

Surety Bond Rider – Prepaid Shared Savings

This amendment includes provides language for ACOs to update existing surety bonds 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 surety bond rider 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.

Instructions:

- Complete fields marked in bracketed and bolded text as instructed.
- According to the preferences of the financial institution issuing the surety bond rider, provide documentation on letterhead or security paper with the financial 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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SURETY BOND RIDER

To be attached to and form part of:

Bond Number: **[Surety Bond #]**

Effective: **[Commencement Date of original Surety Bond]**

Issued by: **[Surety Company Legal Entity Name]** (Surety)

On behalf of: **[ACO Legal Entity Name]** (Principal)

And in favor of: Centers for Medicare & Medicaid Services ("CMS") (Obligee)

Now therefore, it is agreed that the above referenced Bond shall be modified as follows:

The following language is deleted and replaced with:

Deleted:

WHEREAS, pursuant to the Regulations, the Principal must pay Obligee the amount of shared losses that Obligee determines are owed upon annual reconciliation of each Performance Year ("Shared Losses").

WHEREAS, pursuant to the Regulations, the Principal must guarantee its ability to pay the Shared Losses by providing a repayment mechanism in an amount determined by Obligee.

NOW THEREFORE, the condition of this Bond is that the Obligee determines that Principal owes Shared Losses under the Regulations, and the Principal fails to pay the Shared Losses in full to Obligee, subject, however, to the following:

Replaced:

WHEREAS, pursuant to the Regulations, the Principal must pay Obligee the amount of shared losses that Obligee determines are owed upon annual reconciliation of each Performance Year ("Shared Losses") and any prepaid shared savings determined to be owed (the "Debt").

WHEREAS, pursuant to the Regulations, the Principal must guarantee its ability to pay the Debt by providing a repayment mechanism in an amount determined by Obligee.

NOW THEREFORE, the condition of this Bond is that the Obligee determines that Principal owes Debt under the Regulations, and the Principal fails to pay the Debt in full to Obligee, subject, however, to the following

The conditions numbered 1, 2 and 5 are replaced by the following conditions:

1. The Surety is liable under this Bond for the Shared Losses determined by the Obligee to be owed by the Principal for the Performance Year(s) under a two-sided model covered by the Agreement and any prepaid shared savings determined to be owed, and the Obligee may collect on this Bond up to the Penal Sum.
2. Surety agrees to pay the Debt within 30 days of receiving from Obligee written notice of the Debt and sufficient evidence to establish Surety's liability under this Bond. Surety

agrees to not contest the amount owed as reflected in the documents provided by Obligee to the Principal. For purposes of this paragraph, the term "sufficient evidence" means the documents Obligee may supply to the Surety to establish that the Principal has failed to pay the Debt in full.

5. After the Bond has been used to pay any portion of Debt owed to Obligee, the Principal must replenish the amount of funds available through the Bond within 90 days. Furthermore, the failure or inability of the Principal to replenish the Bond required by Obligee shall not itself constitute a loss to the Obligee recoverable under this Bond.

Except as expressly modified herein, all other terms and conditions of the above referenced bond shall remain unchanged.

This Rider is to be effective **[# of day]** of **[Month, Year]**.

In witness whereof, the undersigned Principal and Surety have set their hands and seals on this **[# of day]** of **[Month, Year]**.

[ACO Legal Entity Name]

By: _____
 [Signature]

Name: _____
 [Printed Name]

Title: _____
 [Title]

[Surety Company Name]

By: _____
 [Signature]

Name: _____
 [Printed Name] Attorney in Fact