



Medicare Accountable Care
Organization Track 1+ Model

SECOND AMENDED AND RESTATED PARTICIPATION AGREEMENT

Updated 2020

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MEDICARE
SHARED SAVINGS
PROGRAM

Revision History

The Medicare Accountable Care Organization Track 1+ Model Second Amended and Restated Participation Agreement incorporates policies adopted in the interim final rule with comment period entitled “Medicare and Medicaid Programs, Basic Health Program, and Exchanges; Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency and Delay of Certain Reporting Requirements for the Skilled Nursing Facility Quality Reporting Program,” which appeared in the May 8, 2020 Federal Register (refer to 85 FR 27573 through 27587) (the “[May 8th COVID-19 IFC](#)”). It also reflects the updates contained in the Medicare Accountable Care Organization Track 1+ Model Amended and Restated Participation Agreement, which amended the original Medicare Accountable Care Organization Track 1+ Model Participation Agreement to incorporate policies adopted in the Medicare Shared Savings Program (Shared Savings Program) final rule, “Accountable Care Organizations – Pathways to Success and Extreme and Uncontrollable Circumstances Policies for Performance Year 2017,” which appeared in the Federal Register on December 31, 2018, (refer to 83 FR 68031 through 68033) and the Calendar Year 2019 Medicare Physician Fee Schedule Final Rule, which appeared in the Federal Register on November 23, 2018 (refer to 83 FR 59989 through 59990).

SECTION	REVISION/CHANGE DESCRIPTION	SOURCE
Title and Section I.A <i>General Provisions</i>	Added “Second” to distinguish from the original Amended and Restated Agreement.	Second Amended and Restated Agreement Title and Section I.A
Section I.B <i>Start Date</i>	Revised to delete the second sentence in its entirety, which originally specified the Track 1+ ACO is ineligible for the participation option specified under §425.200(b)(3)(ii)(A) (which option is no longer available).	May 8 th COVID-19 IFC
Section III.A.3 <i>Repayment Mechanism</i>	Revised to state that CMS will notify ACOs in writing if their repayment mechanism amount must be increased or may be decreased.	42 CFR 425.204(f)(4)(iii)(A) and Second Amended and Restated Agreement Section III.A.3
Section V.A. <i>Minimum Savings Rate (MSR)/Minimum Loss Rate (MLR)</i>	Revised subsection to specify the MSR/MLR policy to address small population sizes applies to Track 1+ ACOs that elect to extend their agreement period for PY 2021.	May 8 th COVID-19 IFC

SECTION	REVISION/CHANGE DESCRIPTION	SOURCE
<p>Section V.B.4.i. <i>Calculation of the Revenue-Based Loss Sharing Limit</i></p>	<p>Revised subparagraph (a) to state CMS determines Medicare Parts A and B fee-for-service revenue of ACO participants, as adjusted to remove expenditures for episodes of care for treatment of COVID-19 in accordance with the methodology set forth in Shared Savings Program regulations.</p> <p>Revised subparagraphs (b) and (c) to make clarifying edits.</p>	<p>May 8th COVID-19 IFC and Second Amended and Restated Agreement Sections V.B.4.i.b and V.B.4.i.c</p>
<p>Section V.B.6 <i>Extreme and Uncontrollable Circumstances</i></p>	<p>Revised to clarify the months affected by an extreme and uncontrollable circumstance for the COVID-19 pandemic will begin with January 2020 and continue through the end of the COVID-19 PHE.</p>	<p>May 8th COVID-19 IFC</p>
<p>Section VIII. <i>Waiver for payment for telehealth services</i></p>	<p>Revised subsection VIII.A to refer to Section 1899(l) of the Act.</p> <p>Revised subsection VIII.B to specify the policy applies to Track 1+ ACOs that elect to extend their agreement period for PY 2021.</p>	<p>May 8th COVID-19 IFC</p>

**MEDICARE ACCOUNTABLE CARE ORGANIZATION TRACK 1+ MODEL
SECOND AMENDED AND RESTATED PARTICIPATION AGREEMENT**

This Track 1+ Model Participation Agreement (“**Agreement**”) is entered into

between

THE CENTERS FOR MEDICARE & MEDICAID SERVICES (“**CMS**”)

and

the Accountable Care Organization known as _____
D/B/A _____ (the “**Track 1+ ACO**”).

The Track 1+ ACO is an Accountable Care Organization (“**ACO**”) that participates in Track 1 of the Medicare Shared Savings Program (“**Shared Savings Program**”).

CMS is the agency within the U.S. Department of Health and Human Services (“**HHS**”) that is charged with administering the Medicare and Medicaid programs, including the Shared Savings Program.

CMS is implementing the Medicare Accountable Care Organization Track 1+ Model (“**Track 1+ Model**”) under Section 1115A of the Social Security Act (“**Act**”), which authorizes CMS to test innovative payment and service delivery models that have the potential to reduce Medicare, Medicaid, or Children’s Health Insurance Program expenditures while maintaining or improving the quality of beneficiaries’ care.

The Track 1+ Model is a voluntary ACO model for participants in Track 1 of the Shared Savings Program. Under the Track 1+ Model, the Track 1+ ACO agrees to participate in a new, more limited two-sided risk track than is otherwise available under Track 2 or the ENHANCED track (formerly Track 3, as described under 42 CFR 425.600 and 425.610) of the Shared Savings Program. For the purpose of testing the Track 1+ Model, and pursuant to its authority under Section 1115A(d)(1) of the Act, CMS has waived certain provisions of law that otherwise would be applicable to ACOs participating in Track 1 of the Shared Savings Program.

The Track 1+ ACO has executed a Shared Savings Program Participation Agreement, and CMS has approved the application submitted by the Track 1+ ACO to participate in the Track 1+ Model. On or before January 1, 2018, the parties executed a Track 1+ Model Participation Agreement governing their rights and obligations under the Track 1+ Model (“**Agreement**”). The Agreement was amended to incorporate certain policy changes that were made to the Shared Savings Program in the Calendar Year 2019 Medicare Physician Fee Schedule Final Rule. 83 Fed. Reg. 59452 (Nov. 23, 2018). The parties subsequently entered into an Amended and Restated Participation Agreement, which incorporated policies adopted in the Shared Savings Program final rule, “Accountable Care Organizations – Pathways to Success and Extreme and Uncontrollable Circumstances Policies for Performance Year 2017.” 83 Fed. Reg. 67816 (Dec. 31, 2018).

CMS now wishes to further amend the terms of the Agreement to incorporate certain policy changes to the Shared Savings Program that were adopted in the interim final rule with comment period entitled “Medicare and Medicaid Programs, Basic Health Program, and Exchanges; Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency and Delay of Certain Reporting Requirements for the Skilled Nursing Facility Quality Reporting Program” (85 Fed. Reg. 27550 (May 8, 2020)), which are intended to respond to the public health emergency (“**PHE**”) for the coronavirus disease 2019 (“**COVID-19**”).

The parties therefore agree as set forth below.

I. General Provisions

- A. *Effective Date*: This Agreement became effective when it was signed by both parties. The effective date of this Agreement (the “**Effective Date**”) was the date it was signed by the last party to sign it (as indicated by the date associated with that party’s signature). The amendments hereby made to the Agreement will be effective as of the date this Second Amended and Restated Participation Agreement was signed by the last party to sign it (as indicated by the date associated with that party’s signature).
- B. *Start Date*: This Agreement applies to each performance year starting on or after January 1, 2018 (the “**Start Date**”), except that this Agreement terminates on the last day of the last performance year of the Track 1+ ACO’s Shared Savings Program Participation Agreement, unless sooner terminated in accordance with Section X.
- C. *Applicability of Shared Savings Program Requirements*: Except as otherwise provided in this Agreement, the parties shall comply with the requirements for ACOs participating in Track 1 of the Shared Savings Program set forth in 42 CFR part 425 and the Shared Savings Program ACO Participation Agreement. Consistent with 42 CFR 425.212, the Track 1+ ACO is subject to all applicable regulatory changes, including but not limited to, changes to the regulatory provisions referenced within this Agreement, that become effective during the term of the ACO’s Shared Savings Program Participation Agreement and this Agreement unless otherwise specified through rulemaking or amendment to this Agreement.
- D. *Participation in a Two-Sided Model*: CMS waives 42 CFR 425.600(a)(1), which specifies that Track 1 ACOs operate under a one-sided model (as described under 42 CFR 425.604). Under the Track 1+ Model, the Track 1+ ACO operates under a two-sided model.

II. Eligibility Requirements for the Track 1+ Model

- A. *Participation in Other Shared Savings Initiatives*: CMS waives Section 1899(b)(4)(A) of the Act and 42 CFR 425.114(a) to allow the Track 1+ ACO and its ACO participants and ACO providers/suppliers to participate in both the Shared Savings Program and the Track 1+ Model.
- B. *Ownership or Operation by a Health Plan*: The Track 1+ ACO shall notify CMS 30 days after the Track 1+ ACO legal entity becomes owned or operated, in whole or in part, by a health plan. If the Track 1+ ACO becomes owned or operated, in whole or in part, by a health plan during the course of a performance year under the Track 1+ Model, the Track 1+ ACO will be permitted to complete that performance year under the Track 1+ Model, but will be ineligible to continue participation in the Track 1+ Model after the end of that performance year.
- C. *Experienced ACO Participant Threshold*: Each performance year, the number of experienced ACO participants in the Track 1+ ACO must be less than 40 percent of all ACO participants. For purposes of this paragraph, an “experienced ACO participant” is an entity that participated in a performance-based risk Medicare ACO initiative in the performance year immediately preceding the year in which the entity began to participate in the Track 1+ ACO as an ACO participant. For purposes of this paragraph, the term “performance-based risk Medicare ACO initiative” means the Next Generation ACO Model, the Comprehensive End-Stage Renal Disease (“**ESRD**”) Care Model, the BASIC track (Levels A through E), Track 2 or the ENHANCED track of the Shared Savings Program, and such other Medicare ACO initiatives as may be specified by CMS.

III. Track 1+ Model Requirements

A. *Repayment Mechanism*

1. The Track 1+ ACO shall provide assurance of its ability to repay all shared losses for which it may be liable under the Track 1+ Model in a manner consistent with the requirements of 42 CFR 425.204(f), except as set forth in this Section III.A.
2. CMS shall calculate the amount of the Track 1+ ACO's repayment mechanism as follows:
 - i. If the Track 1+ ACO is eligible for a benchmark-based loss sharing limit: The repayment mechanism amount is 1 percent of the ACO's total per capita Medicare Parts A and B fee-for-service expenditures for its assigned beneficiaries, as determined based on expenditures for the most recent calendar year for which 12 months of data are available.
 - ii. If the Track 1+ ACO is eligible for a revenue-based loss sharing limit: The repayment mechanism amount is the lower of (a) 2 percent of ACO participants' Medicare fee-for-service revenue (total Parts A and B fee-for-service revenue), as determined based on revenue for the most recent calendar year for which 12 months of data are available, or (b) 1 percent of the ACO's total per capita Medicare Parts A and B fee-for-service expenditures for its assigned beneficiaries, as determined based on expenditures for the most recent calendar year for which 12 months of data are available.
3. If CMS re-determines the Track 1+ ACO's loss sharing limit in accordance with Section V.B.3, CMS may increase the amount of the Track 1+ ACO's repayment mechanism in the manner set forth in paragraph (A) of 42 CFR 425.204(f)(4)(iii) or decrease the amount of the Track 1+ ACO's repayment mechanism. CMS shall notify the Track 1+ ACO in writing if the amount of its repayment mechanism must be increased or may be decreased. Within 90 days after receipt of written notice that its repayment mechanism must be increased, the Track 1+ ACO shall submit for CMS approval documentation that the amount of its repayment mechanism has been changed to the amount specified by CMS and that the repayment mechanism satisfies all applicable requirements. Within 90 days after receipt of written notice that its repayment mechanism may be decreased, if the Track 1+ ACO wishes to decrease the amount of its repayment mechanism, the Track 1+ ACO shall submit for CMS approval documentation that the amount of its repayment mechanism has been reduced to an amount no lower than that specified by CMS and that the repayment mechanism satisfies all applicable requirements.

B. *Application of This Agreement to ACO Participants, ACO Providers/Suppliers, and Others*

1. The Track 1+ ACO shall provide a copy of this Agreement and any amendments to all ACO participants, ACO providers/suppliers, and other individuals and entities involved in ACO governance.
2. All contracts or arrangements between or among the Track 1+ ACO, ACO participants, ACO providers/suppliers, and other individuals or entities performing functions or services related to ACO activities must require compliance with the requirements and conditions specified in this Agreement.

C. *Renewal of Shared Savings Program Participation Agreement After Termination of This Agreement*

1. If the Track 1+ ACO wishes to continue participating in the Shared Savings Program after termination of this Agreement, it must timely submit a Shared Savings Program application in accordance with 42 CFR part 425 subpart C. CMS shall review the application in accordance with 42 CFR 425.224(b).
2. After expiration or termination of this Agreement, the Track 1+ ACO will be considered experienced with performance-based risk Medicare ACO initiatives and therefore not be eligible to participate in the BASIC track's glide path. If the ACO is eligible to participate for a subsequent agreement period in the BASIC track, the Track 1+ ACO will be required to participate in Level E of the BASIC track in accordance with 42 CFR 425.600(a)(4)(ii).

D. *Audits and Record Retention*

1. CMS has the same right to audit with respect to the Track 1+ ACO's participation in the Track 1+ Model as applies under 42 CFR 425.314(a). This Agreement does not limit or restrict the authority of any other agency (including the HHS Office of Inspector General and the Department of Justice) to audit, evaluate, investigate, or inspect the Track 1+ ACO, its ACO participants, its ACO providers/suppliers, and other individuals or entities performing functions or services related to ACO activities.
2. The Track 1+ ACO shall maintain records related to its participation in the Track 1+ Model in the same manner required under 42 CFR 425.314(b).
3. Notwithstanding any arrangements between or among the Track 1+ ACO, its ACO participants, ACO providers/suppliers, or other individuals or entities performing functions or services related to ACO activities, the Track 1+ ACO is ultimately responsible for fully complying with the terms and conditions of this Agreement.

E. *Public Reporting Requirements*

1. The Track 1+ ACO shall publicly report the following information in a standardized format specified by CMS: (1) shared losses information; (2) use of the Skilled Nursing Facility ("SNF") 3-Day Rule Waiver (described in Section VII), if applicable; and (3) use of telehealth services furnished under section 1899(l) of the Act (described in Section VIII), if applicable.
2. The Track 1+ ACO shall publicly report its participation in the Track 1+ Model in the form and manner specified by CMS.

F. *Reporting Requirements Related to Adoption of Certified Electronic Health Record Technology (CEHRT)*

1. CMS waives the requirements of 42 CFR 425.506, which for performance years beginning on January 1, 2019, and subsequent performance years, requires ACOs in a track or payment model within a track that does not meet the financial risk standard to be an Advanced APM to certify annually that the percentage of eligible clinicians participating in the ACO that use CEHRT to document and communicate clinical care to their patients or other health care providers meets or exceeds 50 percent.

2. For the performance year beginning on January 1, 2019, and any subsequent performance years under this Agreement, for purposes of the certification requirement under 42 CFR 425.302(a)(3)(iii), the Track 1+ ACO must certify that the percentage of eligible clinicians participating in the ACO that use CEHRT to document and communicate clinical care to their patients or other health care providers meets or exceeds the applicable percentage specified by CMS at 42 CFR 425.506(f)(2).

IV. Assignment of Beneficiaries

CMS waives 42 CFR 425.400(a)(4)(A), which provides for preliminary prospective beneficiary assignment with retrospective reconciliation. CMS shall perform prospective beneficiary assignment for the Track 1+ ACO in the manner described in 42 CFR 425.400(a)(3) and 425.401(b).

V. Shared Savings and Shared Losses

- A. *Minimum Savings Rate/Minimum Loss Rate*: Except as provided in this Section V.A, CMS waives 42 CFR 425.604(b). As part of its application for the Track 1+ Model, the Track 1+ ACO selected a symmetrical Minimum Savings Rate (“**MSR**”)/Minimum Loss Rate (“**MLR**”) from the options in 42 CFR 425.610(b). The MSR/MLR selected by the Track 1+ ACO will apply for the duration of this Agreement. If the Track 1+ ACO selected a fixed MSR/MLR and the Track 1+ ACO’s assigned beneficiary population for a performance year beginning on or after January 1, 2020, falls below 5,000, CMS will use a variable MSR/MLR in the manner described in 42 CFR 425.110(b)(3), where the MSR is the same as would apply in a one-sided model under 42 CFR 425.604(b) based on the number of assigned beneficiaries and the MLR is equal to the negative MSR.
- B. *Calculating Shared Losses Under the Track 1+ Model*
 1. Subject to Section V.B.7, for each performance year, CMS determines whether the estimated average per capita Medicare expenditures under the Track 1+ ACO for Medicare fee-for-service beneficiaries for Parts A and B services, as determined under 42 CFR 425.604, are above or below the updated benchmark determined under 42 CFR 425.602 or 42 CFR 425.603. To be responsible for sharing losses with CMS, the Track 1+ ACO’s average per capita Medicare expenditures under the Track 1+ ACO for Medicare fee-for-service beneficiaries for Parts A and B services for the performance year must be above the updated benchmark by at least the MLR established for the Track 1+ ACO under Section V.A.
 2. *Shared Loss Rate*: If the Track 1+ ACO is required to share losses with CMS for expenditures over the updated benchmark, the amount of shared losses is determined based on a fixed 30 percent loss sharing rate, which will be applied to first dollar losses once the MLR is met or exceeded.
 3. *Loss Sharing Limit*: The amount of shared losses for which the Track 1+ ACO is liable may not exceed a loss sharing limit determined based on ACO participant composition for the applicable performance year.
 - i. *Determination of loss sharing limit*: For each performance year, CMS determines whether the Track 1+ ACO will be subject to the benchmark-based loss sharing limit or the revenue-based loss sharing limit (as defined in Sections V.B.4 and V.B.5), based on its composition of ACO participants (as specified in Section V.B.3.ii).

- ii. *Criteria for Determining the Loss Sharing Limit*
 - a. To determine whether the revenue-based or the benchmark-based loss sharing limit applies for a performance year, CMS will consider whether any of the following criteria are met: the Track 1+ ACO includes an ACO participant (as identified by Taxpayer Identification Numbers/CMS Certification Numbers) that is an inpatient prospective payment system hospital, cancer center, or a rural hospital with more than 100 beds; or is owned or operated by, in whole or in part, such a hospital or by an organization that owns or operates such a hospital.
 - b. If the Track 1+ ACO does not include an ACO participant described in Section V.B.3.ii.a, it will be subject to the revenue-based loss sharing limit for the applicable performance year.
 - c. If the Track 1+ ACO includes one or more ACO participants described in Section V.B.3.ii.a, it will be subject to the benchmark-based loss sharing limit for the applicable performance year.

4. *Revenue-Based Loss Sharing Limit*

- i. *Calculation of the Revenue-Based Loss Sharing Limit:* If the Track 1+ ACO is subject to the revenue-based loss sharing limit for a performance year, CMS does all of the following to determine the loss sharing limit for that year:
 - a. Determines ACO participant Medicare fee-for-service revenue, which includes total Parts A and B fee-for-service revenue for all providers and suppliers that bill for items and services through the Taxpayer Identification Number of an ACO participant for the applicable performance year, as adjusted to remove expenditures for episodes of care for treatment of COVID-19 in accordance with the methodology set forth in 42 CFR 425.611.
 - b. Determines 8 percent of the Parts A and B fee-for-service revenue for ACO participants as determined under Section V.B.4.i.a which is the revenue-based loss sharing limit for the performance year.
 - c. If the revenue-based loss sharing limit determined under Section V.B.4.i.b exceeds the amount that is 4 percent of the Track 1+ ACO's updated historical benchmark for the applicable performance year, then the ACO will be subject to the benchmark-based loss sharing determined under Section V.B.5.
- ii. *Qualification as an Advanced APM Entity Under the Quality Payment Program:* The revenue-based loss sharing limit meets the generally applicable Advanced APM nominal amount standard under 42 CFR 414.1415(c)(3)(i)(A).

5. *Benchmark-Based Loss Sharing Limit*

- i. *Calculation of the Benchmark-Based Loss Sharing Limit:* If the Track 1+ ACO is subject to the benchmark-based loss sharing limit for a performance year, the loss sharing limit is 4 percent of the Track 1+ ACO's updated historical benchmark as determined under 42 CFR 425.602 or 425.603, as applicable.

- ii. *Qualification as an Advanced APM Entity under the Quality Payment Program:* The benchmark-based loss sharing limit exceeds the Advanced APM nominal risk requirement under 42 CFR 414.1415(c)(3)(i)(B).
6. *Extreme and Uncontrollable Circumstances:* In calculating the amount of shared losses, after the application of the shared loss rate under Section V.B.2 and the loss sharing limit determined under Section V.B.3, CMS shall determine any adjustment for extreme and uncontrollable circumstances in the manner described in 42 CFR 425.610(i). The months affected by an extreme and uncontrollable circumstance for the COVID-19 pandemic will begin with January 2020 and continue through the end of the COVID-19 PHE, as defined in 42 CFR 400.200.
7. *Determining Performance for a 6-month Performance Year or Performance Period:* In calculating the amount of shared losses for an ACO participating in the 6-month performance year (or performance period) from January 1, 2019, through June 30, 2019, CMS shall use the methodology applicable under the terms of this Agreement and perform the calculations in the manner described in 42 CFR 425.609.

C. *Notification of Losses*

1. CMS provides written notification to the Track 1+ ACO of the amount of shared losses, if any, that it must repay to CMS.
2. If the Track 1+ ACO has shared losses, it shall make payment in full to CMS within 90 days of receipt of notification.

VI. Data Sharing with the Track 1+ ACO

- A. *Aggregate Reports:* CMS waives 42 CFR 425.702(c)(1)(ii)(A) and (B), specifying requirements for aggregate reports furnished to ACOs in Track 1. CMS shall make the information specified in 42 CFR 425.702(c)(1)(ii)(A) and (B) available to the Track 1+ ACO for its prospectively assigned beneficiaries in the same manner as provided for in 42 CFR 425.702(c)(1)(ii)(C) for ACOs participating under prospective assignment. For a Track 1+ ACO eligible to be reconciled under Section V.B.7, CMS shares with the ACO quarterly aggregate reports for calendar year 2019 as provided in 42 CFR 425.702(b) and (c)(1)(ii).
- B. *Beneficiary-Identifiable Claims Data:* CMS waives 42 CFR 425.704(d)(1)(i), specifying requirements for ACOs participating under preliminary prospective assignment with retrospective assignment to request beneficiary-identifiable claims data. The Track 1+ ACO may request beneficiary-identifiable claims data for beneficiaries who appear on the prospective assignment list provided to the Track 1+ ACO at the beginning of the performance year in the same manner as provided for ACOs participating under prospective assignment under 42 CFR 425.704(d)(1)(ii).

C. *Data Use Agreement*

1. Consistent with 42 CFR 425.710, before receiving any beneficiary-identifiable data under Section VI.B, the Track 1+ ACO shall have a Data Use Agreement (“DUA”) with CMS.
2. If the Track 1+ ACO misuses or discloses data in a manner that violates any applicable statutory or regulatory requirements or that is otherwise non-compliant with the provisions of the DUA, it will no longer be eligible to receive data under either 42 CFR part 425 subpart H or this Agreement, may be terminated from the Shared Savings Program under 42 CFR

425.218, and the Track 1+ Model under Section X of this Agreement, and may be subject to additional sanctions and penalties provided under law.

VII. SNF 3-Day Rule Waiver

- A. CMS waives the requirement in Section 1861(i) of the Act for a 3-day inpatient hospital stay prior to a Medicare-covered post-hospital extended care service for eligible beneficiaries prospectively assigned to the Track 1+ ACO, and during a grace period for beneficiaries excluded from prospective assignment to the Track 1+ ACO, who receive otherwise covered post-hospital extended care services furnished by an eligible SNF that has entered into a written agreement to partner with the Track 1+ ACO for purposes of this waiver (“**SNF 3-Day Rule Waiver**”). All other provisions of the statute and regulations regarding Medicare Part A post-hospital extended care services continue to apply.
- B. *Request to Use Waiver*
1. The Track 1+ ACO may apply for a SNF 3-Day Rule Waiver following the same procedures outlined in 42 CFR 425.612 and related Shared Savings Program guidance.
 2. In order for the Track 1+ ACO to include a SNF on its list of SNF affiliates, the SNF must meet the eligibility requirements established in 42 CFR 425.612(a)(1)(iii), including entering into a SNF Affiliate Agreement with the Track 1+ ACO in which the SNF affiliate agrees to comply with the requirements and conditions of 42 CFR part 425.
- C. If the Track 1+ ACO’s application for a SNF 3-Day Rule Waiver is approved:
1. The Track 1+ ACO shall comply with all requirements established in 42 CFR 425.612;
 2. CMS will monitor and audit the use of the SNF 3-Day Rule Waiver as provided in 42 CFR 425.612(d);
 3. The rules governing the use of waivers outlined in 42 CFR 425.612 will apply to the SNF 3-Day Rule Waiver under this Agreement; and
 4. The Track 1+ ACO shall expressly notify SNF affiliates of the requirements of 42 CFR 425.612(a)(1)(v), providing that, in the event that CMS makes no payment for SNF services furnished by a SNF affiliate and the only reason the claim was non-covered is due to the lack of a qualifying inpatient stay, the following beneficiary protections will apply:
 - i. The SNF shall not charge the beneficiary for the expenses incurred for such services; and
 - ii. The SNF shall return to the beneficiary any monies collected for such services.
- D. *Effective Period of Waiver*
1. The SNF 3-Day Rule Waiver is effective upon the date specified by CMS in its notification of approval for the waiver or the Start Date of this Agreement, whichever is later.
 2. The SNF 3-Day Rule Waiver terminates upon the termination of this Agreement.

VIII. Telehealth Services

- A. Under Section 1899(l) of the Act, payment is available for otherwise covered telehealth services furnished on or after January 1, 2020, by a physician or other practitioner billing through the Taxpayer Identification Number of an ACO participant in a Track 1+ ACO, without regard to the geographic requirements under section 1834(m)(4)(C)(i) of the Act, in accordance with the requirements for an applicable ACO specified in 42 CFR 425.613.
- B. *Waiver for payment for telehealth services.* In addition to the additional telehealth flexibilities described in Section VIII.A, for performance year 2020 and performance year 2021, CMS also waives the originating site requirements in section 1834(m)(4)(C)(i) and (ii) of the Act and makes payment for telehealth services furnished to a beneficiary, if the following conditions are met:
 - 1. The beneficiary was prospectively assigned to the Track 1+ ACO at the beginning of the performance year, but the beneficiary was excluded in the most recent quarterly update to the prospective assignment list as described in Section IV of this Agreement and 42 CFR 425.401(b).
 - 2. The telehealth services are provided by a physician or practitioner billing under the Taxpayer Identification Number of an ACO participant in the Track 1+ ACO within 90 days following the date CMS delivers the quarterly exclusion list to the Track 1+ ACO.
 - 3. But for the beneficiary's exclusion from the Track 1+ ACO's prospective assignment list, CMS would have made payment to the ACO participant for such services consistent with this Agreement and 42 CFR 425.613.

IX. Participation in Shared Learning and Evaluation Activities

A. Shared Learning Activities

- 1. The Track 1+ ACO shall participate in CMS-sponsored learning activities designed to strengthen results and share learning that emerges from participation in the Track 1+ Model.
- 2. The Track 1+ ACO shall participate in periodic conference calls, site visits, and virtual or in-person meetings, and actively share resources, tools, and ideas as prescribed by CMS.

B. Evaluation Requirement

- 1. The Track 1+ ACO shall participate in and cooperate with any evaluation activities conducted by CMS and/or its designees aimed at assessing the impact of the Track 1+ Model.
- 2. The Track 1+ ACO shall require its ACO participants and ACO providers/suppliers to participate in and cooperate with any Track 1+ Model evaluation activities conducted by CMS and/or its designees.
- 3. The Track 1+ ACO shall require any individuals and entities performing functions and services related to its participation in the Shared Savings Program and the Track 1+ Model to participate in and cooperate with any Track 1+ Model evaluation activities.

X. Termination of Participation in the Track 1+ Model

- A. *Pre-Termination Actions*: If CMS concludes that termination of this Agreement is warranted under Section X.C, it may take one or more of the following pre-termination actions: provide a warning notice to the Track 1+ ACO; request a corrective action plan from the Track 1+ ACO; or place the Track 1+ ACO on a special monitoring plan.
- B. *Automatic Termination*: This Agreement automatically terminates upon expiration or termination of the ACO's Shared Savings Program Participation Agreement.
- C. *Termination by CMS*
 - 1. CMS may terminate this Agreement if the Track 1+ ACO, its ACO participants, ACO providers/suppliers, or other individuals or entities performing functions or services related to ACO activities fail to comply with any of the requirements of this Agreement.
 - 2. CMS may terminate or modify this Agreement pursuant to Section 1115A(b)(3) of the Act.
 - 3. If CMS terminates this Agreement under Section X.C.1, CMS will terminate the ACO's participation in the Shared Savings Program under 42 CFR 425.218.
- D. *Termination by the Track 1+ ACO*: If the Track 1+ ACO wishes to terminate this Agreement, it must do so by terminating its participation in the Shared Savings Program following the procedures established in 42 CFR 425.220.
- E. *Close-Out Procedures*: Following the termination or expiration of its Shared Savings Program Participation Agreement and this Agreement, the Track 1+ ACO shall comply with the close-out procedures in 42 CFR 425.221(a), and the payment consequences of early termination by an ACO in a two-sided model under 42 CFR 425.221(b) will apply.

XI. Limitations on Review

- A. Pursuant to Section 1115A(d)(2) of the Act, there is no administrative or judicial review under Sections 1869 or 1878 of the Act or otherwise of the following:
 - 1. The selection of organizations, sites, or participants to test the Track 1+ Model, including the decision by CMS to terminate this Agreement pursuant to Section X.
 - 2. The elements, parameters, scope, and duration of the Track 1+ Model.
 - 3. Determinations regarding budget neutrality of the Track 1+ Model under Section 1115A(b)(3) of the Act.
 - 4. The termination or modification of the design and implementation of the Track 1+ Model under Section 1115A(b)(3)(B).
 - 5. Determinations about expansion of the duration and scope of the Track 1+ Model under Section 1115A(c), including the determination that the Track 1+ Model is not expected to meet the criteria described in Section 1115A(c)(1) or (2).
- B. The preclusion of administrative and judicial review under Section 1899(g) of the Act and 42 CFR part 425, subpart I, continues to apply with respect to the Track 1+ ACO's participation in Track 1 of the Shared Savings Program.

- C. There is no reconsideration, appeal, or other administrative or judicial review of the following determinations under the Track 1+ Model:
1. The assignment of Medicare fee-for-service beneficiaries;
 2. The initial or revised initial determination of whether the Track 1+ ACO is liable for shared losses and the amount of such shared losses, including the initial determination or revised initial determination of the estimated average per capita expenditures under the Track 1+ ACO for Medicare fee-for-service beneficiaries assigned to the Track 1+ ACO and the average benchmark for the Track 1+ ACO; and
 3. The percent of shared losses and the limit on the total amount of shared losses.
- D. For those matters that are not precluded from administrative and judicial review, the reconsideration review process will be consistent with the processes specified in 42 CFR part 425, subpart I and related guidance.

XII. Miscellaneous Provisions

- A. *Amendment*: The parties may amend this Agreement at any time by mutual written agreement. CMS may amend this Agreement without the consent of the Track 1+ ACO for good cause or as necessary to comply with applicable federal or state law, regulatory requirements, accreditation standards or licensing guidelines or rules. To the extent practicable, CMS shall provide the Track 1+ ACO with 30 calendar days advance written notice of any such unilateral amendment, which notice must specify the amendment's effective date.
- B. *Survival*: Expiration or termination of this Agreement by any party does not affect the rights and obligations of the parties accrued prior to the effective date of the termination or expiration of this Agreement, except as provided in this Agreement. The rights and duties under the following provisions survive the termination or expiration of this Agreement: III.C (re-application after termination); III.D (audits and record retention); V.C.2 (repayment of losses); IX (participation in shared learning and evaluation activities); X.A (pre-termination actions); X.E (close-out procedures); XI (limitations on review); and XII.D (certifications).
- C. *Severability*: In the event that any one or more of the provisions of this Agreement is, for any reason, held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability does not affect any other provisions of this Agreement, and this Agreement is to be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein, unless the deletion of such provision or provisions would result in such a material change so as to cause continued participation under the terms of the Agreement to be unreasonable.
- D. *Certifications*: The Track 1+ ACO agrees, as a condition of participating in the Track 1+ Model, that an individual with the authority to legally bind the Track 1+ ACO will certify the accuracy, completeness, and truthfulness of any data or information requested by or submitted to CMS, including but not limited to any information on which CMS bases its calculation of shared savings payments and shared losses. All such certifications must meet the requirements set forth in 42 CFR 425.302.

The individual executing this Agreement on behalf of the Track 1+ ACO hereby certifies that he or she has the authority to legally bind the Track 1+ ACO.

TRACK 1+ ACO:

Name _____

Title _____

Signature _____ Date _____

CMS:

Name _____

Title _____

Signature _____ Date _____