

Agreement Period Beginning on January 1, 2023

This checklist is a resource to help an Accountable Care Organization (ACO) meet the Repayment Mechanism requirement for the Medicare Shared Savings Program. For more detailed instructions and requirements, refer to the [Repayment Mechanism Arrangements Guidance](#) document.

✓ Check List

- My ACO has reviewed the [Repayment Mechanism Arrangements Guidance](#) document.
- My ACO has started conversations with financial institutions to establish its repayment mechanism(s).
- My ACO has determined which of the following arrangements to use: funds placed in escrow, a line of credit as evidenced by a letter of credit, or surety bond.

✓ General Repayment Mechanism Terms (Applies to All RM Types)

- Is the repayment mechanism established with an insured financial institution as detailed in 42 CFR §425.204(f)(2)?
- Does the repayment mechanism type selected in ACO-MS match the submitted repayment mechanism documentation?
- Does the legal entity name on the repayment mechanism match the legal entity name in ACO-MS?
- Does the ACO ID listed on the repayment mechanism match the ACO ID in ACO-MS?
- Does the repayment mechanism have the CMS address listed as 7500 Security Boulevard, Mail Stop C5-15-12, Baltimore, MD 21244?
- Does the inception date reflect the date the ACO enters into the Medicare Shared Savings Program ACO Participation Agreement with CMS?
- Does the duration of the repayment mechanism meet one of the following requirements as detailed in 42 CFR §425.204(f)(6)?
 - The duration of the repayment mechanism covers the entire duration of the ACO's participation under a two-sided model plus 12 months following the conclusion of the agreement period.
 - The duration of the repayment mechanism covers at least the first two performance years in which the ACO is participating under a two-sided model with automatic, annual 12-month extensions such that the repayment mechanism will eventually remain in effect for the duration of the agreement period plus 12 months following the conclusion of the agreement period.
- Does the repayment mechanism allow for replenishment within 90 days if any portion of the repayment mechanism is used to repay shared losses owed to CMS as detailed in 42 CFR §425.204(f)(5)?
- Does the repayment mechanism contain a statement that account fees will not be paid out of the principal amount or penal sum?
- Is the repayment mechanism account number included on the documentation?

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✓ Funds Placed in Escrow (Applies to Escrow Agreement)

- Is CMS designated as Recipient of the escrow agreement?
- Does the escrow agreement include language indicating that CMS will make a demand for repayment mechanism funds if the ACO fails to pay shared losses it owes to CMS as a result of participation in the Shared Savings Program?
- Does the escrow agreement include language allowing payment to CMS in response to a written notice (sometimes referred to as a demand letter) from CMS?
- Does the escrow agreement include language that the principal is not encumbered for a purpose other than repaying shared losses owed by the ACO to CMS?
- Does the escrow agreement include the verbatim indemnification article as it appears on the CMS approved escrow template, "Recipient is not required to indemnify any person or entity against any loss, claim, damages, liabilities, or expenses, including the cost of litigation arising from the Agreement or the subject of the Agreement."?
- Does the escrow agreement indicate the frequency for providing CMS with account status updates?
- Does the escrow agreement reflect that the funds are invested in a permissible type of investment: a money market account, treasury backed securities, or both?
- Does the escrow agreement specify that assets can be disposed of only upon written instruction from an authorized representative of the Recipient, CMS?
- Does the escrow agreement include Exhibit A Certification of Shared Losses or Distribution of Assets? (The instructions for the disbursement of assets that are consistent with CMS's standard escrow instructions.)
- If amending a previously established escrow agreement, does the escrow agreement inception date on the amendment match the original escrow agreement inception date?

✓ A Line of Credit as Evidenced by Letter of Credit (Applies to Letter of Credit)

- Is CMS designated as the sole beneficiary in the letter of credit?
- Does the letter of credit indicate that the letter of credit is an "irrevocable letter of credit" or "irrevocable standby letter of credit"?
- Does the letter of credit include a term that allows CMS to draw on or demand payment under the letter of credit accompanied by the following: (1) the original letter of credit and all amendments thereto, if any; and (2) a copy of the written notice from the Beneficiary to the Applicant of the amount owed?
- Does the letter of credit include language allowing for partial or multiple drawings?
- If the letter of credit includes an automatic extension clause, does it specify the advanced notification period for non-extension that specifies that the issuing institution will notify CMS at least 90 days in advance if it elects not to extend the letter of credit?
- If the letter of credit does not include a non-extension clause, does the letter of credit state that CMS will be notified at least 90 days in advance if the issuing institution elects not to extend the letter of credit?

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✓ Surety Bond (Applies to Surety Bond)

- Is CMS designated as the Obligee within the surety bond?
- Is the ACO designated as the Principal?
- Is the insurance company designated as the Surety?
- Is the surety bond issued from a company included on the U.S. Department of Treasury's List of Certified Companies as detailed in 42 CFR 425.204(f)(2)(ii)?
https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570_a-z.htm
- Does the surety bond include the Surety's legal entity name, street address or post office box number, city, state, or zip code as stated on the U.S. Department of the Treasury's List of Certified (Surety Bond) Companies?
- Does the surety bond include a statement that the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assignees, jointly and severally?
- Does the surety bond include language indicating that CMS will make a demand for repayment mechanism funds if the ACO fails to pay shared losses it owes to CMS as a result of participation in the Shared Savings Program?
- Does the surety bond state that the Surety agrees to pay the shared losses within thirty (30) days of receiving from CMS written notice of the shared losses demonstrating that the ACO has failed to pay the shared losses in full?
- Does the surety bond provide a statement that the Surety agrees to not contest the amount owed by the Principal as reflected in the documents provided by CMS to the ACO?
- Does the surety bond state that the Surety will remain liable for any and all indebtedness of the Principal to the Obligee which accrued prior to the effective date of a cancellation or termination of the bond?
- Does the surety bond state that the Surety will notify CMS at least 90 days in advance of cancellation or termination of the bond?
- Does the surety bond state that the Surety will notify CMS promptly in writing if there is a lapse in surety bond coverage or if there is any change in the amount of the bond?
- Does the surety bond include a statement defining "sufficient evidence" as "the documents the Obligee may supply to the Surety to establish that the Principal has failed to pay the Shared Losses in full"?

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After receiving the final repayment mechanism amount, released with Phase 1 RFI-2, please ensure these requirements are met on your final documentation prior to sending to CMS via traceable carrier.

✓ Final Documentation

- Does the dollar value of the repayment mechanism match the final value specified by CMS – in both numerical and written form? (Note: This amount will be provided in the Participation Options Report released with Phase 1 Request for Information (RFI) 2.)
- Does the repayment mechanism state the execution date?
- Is the repayment mechanism signed by the financial institution?
- If your repayment mechanism was digitally signed, have you provided a copy of the digital signature audit report to CMS by sending an email to acoapproveview@lmi.org?
- Have all “draft” references been removed from your final repayment mechanism?
- If my ACO is establishing a Funds placed in escrow as its repayment mechanism only: Has the Escrow Agent provided a signed letter on its letter head providing a statement that the repayment mechanism amount funds are on deposit?