFR § 425.804(b)). The reconsideration official is an independent CMS official who did not participate in the initial determination that is being reviewed (42 CFR § 425.804(c)).

Any request for reconsideration review of a determination that the reconsideration official finds to be precluded from administrative or judicial review will be dismissed for lack of jurisdiction.

The reconsideration review must be held on the record (review of submitted documentation) (42 CFR § 425.802(a)(2)). In-person, phone, and video hearings are not permitted.

The general steps for the reconsideration review process are described below. Refer to 42 CFR part 425, subpart I for further details.

Step 1: ACO submits a written request for reconsideration review.

An ACO-authorized official⁶ must submit a written request for reconsideration review in accordance with the instructions below:

- The request for reconsideration review should include the name, phone number, and email address of the individual(s) within the organization whom CMS may contact regarding the request.
- The ACO is encouraged to describe the initial determination that it wants CMS to reconsider and the reason(s) the ACO believes CMS' initial determination is not consistent with the requirements of 42 CFR part 425 or applicable statutory authority in its request for reconsideration review. Refer to [Section 3](#) for a list of initial determinations that are precluded from reconsideration review. It is also helpful if the ACO submits any evidence that supports its request or includes a statement explaining the evidence it plans to submit. Although a detailed explanation of the reasons for the ACO's request for reconsideration review and submission of evidence are not required in the initial request for reconsideration review, doing so will help CMS investigate the concern prior to receiving the formal brief (refer to Step 2). Providing supporting information with the request—including the section, cell,

⁵ An ACO that submits a request for reconsideration review of an initial determination regarding termination of the ACO from the Shared Savings Program will remain operational throughout the reconsideration review process as provided in 42 CFR § 425.802(b).

⁶ The ACO Executive and Authorized to Sign contacts (primary and secondary) would be considered ACO-authorized officials for this purpose.

and/or specific calculation of the initial determination that is being challenged, if applicable—can help CMS investigate and respond to the inquiry, which potentially mitigates the need for subsequent steps of the formal reconsideration review process.

Note: ACOs must verify whether any documents (e.g., request for reconsideration review, brief, and/or exhibits) they are submitting to CMS, the reconsideration official, and any others copied on the ACO's request for reconsideration review contain any PHI or PII. If any documents contain PHI and/or PII, ACOs must use safeguards to protect and encrypt the file(s)/document(s) in question (refer to Step 1 for how to safeguard documents submitted to CMS if they include PHI/PII) prior to submission.

- CMS must receive the request for reconsideration review within 15 calendar days (by 11:59 p.m. Eastern Time) from the date of CMS' notice of initial determination.⁷ Per 42 CFR § 425.802, a request for reconsideration review received after the 15-day deadline will be denied.
- CMS recommends that the ACO send its request for reconsideration review by email rather than regular mail.
 - Send requests for reconsideration review and/or withdrawal requests (refer to [Section 5](#)) via email to: ACO Reconsideration Docketing Official, ACOREconsiderations@cms.hhs.gov.
 - In the subject of the email, include your ACO ID (Axxxx), if applicable, and the phrase "Request for Reconsideration Review."

Note: If you do not wish to send the request for reconsideration review by e-mail, contact the docketing official at ACOREconsiderations@cms.hhs.gov to request the mailing address for submission of the request for reconsideration review via a traceable, overnight carrier.

Step 2: CMS docketing official acknowledges the request for reconsideration review and sends further instructions.

The CMS docketing official emails the ACO and CMS a docketing notice that acknowledges receipt of the ACO's request for reconsideration review and includes the following information:

- CMS Reconsideration Official's name and contact information.
- Review procedures.
- Procedures for submitting evidence, including format and timelines.

⁷ If the 15th day falls on a weekend or federal holiday, the request must be received by 11:59 p.m. Eastern Time on the next business day.

- A briefing schedule permitting each party to submit one written brief, including any relevant evidence (refer to Step 1 for how to safeguard documents submitted to CMS if they include PHI/PII). The submission of any additional briefs or supplemental evidence will be at the sole discretion of the reconsideration official.
- A notice that the burden of proof is on the ACO to demonstrate to the Reconsideration Official with convincing evidence that the CMS initial determination is not consistent with the requirements of 42 CFR part 425 or the applicable statutory authority.
- Approval of any requested extension is at the sole discretion of the reconsideration official pursuant to 42 CFR § 425.804(a)(3). Extension requests can be submitted via email to the CMS docketing official.
- The CMS docketing official will respond to the request and include the points of contact for both parties (ACO and CMS).

Step 3: Reconsideration official reviews the evidence provided.

- The reconsideration review will be held on the record (review of the documentation submitted by the ACO and CMS according to the terms of the docketing notice).
- The reconsideration official will base his/her review only on evidence submitted by the reconsideration official's deadline, unless otherwise requested by the reconsideration official. The reconsideration official will email a letter to the parties to notify them of their recommendation and will include instructions on how to request a review of the reconsideration official's recommendation by an independent CMS official (refer to [Section 6](#)).
- The reconsideration official's recommendation is final and binding unless the ACO or CMS timely requests, in writing, an on the record review of the recommendation by an independent CMS official (refer to [Section 6](#)).

5 ACO May Withdraw a Request for Reconsideration Review

An ACO may withdraw its request for reconsideration review at any time following submission of the ACO's request and prior to the reconsideration official's recommendation by sending a written withdrawal request (via email) that is signed by the ACO's authorized official to the same CMS points of contact listed in [Section 4 Step 1](#) above, expressly stating that the ACO is requesting withdrawal of its request for reconsideration review.

Upon receiving the withdrawal request, the CMS docketing official sends an email informing the ACO and CMS that the withdrawal has been accepted and the request for reconsideration review has been closed.

6 Requests for Review of the Reconsideration Official's Recommendation

Pursuant to 42 CFR § 425.806, if CMS or the ACO disagree with the reconsideration official's recommendation, they may request an on the record review of the initial determination and the reconsideration official's recommendation by an independent CMS official who was not involved in the initial determination or the reconsideration review process.

Step 1: CMS or the ACO submit an explanation of its disagreement with the reconsideration official's recommendation.

- To request an on the record review by an independent CMS official, CMS or the ACO must submit an explanation of why it disagrees with the reconsideration official's recommendation within the time frame and in the format specified in the reconsideration official's recommendation letter.

Step 2: An independent CMS official conducts a review of the record.

- In accordance with 42 CFR § 425.806(b), the independent CMS official's review process is based only on evidence presented during the reconsideration review.

7 Effect and Effective Date of Decision

Pursuant to 42 CFR § 425.808:

- The decision of the independent CMS official is the final and binding agency determination.
- The reconsideration review process must not be construed to negate, diminish, or otherwise alter the applicability of existing laws, rules, and regulations or determinations made by other government agencies.

Pursuant to 42 CFR § 425.810:

- If the initial determination denying an ACO's application to participate in the Shared Savings Program is upheld, the application will remain denied based on the effective date of the original notice of denial.
- If the initial determination to terminate an agreement with an ACO is upheld, the decision to terminate the agreement is effective as of the date indicated in the initial notice of termination.
- If the initial determination to terminate an ACO is reversed, the ACO is reinstated into the Shared Savings Program, retroactively back to the original date of termination.