



Medicare Shared Savings Program
**REQUESTING TECHNICAL
ASSISTANCE AND
RECONSIDERATION REVIEW**

Guidance

May 2019
Version #5



MEDICARE
SHARED SAVINGS
PROGRAM

Revision History

VERSION	DATE	REVISION/CHANGE DESCRIPTION	AFFECTED AREA
5	5/1/2019	Update to the 4 th , 5 th , and 7 th bullets in Section 3 to add citations to new Medicare Shared Savings Program regulations to conform with regulatory updates in the December 2018 “Accountable Care Organizations—Pathways to Success and Extreme and Uncontrollable Circumstances Policies for Performance Year 2017”; update to Section 4 to move placement of the note in Step 2 to Step 1 (reminding ACOs to safeguard any documents sent to CMS that contain PHI/PII); and update Section 4, Step 1, to update the CMS points of contact who must be copied on all requests for reconsideration review or follow-up emails that ACOs submit to the docketing official and CMS.	All

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1 Introduction

These guidelines discuss actions that initial and renewal applicants to—and Accountable Care Organizations (ACOs) currently participating in—the Medicare Shared Savings Program (Shared Savings Program) and/or the Medicare ACO Track 1+ Model (collectively referred to throughout this guidance as “ACOs”) can take to raise questions or concerns regarding a CMS initial determination using existing Shared Savings Program technical assistance processes and/or the formal reconsideration review process.

Please note that ACOs may only request a reconsideration review of a Centers for Medicare & Medicaid Services (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 CMS coordinators or the ACO program mailboxes for follow-up.

2 Technical Assistance Requests

Listed below are several technical assistance resources that CMS makes available to ACOs for requesting help with any questions and/or concerns before, during, and after the Shared Savings Program application cycle and/or performance year. Taking advantage of these resources may allow ACOs to receive timely responses to their questions and eliminate the need to file a formal reconsideration review request (refer to [Section 4](#)). Requesting technical assistance does not preclude an ACO from submitting a formal reconsideration review request. 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, financial benchmarking, quality reporting) available on the [Shared Savings Program website](#).
- Reviewing Shared Savings Program application webinars available on the [Application Webinars webpage](#).
- Sending questions to the following Shared Savings Program mailboxes:
 - Current and renewing ACOs: SharedSavingsProgram@cms.hhs.gov
 - Initial ACO applicants: SSPACO_Applications@cms.hhs.gov

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.

- Contacting the ACO's CMS coordinator (assigned to all current and renewing ACOs after acceptance into the Shared Savings Program), whose information is available on the [Contact Information webpage](#).

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 § 425.500 and § 425.502.
- Assessment of the quality of care furnished by an ACO under the performance standards established in § 425.502.
- 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 §§ 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 §§ 425.604, 425.605, 425.606, and 425.610.
- Termination of an ACO for failure to meet the quality performance standards established under § 425.502.
- The termination of a beneficiary incentive program established under § 425.304(c).

The CMS reconsideration official will dismiss any request for reconsideration review submitted with respect to any of these determinations for lack of jurisdiction consistent with the preclusion of administrative and judicial review as implemented in 42 CFR § 425.800(a).

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 Reconsideration Review Requests

Pursuant to 42 CFR § 425.802 and § 425.804, 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](#)). An initial determination will only be modified through the reconsideration review process if the ACO demonstrates to the CMS reconsideration official⁶ with convincing evidence that the initial determination is not consistent with the requirements of 42 CFR part 425 or the applicable statutory authority.

As previously stated in this guidance, any request for reconsideration review of a determination that is precluded from administrative or judicial review will be dismissed by the reconsideration official for lack of jurisdiction.

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

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

STEP 1: ACO submits a written reconsideration review request

An ACO-authorized official⁷ must submit a written and signed reconsideration review request in accordance with the instructions below:

- The reconsideration review request should include the name, fax number, phone number, and email address of the individual(s) within the organization who CMS may contact regarding the request.
- The ACO is encouraged to describe the initial determination that it wants CMS to reconsider and the reason the ACO believes CMS' initial determination is not consistent with the requirements of 42 CFR part 425 or applicable statutory authority in its reconsideration review request. 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 reconsideration review request and submission of evidence are not required in the initial reconsideration review request, doing so will help CMS investigate the concern prior to receiving the formal brief (refer to Step 2). Providing supporting information—including the section, cell, and/or specific calculation of the

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 § 425.802(b).

⁶ "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).

⁷ The ACO Executive and Authorized to Sign contacts (primary and secondary) would be considered ACO-authorized officials for this purpose.

initial determination that is being challenged, if applicable—with the request 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 or not any documents (e.g., request for reconsideration review, brief, exhibits) they are submitting to CMS, the reconsideration official, and any others copied on the ACO’s request for reconsideration review contain any protected health information (PHI) or personally identifiable information (PII). If any documents contain PHI and/or PII, ACOs must use reasonable 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.
- CMS must receive the reconsideration review request within 15 calendar days (by 11:59 p.m. Eastern Time) from the date of CMS’ notice of initial determination.⁸ Per § 425.802, the reconsideration official will deny a reconsideration review request received after the 15-day deadline.
- CMS recommends that the ACO send its reconsideration review request by email rather than regular mail.
 - Send reconsideration review requests and/or withdrawal requests (refer to Step 4) via email to both of the following contacts:

Paula Greathouse: Paula.Greathouse@cms.hhs.gov
Rachel Salazar: Rachel.Salazar@cms.hhs.gov
 - And send a courtesy copy to the Shared Savings Program mailbox at SharedSavingsProgram@cms.hhs.gov.
 - In the subject of the email, include your ACO ID (Axxxx) and the phrase “Reconsideration Review Request.”
- **Note:** If the ACO wishes to send the reconsideration review request by mail, CMS strongly recommends that the ACO send it by tracked mail (e.g., an overnight mail service that provides a tracking number and written delivery confirmation) to each of the addresses noted below in order to provide evidence of the date on which CMS received the request.

⁸ 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.

Office of the Consortium Administrator
Attn: Paula Greathouse
Kansas City Regional Office
Centers for Medicare & Medicaid Services
601 East 12th St, Room 355
Kansas City, MO 64106
1-816-426-6533

Centers for Medicare & Medicaid Services
Attn: Karen McVearry
7500 Security Blvd.
Mail Stop: C5-15-12
Desk: C5-16-06
Baltimore, MD 21244

STEP 2: CMS docketing official acknowledges the reconsideration review request and sends further instructions

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

- Review procedure.
- Procedure for submitting evidence, including format and timelines.
- 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.
- The burden of proof is on the ACO. The ACO must 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.
- The ACO or CMS may request (via email) an extension of the submission deadline for briefs and evidence established by the reconsideration official in order to seek additional time for discussions to resolve the issue through technical assistance discussions or to prepare the brief and evidence. The party requesting an extension must include the other party on any such email request.
 - Approval of any requested extension is at the sole discretion of the reconsideration official.
 - The reconsideration official will respond to the request via email and include the points of contact for both parties (ACO and CMS) on the email response.

STEP 3: Reconsideration official reviews the evidence provided

- The reconsideration review will be held on-the-record (review of submitted documentation).
- The reconsideration official will base his or 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 his or her 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 5](#)).
- 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 5](#)).

STEP 4: ACO withdraws a reconsideration review request

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

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

5 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/or 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 they disagree with the reconsideration official's recommendation within the timeframe and in the format specified in the reconsideration official's recommendation letter.

STEP 2: An independent CMS official conducts a review of the reconsideration official's recommendation

- The independent CMS official will only consider evidence submitted during the reconsideration review process.
- The decision of the independent CMS official is the final and binding agency determination.

6 Effective Date of Decision

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.