

Escrow Agreement Amendment - Prepaid Shared Savings

This amendment includes language for ACOs to update existing escrow agreements to include the recoupment of prepaid shared savings. Pursuant to 42 CFR § 425.640(b)(7), ACOs that receive prepaid shared savings must have in place an adequate repayment mechanism in accordance with 42 CFR § 425.204(f) that can be used to recoup outstanding prepaid shared savings. For ACOs that elect to participate in prepaid shared savings, the ACO's repayment mechanism may also be used to recoup outstanding prepaid shared savings.


Use of the format and text as shown in the template escrow agreement amendment may expedite CMS' review and should minimize the potential need for revisions, but it does not guarantee CMS' approval of the repayment mechanism documentation (particularly if it has been modified). If the Accountable Care Organization (ACO) and/or banking institution chooses to modify the template, the ACO and/or banking institution should use Track Changes in a Word document when submitting the draft to CMS for review. Note that any changes made to the template will lengthen the CMS review time.

Instructions:

- Complete fields marked in bracketed and bolded text as instructed.
- According to the preferences of the banking institution issuing the escrow agreement amendment, provide documentation on letterhead or security paper with the banking institution's logo.

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.

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ESCROW AGREEMENT AMENDMENT

THIS AMENDMENT (“Amendment”), dated _____ **[Date of Amendment]**, is made to the Escrow Agreement (“Agreement”) dated _____ **[Date of execution of original escrow agreement]** by and between _____ **[ACO Legal Entity Name]** (“Depositor”); the United States Department of Health and Human Services (“HHS”), Centers for Medicare & Medicaid Services (“CMS”) (“Recipient”); and _____ **[banking institution name]**, as escrow agent hereunder (“Escrow Agent”), collectively, the “Parties.”

The Parties wish to amend the Agreement to reflect the term of the Medicare Shared Savings Program Accountable Care Organization Participation Agreement (“Participation Agreement”) entered into by the Depositor and Recipient.

THEREFORE, in consideration of the foregoing and the mutual covenants set forth below, the Parties hereby agree as follows:

1. Point E is amended to specify:

Pursuant to the Shared Savings Program Regulations, Depositor must pay CMS the amount of shared losses that CMS determines is owed by Depositor upon annual reconciliation of each performance year (“Shared Losses”) and any prepaid shared savings determined to be owed. The amount of Shared Losses [and any prepaid shared savings] that Depositor owes to CMS comprise the debt (“Debt”).

2. Point F is amended to specify:

Pursuant to the Shared Savings Program Regulations, Depositor must guarantee its ability to pay Debt by providing a repayment mechanism in an amount determined by CMS. Accordingly, Depositor shall deposit funds in a segregated escrow account (“Account”) to be held by Escrow Agent for the purpose of paying Debt owed by Depositor under the Shared Savings Program Regulations at 42 CFR Part 425. The Assets (as defined below) shall be paid to Recipient according to the terms of this Agreement.

3. Point 10.c is amended to specify:

Before Assets are disbursed for the payment of any amount of Debt, Recipient shall provide further written instructions to Escrow Agent, in consultation with Depositor, for the replenishment of Assets or closure of the Account.

4. Exhibit A is deleted and replaced in its entirety with the revised Exhibit A language attached hereto and incorporated herein.
5. Any conflict between the Agreement and this Amendment will be resolved in favor of this Amendment.
6. Except as set forth above, all other terms and conditions of the Agreement are not further amended and remain in full force and effect.

[Signature page follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

DEPOSITOR

By: _____

(Signature)

Name: _____

Title: _____

RECIPIENT

By: _____

(Signature)

Name: _____

Title: _____

_____ **as Escrow Agent**

By: _____

(Signature)

Name: _____

Title: _____

Exhibit A

Certification of Debt or Distribution of Assets

CMS hereby demands payment of funds held in escrow pursuant to that certain Escrow Agreement (the "Agreement"), dated _____, by and among _____ ("Escrow Agent"), _____ ("Depositor"), and the United States Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) ("Recipient").

Recipient hereby certifies to the Escrow Agent as follows:

1. Depositor has incurred \$ _____ of Shared Losses and owes \$ _____ in prepaid shared savings for the relevant performance year(s), as determined by CMS and set forth in the written notification dated _____ and issued pursuant to the Shared Savings Program regulations (the "Written Notification").
2. Depositor has failed to pay, or the Depositor requested that Recipient be paid \$ _____ of such Shared Losses and prepaid shared savings (the "Debt") by the deadline specified on the Written Notification as required by the Shared Savings Program regulations.
3. Recipient is entitled to payment from the escrow account ("Account") in an amount equal to the lesser of
☐ the Debt (if the cash value of the Assets exceeds the amount of the Debt) or
☐ the full cash value of the Assets on deposit in the Account (if the cash value of the Assets is less than or equal to the amount of the Debt).
4. Escrow Agent is hereby instructed to convert the Assets to cash and remit _____ **[dollar amount or "full cash value of the Assets on deposit in the Account"]** to Recipient by wire transfer as follows:

Receiving Bank: _____
ABA # _____
Account Name: _____
Account Number: _____
Account Address: _____

Ref: _____
Contact Name and Phone Number: _____

5. Escrow Agent is instructed to:

- ☐ Await the replenishment of Assets by the Depositor.
- ☐ To the extent that no funds remain in the Account after payment to Recipient and the subsequent deduction of any unpaid fees, costs or expenses, close the Account.
- ☐ To the extent that any funds remain in the Account after payment to Recipient (if applicable) and the subsequent deduction of any unpaid fees, costs or expenses, return the remaining funds to Depositor by ☐ check delivered to the address in accordance with Schedule I of the Agreement, or by ☐ wire transfer as follows, and close the Account.
- ☐ Decrease the amount of the Account to \$_____ as specified by Recipient, and return any excess funds above that amount to Depositor by ☐ check delivered to the address in accordance with Schedule I of the Agreement, or by ☐ wire transfer as follows.

Receiving Bank: _____

ABA # _____

Account Name: _____

Account Number: _____

Account Address: _____

Ref: _____

Contact Name and Phone Number: _____

6. Recipient has received separate written instructions from Depositor regarding the disposition of the Account as specified in sections 2, or 5 or both of Exhibit A.

☐ Yes or ☐ No.

All terms used herein but not defined shall have such meaning as is ascribed to them by the Agreement or the Shared Savings Program Regulations at 42 CFR Part 425, as the case may be.

RECIPIENT

By: _____

Date: _____

Name: _____

Title: _____