Medicare Shared Savings Program

SKILLED NURSING FACILITY 3-DAY RULE WAIVER

Guidance

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MEDICARE
SHARED SAVINGS
PROGRAM

Revision History – Version 11

Title of Section & Revisions/Changes Description (since last version)	Link to Affected Area
SNF Plan Narratives: Revised Section 4 to bring into compliance with physician fee schedule final rule where ACOs are no longer required to submit their SNF plan narratives in ACO-MS.	Section 4
SNF Plan Narratives: Revised Section 7 to bring into compliance with physician fee schedule final rule where ACOs are no longer required to submit their SNF plan narratives in ACO-MS.	Section 7

CMS MEDICARE SHARED SAVINGS PROGRAM

Table of Contents

1 Executive Summary ... 1

2 SNF 3-Day Rule Waiver Background ... 1

3 SNF 3-Day Rule Waiver Eligibility ... 3

3.1 ACO Eligibility for the SNF 3-Day Rule Waiver ... 3

3.2 SNF Eligibility ... 3

3.3 Beneficiary Eligibility for the SNF 3-Day Rule Waiver ... 3

3.3.1 Prospectively Assigned Beneficiaries ... 4

3.3.2 Preliminarily Prospectively Assigned Beneficiaries ... 5

4 How to Apply for a SNF 3-Day Rule Waiver ... 5

5 SNF Affiliate Agreements ... 6

5.1 Executed SNF Affiliate Agreements ... 7

5.1.1 Renewal/Early Renewal ACOs with Current SNF 3-Day Rule Waivers Renewing for a New Shared Savings Program Agreement Period ... 8

6 SNF Affiliate List ... 8

6.1 SNF Affiliate List Requirements ... 8

6.1.1 SNF Affiliate List Review Cycle ... 10

6.1.2 SNF Affiliate List Additions ... 10

6.1.3 SNF Affiliate Legal Business Name Changes ... 11

6.1.4 SNF Affiliate List Deletions ... 11

6.2 Maintaining the SNF Affiliate List in ACO-MS ... 12

7 SNF 3-Day Rule Waiver Plan Narratives ... 12

7.1 Communication Plan Between the ACO and SNF Affiliate ... 13

7.2 Care Management Plan for Beneficiaries Admitted to the SNF Affiliate ... 13

7.3 Beneficiary Evaluation and Admission Plan ... 14

8 SNF 3-Day Rule Waiver Medicare Claims Processing ... 14

9 Beneficiary Protections and 90-Day Grace Period ... 16

10 SNF 3-Day Rule Waiver Beneficiary Communications ... 17

11 SNF 3-Day Rule Waiver Public Reporting Requirements ... 18

12 SNF 3-Day Rule Waiver Compliance ... 18

Appendix A: Sample SNF Affiliate Agreement Introductory Paragraph/Signature Page ... 19

Appendix B: Information on Digital Signature Requirements ... 20

1 Executive Summary

The purpose of this document is to describe the policies for waivers of the Skilled Nursing Facility (SNF) 3-Day Rule under the Medicare Shared Savings Program (Shared Savings Program). Specifically, this document provides background on the SNF 3-Day Rule, waiver-eligibility criteria for Accountable Care Organizations (ACOs) and SNF affiliates, as well as information on how to apply for a SNF 3-Day Rule Waiver.

The SNF 3-Day Rule Waiver waives the requirement for a 3-day inpatient hospital stay prior to a Medicare-covered, post-hospital, extended-care service for eligible beneficiaries if certain conditions are met (refer to Section 3.3 below). Only Shared Savings Program ACOs that are currently participating in or applying to certain Shared Savings Program performance-based risk tracks have the opportunity to apply for a waiver of the SNF 3-Day Rule, and they must apply separately for the waiver during the annual application process as described in Section 4 below.

To apply for a SNF 3-Day Rule Waiver, an ACO must:

- Meet specific eligibility criteria.
- Submit a SNF Affiliate List.
- Submit an executed SNF Affiliate Agreement for each proposed SNF affiliate.
- Attest that your ACO has established and will make available to CMS upon request narratives describing how your ACO plans to implement the SNF 3-day rule waiver. These narratives must include the following:
  - Communication plan (refer to Section 7.1),
  - Care management plan (refer to Section 7.2), and
  - Beneficiary evaluation and admission plan (refer to Section 7.3).

This document is subject to periodic change. Any substantive changes to this document are noted in the revision history.

2 SNF 3-Day Rule Waiver Background

Section 1819(a) of the Social Security Act (the Act) defines a SNF, in part, as an institution (or a distinct part of an institution) that is not primarily for the care and treatment of mental diseases but is primarily engaged in providing the following to residents:

- Skilled nursing care and related services for residents who require medical or nursing care.
- Skilled rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

The Medicare SNF benefit applies to beneficiaries who require a short-term intensive stay in a SNF and skilled nursing and/or skilled rehabilitation care. Pursuant to Section 1861(i) of the Act, beneficiaries must have a prior inpatient hospital stay of no fewer than three consecutive days to be eligible for Medicare coverage of inpatient SNF care. This requirement is referred to as the SNF 3-Day Rule.

Section 1899(f) of the Act permits the Secretary to waive certain payment or other program requirements as may be necessary to carry out the Shared Savings Program. To support ACOs' efforts to increase quality and decrease costs, the Centers for Medicare and Medicaid Services (CMS) finalized a waiver of the SNF 3-Day Rule for eligible ACOs participating in certain performance-based risk tracks (or payment models within a track) of the Shared Savings Program (42 CFR § 425.612). Specifically, CMS has used the authority under Section 1899(f) to waive Section 1861(i) of the Act to allow coverage of certain SNF services that are not preceded by a qualifying 3-day inpatient hospital stay. The SNF 3-Day Rule Waiver waives the requirement for a 3-day inpatient hospital stay prior to a Medicare-covered, post-hospital, extended-care service for eligible beneficiaries if certain conditions are met (refer to Section 3.3 below).

Eligible ACOs may apply for the use of a SNF 3-Day Rule Waiver during their agreement period, or at the time of application to participate in the program. ACOs, including those applying for a waiver during the term of an existing participation agreement, must follow the annual application process as described in Section 4 below. Applications for a SNF 3-Day Rule Waiver will have an effective date of January 1st of the upcoming performance year. Once approved, an ACO will maintain its SNF 3-Day Rule Waiver for the remainder of its current participation agreement, unless CMS determines it is necessary to revoke the ACO's waiver as provided in 42 CFR § 425.612(d)(3). If CMS terminates the ACO's participation agreement under 42 CFR § 425.218, the waiver ends on the date specified by CMS in the termination notice or, if the ACO terminates its participation agreement, on the effective date of termination, as specified in the ACO's advance written notice to CMS required under 42 CFR § 425.220.

It is important to note that a SNF 3-Day Rule Waiver does not create a new benefit or extend Medicare SNF coverage to patients who could be treated in outpatient settings or who require long-term custodial care. The waiver is intended to provide ACOs that are participating in certain performance-based risk tracks with additional flexibility to increase quality and decrease costs. The SNF benefit itself remains unchanged. The SNF 3-Day Rule Waiver is only applicable for services furnished in SNF affiliates that meet the eligibility requirements in 42 CFR § 425.612, discussed below in Section 3.2.

The SNF 3-Day Rule Waiver does not restrict a beneficiary's choice of provider or supplier. A beneficiary continues to have the option to seek care from any Medicare fee-for-service (FFS) provider or supplier, including from a SNF or other facility that is not an affiliate of an ACO that is participating in the Shared Savings Program. In such

circumstances, normal Medicare requirements apply, including the requirement for a 3-day inpatient hospitalization.

3 SNF 3-Day Rule Waiver Eligibility

Beneficiaries, SNF affiliates, and ACOs must meet the eligibility requirements specified in 42 CFR § 425.612 for Medicare to make payment for services provided pursuant to a SNF 3-Day Rule Waiver.

3.1 ACO ELIGIBILITY FOR THE SNF 3-DAY RULE WAIVER

To be eligible to apply for the SNF 3-Day Rule Waiver, an ACO must be applying to participate or already be participating in the Shared Savings Program Levels C, D, or E of the BASIC track or the ENHANCED track. ACOs applying to or participating in Levels A and B (one-sided model) of the BASIC track are not eligible to apply for the SNF 3-Day Rule Waiver until the application cycle preceding their entry into Level C or higher of the BASIC track.

3.2 SNF ELIGIBILITY

The ACO must provide CMS with a list of SNFs (referred to as SNF affiliates) with which the ACO will partner along with executed written SNF Affiliate Agreements (first page and signature page are sufficient) between the ACO and each listed SNF affiliate (refer to Section 5). The ACO submits the SNF Affiliate List and the SNF Affiliate Agreements through the ACO Management System (ACO-MS).

The SNF affiliates included on the ACO's list (referred to as the "SNF Affiliate List") undergo a program integrity review and CMS reviews the SNF Affiliate Agreements for compliance with the SNF 3-Day Rule Waiver requirements in 42 CFR § 425.612. SNF affiliates that are eligible to be included in the CMS 5-star Quality Rating System must have and maintain an overall rating of 3 stars or higher. Hospitals and Critical Access Hospitals (CAHs) operating under swing bed agreements are eligible to partner with ACOs as SNF affiliates. Additionally, hospitals and CAHs operating under swing bed agreements are not required to have or maintain a rating in the CMS 5-star Quality Rating System.

3.3 BENEFICIARY ELIGIBILITY FOR THE SNF 3-DAY RULE WAIVER

To be eligible to receive covered SNF services under the waiver, a beneficiary must appear on an eligible beneficiary assignment list report:

- For an ACO that has selected preliminary prospective assignment with retrospective reconciliation under 42 CFR § 425.400(a)(2), the beneficiary must appear on the list of preliminarily prospectively assigned beneficiaries at the beginning of the performance year or on the 1st, 2nd, or 3rd quarter preliminary prospective assignment list for the performance year in which they are admitted to

the eligible SNF (referred to as a SNF affiliate, described in Section 6), and the SNF services must be provided after the beneficiary first appeared on the preliminary prospective assignment list for the performance year.

- For an ACO that has selected prospective assignment under 42 CFR § 425.400(a)(3), the beneficiary must be prospectively assigned to the ACO for the performance year in which they are admitted to the eligible SNF.

Additionally, beneficiaries must meet the following requirements under 42 CFR § 425.612(a)(1)(ii):

- Not reside in a SNF or other long-term care setting;
- Be medically stable;
- Not require inpatient or further inpatient hospital evaluation or treatment;
- Have certain and confirmed diagnoses;
- Have an identified skilled nursing or rehabilitation need that they cannot receive as an outpatient; and
- Have been evaluated and approved for admission to the SNF within 3 days prior to the SNF admission by an ACO provider/supplier that is a physician, consistent with the ACO's beneficiary evaluation and admission plan.

As described in the December 2018 Final Rule, CMS does not consider independent or assisted living facilities to be long-term care settings for purposes of determining a beneficiary's eligibility to receive SNF services pursuant to the SNF 3-Day Rule Waiver. Additionally, the requirement that a beneficiary has been evaluated by an ACO provider/supplier that is a physician does not preclude review and approval by an ACO provider/supplier that is a physician overseeing an evaluation conducted by another provider/supplier that is involved in the beneficiary's care. That provider can be a nurse practitioner, a physician assistant, or a clinical nurse specialist who has directly evaluated the beneficiary and has found that the beneficiary requires admission to a SNF.

To clarify, if a beneficiary is admitted to a SNF without a qualifying 3-day inpatient hospital stay prior to an ACO's termination date, and all requirements of the SNF 3-Day Rule Waiver are met, the SNF services furnished after the ACO's termination date, within the same episode of care, would be covered under the SNF 3-Day Rule Waiver.

3.3.1 PROSPECTIVELY ASSIGNED BENEFICIARIES

ACOs under the prospective assignment methodology will receive an initial assignment list from CMS at the start of each performance year. On a quarterly basis, these ACOs receive a list of beneficiaries whom CMS has removed from the ACO's prospective assignment list as a result of meeting select assignment exclusion criteria. To learn more about the prospective assignment methodology, refer to the current version of the

Shared Savings and Losses and Assignment Methodology Specifications available on the Program Guidance & Specifications webpage.

During the performance year, a beneficiary loses their eligibility to receive covered SNF services under the waiver if they appear on a quarterly report excluding the beneficiary from the ACO's original prospective assignment list, unless the 90-day grace period applies (refer to Section 9 below). The beneficiaries who remain on the ACO's prospective assignment list continue to be eligible to receive covered SNF services under the applicable SNF 3-Day Rule Waiver. The ACO should notify its SNF affiliates of changes to beneficiary eligibility in a timely manner to comply with the waiver requirements. The ACO should refer to the *Assignment List Report and Assignment Summary Report User's Guide*, located in the Program Resources section of the Knowledge Library tab in ACO-MS, for more information on the prospective assignment lists and quarterly exclusion reports.

3.3.2 PRELIMINARILY PROSPECTIVELY ASSIGNED BENEFICIARIES

ACOs will receive an initial assignment list from CMS at the start of each performance year. On a quarterly basis, ACOs under the preliminary prospective with retrospective reconciliation assignment methodology receive a new list of beneficiaries whom CMS has preliminarily prospectively assigned to the ACO for the quarter.

The SNF 3-Day Rule Waiver is available for all beneficiaries who have been identified as preliminarily prospectively assigned to the ACO on the initial performance year assignment list or on one or more assignment lists for 1st, 2nd, and 3rd quarters of the performance year, for SNF services provided after the beneficiary first appeared on one of the assignment lists for the applicable performance year. The beneficiary remains eligible to receive SNF services furnished in accordance with the waiver unless they are no longer enrolled in both Part A and Part B or have enrolled in a Medicare group health plan. To learn more about the preliminary prospective assignment methodology refer to the current version of the Shared Savings and Losses and Assignment Methodology Specifications on the Program Guidance & Specifications webpage.

4 How to Apply for a SNF 3-Day Rule Waiver

The SNF 3-Day Rule Waiver Application requires the ACO to provide sufficient information to demonstrate that the ACO has the capacity to identify and manage beneficiaries who, under the waiver, would be either directly admitted to a SNF or admitted to a SNF after an inpatient hospitalization of fewer than 3 days.

ADDITIONAL RESOURCES

- Application Toolkit webpage
- Application Types & Timeline webpage

Applicants must submit their applications through ACO-MS in accordance with the guidance provided. The ACO submits its SNF 3-Day Rule Waiver application and proposed SNF affiliate(s)' executed agreement(s) during Phase 1 of the application

process. A SNF 3-Day Rule Waiver application requires an accompanying submission of at least one proposed SNF affiliate change request that includes an executed SNF Affiliate Agreement. Per § 425.612(b)(3)(iii), an ACO must have at least one approved SNF affiliate to be approved to use the SNF 3-Day Rule Waiver. Refer to Section 5 for additional details on SNF Affiliate Agreements and Section 6.1.2 for how to add SNF affiliates.

The ACO will be required to attest that its ACO has established and will make available to CMS upon request: a communication plan between the ACO and its SNF affiliates, a care management plan for beneficiaries admitted to a SNF affiliate, and a beneficiary evaluation and admission plan describing how its ACO plans to implement the waiver. Refer to Section 7 for additional information on completing the SNF narratives.

ACOs receive multiple request for information (RFI) notifications summarizing CMS' review of submitted application information. The ACO should carefully review the RFIs sent by CMS because it only has a few opportunities to correct deficiencies identified in the submitted application information. Please note that while the application cycle deadlines are subject to change, CMS will not accept late submissions.

5 SNF Affiliate Agreements

CMS requires that ACOs execute contractual agreements with each SNF affiliate to ensure that the ACO clearly articulates the requirements at 42 CFR § 425.612(a)(1)(iii)—and the SNF understands and agrees to comply with the requirements—regarding the SNF 3-Day Rule Waiver. An ACO may not include a SNF on its SNF Affiliate List unless an individual authorized to bind the SNF affiliate's Medicare-enrolled taxpayer identification number (TIN) has signed a SNF Affiliate Agreement with the ACO. CMS does not provide a standardized SNF Affiliate Agreement template for ACOs; however, CMS encourages ACOs to include the signature page information indicated in the format referenced in Appendix A.

CMS recommends the ACO includes the following information in its SNF Affiliate Agreement to ensure that each SNF affiliate understands how participating in a SNF 3-Day Rule Waiver may impact it. If this information is not included in the SNF Affiliate Agreement, the ACO should clearly discuss the following with each SNF affiliate during the ACO's SNF 3-Day Rule Waiver SNF affiliate education and onboarding process before an authorized representative of the SNF affiliate signs the SNF Affiliate Agreement:

- Training requirements on both the ACO's beneficiary evaluation and admission plan and the care management plan for beneficiaries admitted to the SNF affiliate pursuant to the waiver.
- Express requirement that the ACO is to notify the SNF affiliate when the SNF 3-Day Rule Waiver has ended.

5.1 EXECUTED SNF AFFILIATE AGREEMENTS

Each ACO must submit an executed SNF Affiliate Agreement (first page and signature page are sufficient) for each of its SNF affiliates. In the change request generated by ACO-MS, renewal and early renewal ACOs will have the option to either submit a newly executed SNF Affiliate Agreement or to have ACO-MS carry forward the SNF Affiliate Agreement with the most recent upload. The executed agreement must include a signature date and either a digital signature (refer to Appendix B) or a wet signature from both the ACO and SNF affiliate.

All SNF Affiliate Agreements must meet all Shared Savings Program 3-Day Rule Waiver requirements under the regulations.

The SNF Affiliate Agreement with the ACO includes all individual SNFs under the Medicare-enrolled TIN that agree to partner with the ACO for purposes of a SNF 3-Day Rule Waiver. While the SNF TIN signs the SNF Affiliate Agreement on behalf of the individual SNF(s), the SNF TIN should notify all providers and suppliers billing through each of the CMS Certification Numbers (CCNs) on the SNF Affiliate List about the SNF 3-Day Rule Waiver requirements of the Shared Savings Program before the SNF affiliates begin to admit beneficiaries under a SNF 3-Day Rule Waiver. Section 425.612(d)(2) authorizes CMS to monitor and audit the use of the SNF 3-Day Rule Waiver in accordance with 42 CFR § 425.316. Such monitoring may include review of any and all SNF Affiliate Agreement(s) at any time to determine compliance with Shared Savings Program requirements.

The SNF Affiliate Agreement should also:

- Expressly state the only parties to the agreement are the ACO and the SNF affiliate TIN.
- Be signed on behalf of the ACO and the SNF affiliate TIN by individuals who are authorized to bind the ACO and the SNF affiliate, respectively.
- Include the ACO legal entity name (LEN) and the SNF affiliate TIN legal business name (LBN) on the SNF Affiliate Agreement. These must match the SNF Affiliate change request in ACO-MS.
- Include a signature page that reflects information (such as contact information) for both the ACO and the SNF affiliate TIN.

The ACO is also expected to confirm the accuracy of the following information with respect to its executed SNF Affiliate Agreements:

- The SNF affiliate TIN LBN matches the SNF affiliate TIN LBN in the Provider Enrollment, Chain, and Ownership System (PECOS).
- The SNF affiliate TIN matches the SNF affiliate TIN listed for the entity in PECOS.

- The SNF affiliate TIN is Medicare-enrolled and the SNF affiliate CCN is Medicare-enrolled together with the SNF affiliate TIN.
- If applicable, the SNF affiliate CCN has an overall rating of 3 stars or higher under the CMS 5-star Quality Rating System.

Note: An ACO that chooses to include its communication plan, beneficiary evaluation and admission plan, and care management plan as appendices to its SNF Affiliate Agreements—or that incorporate them by reference into its agreements—should amend or update and re-execute the SNF Affiliate Agreements whenever any of these plans are revised to ensure SNF affiliates are aware of all modifications to these important documents.

5.1.1 RENEWAL/EARLY RENEWAL ACOs WITH CURRENT SNF 3-DAY RULE WAIVERS RENEWING FOR A NEW SHARED SAVINGS PROGRAM AGREEMENT PERIOD

Renewal and early renewal applicants with a current SNF 3-Day Rule Waiver who elect to apply for a SNF 3-Day Rule Waiver for use in the new Shared Savings Program agreement period are not required to submit newly executed SNF Affiliate Agreements for any SNF affiliates the ACO wishes to carry into the new agreement period, provided that current agreements meet the Shared Savings Program requirements under 42 CFR § 425.612(a)(1)(iii). During Phase 1 of the Shared Savings Program application submission period, renewal and early renewal ACO applicants may select SNF affiliates to carry into the new SNF 3-Day Rule Waiver agreement period. The ACO will have the option in the change request generated by ACO-MS to either submit a newly executed SNF Affiliate Agreement or to have ACO-MS carry forward the SNF Affiliate Agreement with the most recent upload date. However, if an ACO's previously executed SNF Affiliate Agreement does not meet all current requirements, the ACO will need to update the existing executed SNF Affiliate Agreement or execute a new agreement that meets current requirements.

6 SNF Affiliate List

A SNF Affiliate List identifies all of an ACO's SNF affiliates by their Medicare-enrolled SNF TINs, SNF TIN LBNs, and SNF CCNs. Each ACO establishes its SNF Affiliate List during Phase 1 of the Shared Savings Program Application process.

6.1 SNF AFFILIATE LIST REQUIREMENTS

The SNF Affiliate List must include the SNF affiliate's TIN, TIN LBN, and CCN for each SNF, and/or hospital or CAH operating under a swing bed agreement that wishes to partner with the ACO for purposes of the SNF 3-Day Rule Waiver. Each SNF affiliate TIN and SNF affiliate CCN must be Medicare-enrolled together in PECOS at the time of CMS' enrollment screening. The ACO must have a signed SNF Affiliate Agreement with the ACO that meets the requirements in 42 CFR § 425.612.

Additionally, for SNF affiliates eligible to be included in the CMS 5-star Quality Rating System, the SNF affiliate must have and maintain an overall quality rating of 3 or more stars to be approved for the SNF 3-Day Rule Waiver. The only exceptions to this requirement are hospitals and CAHs operating under swing bed agreements, as they are not eligible to have a rating on the CMS 5-star Quality Rating System. SNF affiliates that are eligible for the CMS 5-star Quality Rating System but that have no rating—new SNFs, for example—are not eligible to partner with an ACO for purposes of the SNF 3-Day Rule Waiver.

As part of the SNF Affiliate List screening process, CMS performs star rating checks of the SNF affiliates using the most recent publicly available data at the time of the star rating check within the Provider Information Dataset available from the CMS Datasets website. A SNF affiliate change request will be denied if the eligible SNF affiliate does not have a minimum 3-star rating by CMS-specified and published deadlines and at the time of CMS' final check.

The ACO is responsible for ensuring its SNF Affiliate Lists are accurate and include only eligible SNF affiliates that have executed valid SNF Affiliate Agreements to partner with the ACO. After CMS approves a SNF 3-Day Rule Waiver Application, the ACO:

- May add SNF affiliates for CMS review and approval during the CMS application and change request cycle.
    - Notify CMS of any entities to be added to the SNF Affiliate List at such time and in the form and manner specified by CMS (refer to Section 6.1.2 for additional information on adding SNF affiliates)
- May delete SNF affiliates at any time during the current performance year.
    - Timely delete the SNF affiliate from the SNF Affiliate List in ACO-MS after the SNF Affiliate Agreement terminates (refer to Section 6.1.4 for additional information for deleting and terminating SNF affiliates). Failure to comply with the requirement to timely delete a SNF affiliate from the SNF Affiliate List may subject the ACO to compliance actions.
- Must maintain, update, and annually provide the list of SNF affiliates to CMS using ACO-MS at the beginning of each performance year and at other times as specified by CMS.
- Must certify the accuracy of the SNF Affiliate List prior to the start of each performance year and at other times as specified by CMS.

SNF affiliates are not required to be ACO participants or ACO providers/suppliers. Additionally, SNF affiliates may partner with more than one Shared Savings Program ACO. SNF affiliates that are not ACO participants or ACO providers/suppliers may partner with entities participating in other shared savings initiatives. Keep in mind that SNF affiliates that are ACO participants or ACO providers/suppliers do not automatically

qualify to offer services under the applicable SNF 3-Day Rule Waiver. A SNF, hospital, or CAH operating under a swing bed agreement must appear on the ACO's certified SNF Affiliate List and have entered the required SNF Affiliate Agreement with the ACO—as well as meet all other applicable requirements—in order to be eligible for payment for services provided under the SNF 3-Day Rule Waiver.

An ACO should validate the proposed SNF affiliate TINs and CCNs by submitting them through ACO-MS. To ensure the SNF 3-Day Rule Waiver is applied and claims are processed correctly, the correct TIN and CCN must appear in PECOS and CMS claims data. If a SNF—or hospital or CAH operating under a swing bed agreement—uses a CCN that does not appear on the SNF Affiliate List and admits a beneficiary without a qualifying 3-day inpatient hospital stay, CMS will reject the claim.

The ACO and SNF affiliates should discuss any changes to the SNF affiliates' TINs and/or CCNs as they appear on the certified SNF Affiliate List. The SNF affiliate TIN and SNF affiliate CCN must be Medicare-enrolled together in PECOS. If a SNF affiliate's TIN and/or CCN changes (e.g., digits change) or the CCN is not Medicare-enrolled together with the SNF affiliate TIN during a performance year, the ACO must report the changes to CMS through ACO-MS. Such changes will result in the SNF affiliate not being eligible to use the SNF 3-Day Rule Waiver for that performance year, as an entity that changes its TIN and/or CCN is considered a new SNF affiliate. Any new SNF affiliate needs to be evaluated and approved by CMS before being eligible to use a SNF 3-Day Rule Waiver in the upcoming performance year. Any new SNF affiliate (TIN and/or CCN) is subject to the SNF Affiliate List review cycle described below.

6.1.1 SNF AFFILIATE LIST REVIEW CYCLE

CMS is required to review SNF affiliates for all ACOs applying for a SNF 3-Day Rule Waiver. As part of this review, CMS may require an ACO to correct or update the information on the SNF Affiliate List submitted as part of its SNF 3-Day Rule Waiver application. CMS will provide the ACO with RFI notifications, which will summarize CMS' review of submitted application information, including feedback on SNF affiliate submissions. An ACO may receive multiple RFIs during the application process. It is important that the ACO carefully review any RFIs, as there are limited opportunities to correct CMS-identified deficiencies.

6.1.2 SNF AFFILIATE LIST ADDITIONS

An ACO that has been approved for a SNF 3-Day Rule Waiver may make changes to its SNF Affiliate List for the upcoming performance year. Change requests to add SNF affiliates for an upcoming performance year will be reviewed during an established CMS review cycle. Any changes that an ACO wants to make to its SNF Affiliate List for the next performance year must be performed by submitting those changes in ACO-MS, by CMS-specified and published deadlines.

Prior to the deadline to add SNF affiliates, the ACO should ensure that all submitted SNF affiliate information is correct. The ACO must submit a new SNF affiliate change request to correct errors:

- If the digit(s) of a SNF affiliate TIN or CCN change, or if the SNF affiliate CCN is now enrolled together with a different SNF affiliate TIN in PECOS, this change is considered a new change request.
- If an ACO submits a change request to its SNF Affiliate List and a required identifier is submitted incorrectly (e.g., the digits of the TIN are typed incorrectly), the error can only be corrected by submitting a new change request to add the SNF affiliate.

6.1.3 SNF AFFILIATE LEGAL BUSINESS NAME CHANGES

If a SNF affiliate changes its TIN LBN for any reason, the ACO must update the relevant SNF Affiliate Agreement to reflect the new TIN LBN as it appears in PECOS. This document should be maintained internally and made available for CMS review upon request. The updated SNF Affiliate Agreement reflecting the TIN LBN change should be submitted when the ACO applies for a SNF 3-Day Rule Waiver for its next Shared Savings Program participation agreement period. If the submission of the change request to carry forward the SNF affiliate generates a PECOS deficiency (SNF affiliate TIN LBN mismatch), the ACO will have the opportunity to update the SNF TIN LBN in ACO-MS during CMS-specified and published deadlines.

6.1.4 SNF AFFILIATE LIST DELETIONS

When a SNF Affiliate Agreement terminates during the performance year, the ACO must delete the SNF affiliate in ACO-MS. When a SNF affiliate record is terminated, ACO-MS will prompt the ACO to enter the date on which the ACO intends to terminate the SNF Affiliate Agreement. The SNF Affiliate Agreement end date will be the date the SNF affiliate is no longer eligible for payment for services under the waiver. Please note: ACO-MS functionality does not enable an ACO to enter a termination date earlier than the date the record is terminated in ACO-MS nor enter a termination date beyond the end of the current performance year.

The ACO should alert the former SNF affiliate that as of the SNF Affiliate Agreement end date it will not be a SNF affiliate under the SNF 3-Day Rule Waiver. Once a SNF Affiliate Agreement is terminated, CMS will begin denying claims for lack of a qualifying 3-day inpatient hospital stay that formerly would have been covered under the SNF 3-Day Rule Waiver. However, if a beneficiary is admitted to a SNF without a qualifying 3-day inpatient hospital stay prior to a SNF Affiliate's Agreement end date—and if all requirements of the SNF 3-Day Rule Waiver are met—the SNF services furnished after the SNF Affiliate Agreement end date and within the same episode of care would be covered under the SNF 3-Day Rule Waiver.

6.2 MAINTAINING THE SNF AFFILIATE LIST IN ACO-MS

The ACO can review approved SNF affiliate Medicare enrollment information and star ratings under the CMS 5-star Quality Rating System directly within ACO-MS. This functionality allows the ACO to identify SNF affiliates that may have become non-Medicare-enrolled and/or now have an overall rating below 3 stars. CMS anticipates incorporating these ongoing updates within ACO-MS by the first of each month until the end of the change request cycle for the next performance year.

To review this information, the ACO may log into ACO-MS and navigate to the SNF Affiliates subtab. Any SNF affiliate(s) that may be non-Medicare-enrolled (per PECOS) and/or have a rating below 3 stars (per the most recent update from Care Compare) will display with a red exclamation point warning icon. The ACO may also identify these SNF affiliates by using the “Filter" option to select any SNF affiliate(s) with a Medicare Enrollment Status of “Failed" and/or a SNF Star Rating of “2 or Less Stars.”

CMS expects the ACO to use this information to help manage its SNF Affiliate List on an ongoing basis.

If one or more SNF affiliates has a Medicare Enrollment Status of “Failed" (as displayed in ACO-MS), the ACO may:

- Contact the SNF affiliate to confirm their enrollment in Medicare is valid or work with the SNF affiliate to reenroll, reactivate, or revalidate their Medicare enrollment.
- Take any necessary action(s) in ACO-MS to rectify instance(s) of non-Medicare-enrolled SNF affiliates in accordance with established change request cycle deadlines.
- Delete SNF affiliates without valid Medicare enrollments, as necessary.

If one or more SNF affiliates has a SNF Star Rating of “2 or Less Stars" (as displayed in ACO-MS), the ACO may:

- Inform SNF affiliates of the drop in their overall star rating and educate them regarding the consequences of not maintaining an overall star rating of 3 stars or higher.
- Delete SNF affiliates unable to maintain the requisite 3-star rating, as necessary.

7 SNF 3-Day Rule Waiver Plan Narratives

An ACO must submit to CMS supplemental application information in the form and manner specified by CMS sufficient to demonstrate the ACO has the capacity to identify and manage beneficiaries who would be either directly admitted to a SNF or admitted to a SNF after an inpatient hospitalization of fewer than 3 days.

An ACO must submit an attestation that it has established SNF 3- Day Rule Waiver plan narratives and will make them available to CMS upon request. These narratives must describe how the ACO plans to implement the SNF 3-Day Rule Waiver including:

- The communication plan between the ACO and its SNF affiliates.
- The care management plan for beneficiaries admitted to a SNF affiliate.
- The beneficiary evaluation and admission plan approved by the ACO medical director and the healthcare professional responsible for the ACO's quality improvement and assurance processes under 42 CFR § 425.112.

During the course of the performance period, an ACO may elect to update its SNF 3-Day Rule Waiver plan narratives and should maintain the updated narratives.

7.1 COMMUNICATION PLAN BETWEEN THE ACO AND SNF AFFILIATE

When developing a communication plan an ACO may want to consider including:

- How information will be shared across sites of care and made available to all members of the care team for optimal care integration. This could include describing Health Insurance Portability and Accountability Act (HIPAA)-compliant communication tools that will be used by the care team and the ACO.
- How the ACO will share the prospective or preliminary prospective beneficiary assignment list, as well as the quarterly exclusion lists, with SNF affiliates to ensure the ACO and SNF affiliates are able to correctly identify the beneficiaries eligible to receive covered SNF services under the SNF 3-Day Rule Waiver.
- How frequently communications will take place between the ACO and its SNF affiliates for purposes of such activities as administering the waiver, data sharing, education, and compliance monitoring.
- How the ACO will communicate the beneficiary evaluation and admission plan and care management plan to the SNF affiliates and other individuals or entities responsible or involved in providing or coordinating services under the waiver.
- How the ACO will respond to questions and complaints related to the ACO's use of the SNF 3-Day Rule Waiver.

7.2 CARE MANAGEMENT PLAN FOR BENEFICIARIES ADMITTED TO THE SNF AFFILIATE

When developing a care management plan an ACO may want to consider including:

- Who at the ACO provider/supplier is responsible for initiating the admission and care management plan.

- Who at the SNF affiliate is responsible for accepting the beneficiary and implementing the care management plan.
- How the designated ACO provider/supplier and the designated person from the SNF affiliate will certify that the beneficiary meets requirements to receive covered SNF services under the waiver.
- How the beneficiary's care will be managed at the SNF affiliate, including how the beneficiary's care will seamlessly transition upon discharge from the SNF affiliate to the beneficiary's primary care provider or other health care provider as determined by the care team and beneficiary.
- Who is responsible for responding to inquiries about the care management plan.

7.3 BENEFICIARY EVALUATION AND ADMISSION PLAN

When developing a beneficiary evaluation and admission plan an ACO may want to consider including:

- How beneficiaries will be admitted to a SNF directly from home or an outpatient setting under the waiver.
- How beneficiaries will be admitted to a SNF when it has been determined that the beneficiary does not need the full 3-day inpatient hospital stay.
- How the ACO will inform beneficiaries about the waiver and their options for care settings.

8 SNF 3-Day Rule Waiver Medicare Claims Processing

SNF waiver-approved ACOs must comply with all Medicare claims submission requirements, except the requirement for a 3-day inpatient hospital stay prior to a Medicare-covered, post-hospital, extended care service per 42 CFR § 425.612(a). A SNF 3-Day Rule Waiver does not change FFS billing requirements (other than the 3-day inpatient hospital stay requirement).

Beginning with admissions on or after January 1, 2020, SNF affiliates (including hospitals and CAHs operating under swing bed agreements and partnering with ACOs as SNF affiliates) are required to include demonstration code 77 in the treatment authorization code field on claims when the SNF affiliate intends for CMS to waive the 3-day qualifying stay requirement.

Including demonstration code 77 in the treatment authorization code field provides an attestation on behalf of the SNF affiliate that the eligibility requirements specified in 42 CFR § 425.612 have been met and helps ensure payment only when those requirements are met. Such eligibility requirements include, but are not limited to, the patient having been evaluated and approved for admission to the SNF within 3 days

prior to the SNF admission by an ACO provider/supplier that is a physician, consistent with the ACO's beneficiary evaluation and admission plan.

A SNF claim must meet the following conditions:

- "Received" date on the claim is on or after January 1st of the calendar year indicated on the claim's "From" date;
- A CCN (first 6 digits) is included on the claim that is also found on the ACO's certified SNF Affiliate List in ACO-MS;
- The Medicare Beneficiary Identifier (MBI) included on the claim is also found on the ACO's beneficiary assignment list;
- The admission date on the claim is on or after the effective start date of a SNF 3-Day Rule Waiver; and
- The beneficiary is admitted to a SNF prior to an ACO's termination date in the Shared Savings Program as well as the termination date of the SNF Affiliate's Agreement.

A SNF claim that meets the above criteria, but that does not include demonstration code 77 in the treatment authorization code field will be returned to the provider. Additionally, a SNF claim that includes demonstration code 77 and does not meet the above criteria will be rejected.

Note that beneficiaries maintain their freedom of choice to select any SNF they choose. If a beneficiary selects a SNF that is not on an ACO's approved SNF Affiliate List and that SNF admits the beneficiary without a qualifying 3-day inpatient hospital stay, CMS will reject the claim for failing to meet one of the required elements (i.e., the SNF must be a SNF affiliate on the approved SNF Affiliate List). If the selected SNF is not a SNF affiliate, current Medicare SNF coverage requirements apply for SNF services. CMS only reimburses the SNF for services furnished to beneficiaries without a prior 3-day inpatient hospital stay if the SNF is on the ACO's SNF Affiliate List for the performance year in which it admits the beneficiary, and all other criteria for eligibility under the SNF 3-Day Rule Waiver are satisfied. If CMS rejects a SNF claim for lack of a 3-day inpatient hospital stay and the ACO, SNF affiliate, and/or the beneficiary did not meet the eligibility requirements (described in Section 3 above), CMS may require the SNF waiver-approved ACO to submit a corrective action plan (CAP) addressing what actions the ACO will take to ensure appropriate use of the waiver in the future and take other remedial actions, as appropriate.

A SNF 3-Day Rule Waiver does not change FFS billing requirements (other than the 3-day inpatient hospital stay requirement), and therefore does not change the SNF transfer/readmission requirements outlined in 42 CFR § 409.36 and the *Medicare Benefit Policy Manual,* Chapter 8 – Coverage of Extended Care (SNF) Services, Section 20.2.3 – Readmission to a SNF. In part, these Manual requirements state: "If an

individual who is receiving covered post-hospital extended care, leaves a SNF and is readmitted to the same or any other participating SNF for further covered care within 30 days after the day of discharge, the 30-day transfer requirement is considered to be met. The same is true if the beneficiary remains in the SNF to receive custodial care following a covered stay, and subsequently develops a renewed need for covered care there within 30 consecutive days after the first day of non-coverage. Thus, the period of extended care services may be interrupted briefly and then resumed, if necessary, without hospitalization preceding the resumption of SNF coverage."

Therefore, a beneficiary who is assigned to an ACO that is approved for the SNF 3-Day Rule Waiver and has been receiving covered SNF services in a SNF affiliate pursuant to that waiver and who is transferred from the SNF affiliate to another SNF within 30 days of discharge from the SNF affiliate, would not need to be "re-waived." The circumstances surrounding the initial SNF admission would be considered for purposes of determining Medicare coverage for SNF services. The beneficiary would be eligible to be transferred to any Medicare-enrolled SNF without regard to whether the receiving SNF is approved as a SNF affiliate of the ACO to which the beneficiary is assigned.

9 Beneficiary Protections and 90-Day Grace Period

CMS determined that additional protections were necessary for beneficiaries receiving services under a SNF 3-Day Rule Waiver and has included the following beneficiary protections.

CMS modified 42 CFR § 425.612(a)(1) to include a 90-day grace period that will permit payment for SNF services provided without a qualifying 3-day inpatient hospital stay to certain beneficiaries who were initially included on the ACO's prospective assignment list but who were subsequently excluded during the performance year if such services would otherwise be covered under the SNF 3-Day Rule Waiver. This allows SNF waiver-approved ACOs and SNF affiliates a grace period to update their systems to account for beneficiaries who were previously eligible to receive services under a SNF 3-Day Rule Waiver but were excluded from assignment to the ACO in the most recent quarterly update to the ACO's prospective assignment list. The 90-day grace period begins on the date that CMS delivers the quarterly beneficiary exclusion list to an ACO.

The 90-day grace period does not apply to beneficiaries who have enrolled in a Medicare Advantage Plan or are otherwise no longer enrolled in Part A and Part B. For each performance year, the initial assignment list is based on the most recent dataset available and does not include claims processed or beneficiary changes after the fourth quarter of the previous performance year. Therefore, beneficiaries newly enrolled in a Medicare Group Health Plan or no longer enrolled in Part A and Part B may appear on the initial assignment list. However, as described in Section 8, a SNF 3-Day Rule Waiver does not change FFS billing requirements (other than the 3-day inpatient stay requirement). The ACO should verify a beneficiary's eligibility for the SNF 3-Day Rule Waiver prior to admission to a SNF affiliate. Additionally, providers and suppliers are

expected to confirm a beneficiary's health insurance coverage to determine if they are eligible for FFS benefits.

The 90-day grace period that applies to beneficiaries assigned to waiver-approved ACOs participating under the prospective assignment methodology does not extend to include beneficiaries who are preliminarily prospectively assigned to a waiver-approved ACO. Beneficiaries who are preliminarily prospectively assigned to a waiver-approved ACO will remain eligible to receive services furnished in accordance with the SNF 3-Day Rule Waiver for the remainder of that performance year unless they enroll in a Medicare Group Health Plan or no longer enrolled in Part A and Part B. The ACO has the flexibility to use the SNF 3-Day Rule Waiver to permit any beneficiary who has been identified as preliminarily prospectively assigned to the ACO during the performance year to receive covered SNF services without a prior 3-day inpatient hospital stay, when clinically appropriate.

The ACO should educate SNF affiliates and ACO providers/suppliers about the 90-day grace period. The ACO is expected to communicate information contained in the assignment list and quarterly exclusion reports in a timely and accurate manner to its SNF affiliates and ACO providers/suppliers that rely on this information during their evaluation of a beneficiary for admission under a SNF 3-Day Rule Waiver.

In the event that a SNF affiliate of an ACO that has been approved for the SNF 3-Day Rule Waiver admits a FFS beneficiary who was never prospectively or preliminarily prospectively assigned to the ACO or was prospectively assigned but was later excluded and the 90-day grace period has lapsed, and the claim is rejected only for lack of a qualifying 3-day inpatient hospital stay, CMS will make no payment to the SNF. The SNF may not charge the beneficiary for the non-covered SNF services and must return to the beneficiary any monies collected for such services. In this circumstance, the SNF affiliate will be prohibited from charging a beneficiary for non-covered SNF services, even in cases where the beneficiary explicitly requested or agreed to being admitted to the SNF in the absence of a qualifying 3-day inpatient hospital stay, if all other requirements for coverage are met.

10 SNF 3-Day Rule Waiver Beneficiary Communications

For SNF waiver-approved ACOs, it is important to highlight that CMS has certain rules and policies governing communications to beneficiaries. Of note, hospital discharge planning conditions of participation standards found at 42 CFR §§ 482.13 and 482.43(c)(6)–(8) continue to apply. In part, these rules require hospitals to include a list of Medicare-participating SNFs in the discharge plan for those patients for whom the plan indicates post-hospital extended care services are required. During the discharge planning process, the hospital must inform the patient of their freedom to choose among Medicare-participating, post-hospital providers and must not direct the patient to specific

provider(s) or otherwise limit the pool of qualified providers from which the patient may choose. Additionally, under the Patient's Rights Condition of Participation at 42 CFR § 482.13, the hospital must always respect the patient's right to make informed decisions.

CMS has developed a SNF 3-Day Rule Waiver Notice template for SNF waiver-approved ACOs to use to describe the waiver to eligible beneficiaries. For example, a participating physician can use the waiver notice to supplement the discharge planning conversation and aid eligible beneficiaries in making an informed decision about whether and where to receive SNF services. The latest version of this template is available in the Marketing subtab in ACO-MS. ACOs are not permitted to modify template content, except in the spaces that CMS provides for ACO-specific information.

Please note that only SNF waiver-approved ACOs have the option to use the waiver notice template to educate and inform their assigned beneficiaries who may be eligible to receive covered services under a SNF 3-Day Rule Waiver. This notice is not intended as general information and could lead to confusion if shared with Medicare beneficiaries who are not eligible for such services.

11 SNF 3-Day Rule Waiver Public Reporting Requirements

Consistent with the requirements of 42 CFR § 425.612(d)(1), SNF waiver-approved ACOs must report their use of a SNF 3-Day Rule Waiver (i.e., reporting "yes" or "no") as part of Shared Savings Program public reporting requirements.

12 SNF 3-Day Rule Waiver Compliance

CMS monitors and may audit the use of SNF 3-Day Rule Waivers. Misuse of a SNF 3-Day Rule Waiver may result in CMS taking remedial action against the ACO up to and including termination of the ACO from the Shared Savings Program. Additionally, CMS reserves the right to periodically review claims data, beneficiary medical records, and/or Minimum Data Set Nursing Home Assessments to confirm whether the ACO and its SNF affiliates appropriately confirm beneficiary eligibility prior to admission to a SNF affiliate. CMS may take remedial action if it finds that Medicare beneficiaries admitted to a SNF affiliate under the SNF 3-Day Rule Waiver did not meet beneficiary eligibility requirements.

Appendix A: Sample SNF Affiliate Agreement Introductory Paragraph/Signature Page

Sample Introductory Paragraph:

This ACO SNF Affiliate Agreement (“Agreement”) is by and between Accountable Care Organization of ABC, LLC DBA ABC ACO (“ACO”), and XYZ Group Practice P.C. (“SNF Affiliate”) and is effective [Month, Day, Year] (“Effective Date”).

<Body of Agreement>

Sample Signature Page:

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by the duly authorized representatives as of the dates below.

For the ACO	**For the SNF Affiliate**
Legal Entity Name	Legal Business Name
DBA Name	DBA Name
Signature (on behalf of the ACO)	Signature (on behalf of the SNF Affiliate)
Name	Name
Title	Title
Date	Date
Address	Address
City, State ZIP Code	City, State ZIP Code
Business Phone	Business Phone

Individual signing for the SNF Affiliate(s) agrees to the terms and conditions of this Agreement on behalf of the following SNF Affiliate CCNs:

< List of each CCN>

Appendix B: Information on Digital Signature Requirements

General Overview of Digital Signatures

If an ACO and SNF affiliate both consent to the use of digital signatures to execute a SNF Affiliate Agreement, they must use industry-accepted software to verify that the digital signatures represent the signers' consent to the terms of the agreement.

Generally, a digital signature requires two components: the signature generation process (i.e., when a signer embeds a unique signature in the electronic document, thus legally executing the document), and the signature verification process (i.e., the mechanism by which an auditing party is able to verify the signature's authenticity).

The ACO should maintain all physical and/or electronic records necessary to verify each digital signature that it submits for CMS review and provide these records to the Shared Savings Program upon request.

Digital Signature Programs

The Shared Savings Program does not require the use of any particular software product to execute a SNF Affiliate Agreement, and any software that employs digital signature algorithms and that fulfills the two requirements—signature generation and signature verification—may be employed. Should CMS question the integrity of the software used, it may send the ACO an RFI. Should an ACO receive an RFI, it should provide CMS with documented evidence of the verification process for the signature in question.

Regulation of Digital Signatures

The Electronic Signatures in Global and National Commerce Act (E-Sign Act), which was enacted on June 30, 2000, promotes the use of electronic contract formation, signatures, and recordkeeping in private commerce by establishing legal equivalence between paper and electronic contracts; pen and ink signatures and electronic signatures; and other legally required written documents (termed "records") and their electronic equivalents.

Additional Questions

Q1. What is the difference between a digital signature and an electronic signature?

Per Section 106 of the E-Sign Act, an electronic signature is defined as "an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record." A digital signature consists of both the electronic signature itself

and the verification process used to authenticate it. Digital signatures require the signer to use a digital certificate that links the signer with the document being signed, and a unique digital "fingerprint" is embedded in the document once signed. An electronic signature that lacks an authentication verification process will not be accepted. Any non-handwritten signature must be verifiable according to industry standards.

Q2. Do both parties to the Agreement have to use digital signatures to sign the SNF Affiliate Agreement?

No. So long as both parties agree that a digital signature has the full force and effect of a handwritten signature, one party may use a digital signature while the other uses a handwritten signature.

However, if only one party will be executing the document by a handwritten signature, then that party must sign the document first. The remaining party should then scan in the signed document and embed their digital signature upon that scanned document. Printing out a document that contains a digital signature hinders validation of the encryption required for authentication in this format.

Q3. What if a party needs to amend or change an agreement that was executed with digital signatures?

Should an agreement containing a digital signature need to be amended, it must be re-executed with a new digital signature to indicate consent to the changes.

Q4. Can CMS recommend any digital signature programs for ACOs to use in executing agreements with SNF affiliates?

The E-Sign Act does not permit agencies to require the use of specific products and/or manufacturers. Therefore, CMS cannot recommend any specific products or companies. However, in choosing a digital signature program, an ACO should review the E-Sign Act requirements and focus on the particular product's signature generation and verification capabilities.