

Prepaid Shared Savings Surety Bond Template

This template includes language for ACOs 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 surety bond template will expedite CMS' review and should minimize the potential need for revision but does not guarantee CMS approval of the ACO's surety bond (particularly if it has been modified). If the ACO and/or surety company chooses to modify the template, the ACO and/or surety company should use Track Changes in a Word document when submitting the draft to CMS for review. Note that any changes made to the sample will lengthen the CMS review time.


Instructions:

- ACOs that are participating in Prepaid Shared Savings and electing to establish a new repayment mechanism should use the following template. If an ACO is electing to amend an existing repayment mechanism for Prepaid Shared Savings participation, please reference the appropriate Prepaid Shared Savings amendment/rider template.
- ACOs that are not participating in Prepaid Shared Savings should utilize the repayment mechanisms included in the appendices of the [Repayment Mechanism Arrangements Guidance](#).
- Complete fields marked in bracketed and bolded text as instructed.
- According to the preferences of the surety company issuing the surety bond, provide documentation on letterhead or security paper with surety's logo.
- Original documentation should include the notarized power of attorney or electronic seal.

For additional information, review the [Repayment Mechanism Arrangements Guidance](#).

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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BOND NUMBER: [Surety Bond #]

Surety Bond
MEDICARE SHARED SAVINGS PROGRAM
ACCOUNTABLE CARE ORGANIZATION

KNOW ALL PERSONS BY THESE PRESENTS, that subject to the terms, conditions and limitations of this Bond, [ACO Legal Entity Name],
as Principal, and [Surety Company Legal Entity Name],
of [Surety Company's Address],
a corporation organized and existing under the laws of [State in which Surety Company is licensed],
, as Surety, are held and firmly bound unto the Centers for Medicare &
Medicaid Services ("CMS"), an agency of the United States Department of Health and Human Services,
of 7500 Security Boulevard, Mail Stop C5-15-12, Baltimore, MD 21244, as Oblige, in the Penal Sum of
[required written dollar amount]
USD (\$) [numerical dollar amount] for the payment of which Principal and
Surety bind themselves, their heirs, executors, administrators, successors, and assignees, jointly and
severally, by these presents.

WHEREAS, the Principal has entered into the Medicare Shared Savings Program Accountable Care
Organization Participation Agreement ("Agreement") with Oblige, effective [date of
first day of the ACO's agreement period] pursuant to which the Principal agreed to participate in the
Medicare Shared Savings Program ("Shared Savings Program") and to comply with the regulations at
42 CFR Part 425 ("Regulations").

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

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

1. The Surety is liable under this Bond for only the Shared Losses determined by the Oblige 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 Oblige may collect on this Bond up to the
Penal Sum.
2. Surety agrees to pay the Debt within 30 days of receiving from Oblige 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 Oblige to the Principal. For purposes of this
paragraph, the term "sufficient evidence" means the documents Oblige may supply to the Surety to
establish that the Principal has failed to pay the Debt in full.
3. CMS is the sole Oblige of this Bond, and no action may be brought on it by, or for the use or benefit
of, any person or entity other than CMS.
4. Surety shall notify Oblige promptly in writing if there is a lapse in the Bond coverage or change in the
amount of the Bond.

5. After the Bond has been used to pay any portion of Debt owed to Oblige, 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 Oblige shall not itself constitute a loss to the Oblige recoverable under this Bond.
6. The Surety may cancel this Bond and terminate its liability by giving written notice to the Oblige; provided, however, that such notice must be received by the Oblige at least ninety (90) days prior to the date of termination or cancellation of the Bond. Cancellation or termination shall not itself constitute a loss to the Oblige recoverable under this Bond. The Surety will remain liable for any and all indebtedness of the Principal to the Oblige which accrued prior to the effective date of cancellation or termination of the Bond.
7. The term of this Bond shall commence on **[date of first day of the ACO's first Performance Year under a two-sided model]**. As indicated, the end date of the term of the Bond is as follows (select one):
- ☐ The term of this Bond shall end on **[Date]**, which is 12 months following the conclusion of the last performance year of the Principal's Agreement.
- ☐ The term of this Bond shall end on 12/31/ **[Date that is the last day of the ACO's second performance year under a two-sided model covered by this surety bond, i.e. the second calendar year from the issuance date of this surety bond]**, provided that this Bond will be automatically extended for an additional 12-month period from the initial expiration date and annually thereafter, such that the term of this Bond will eventually cover all remaining Performance Year(s) of the Principal's Agreement under a two-sided model and end on 12/31/ **[Final expiration year]**, which is 12 months following the conclusion of the last Performance Year of Principal's Agreement. If Surety elects not to automatically extend this Bond for any additional period, it must provide Oblige with at least ninety (90) days advance written notice of non-extension.

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

[ACO Legal Entity Name]

By: _____

Name: _____
[Printed Name]

Title: _____
[Title]

[Surety Company Name]

By: _____

Name: _____
[Printed Name] Attorney in Fact