Impact of the Continued Extreme and Uncontrollable Circumstances Policy on MSSP ACOs

Sara Hemmingson, FCAS, FSA, MAAA
612.286.1020 • sara.hemmingson@wakely.com

Hunter Schouweiler, MS-HSM
720.221.9603 • hunter.schouweiler@wakely.com

As the COVID-19 pandemic has continued to lengthen into multiple years, CMS has been taking additional steps to address the negative impact that the emergency could have to various healthcare programs and policies. For ACOs participating in the MSSP program, these actions will have a significant impact to the performance calculations for multiple years.

Background

In December of 2020, CMS published "Shared Savings and Losses and Assignment Methodology" for the Medicare Share Savings Program (MSSP) that included details around how CMS will be handling the Public Health Emergency for COVID-19[1]. As the worldwide COVID-19 pandemic has continued through 2021 and into 2022, there are additional implications to ACO's participating in the MSSP for performance years 2021 and 2022.

The Secretary of the Department of Health and Human Services first declared a Nationwide public health emergency (PHE) in late January of 2020, which triggered the Shared Savings Program's Extreme and Uncontrollable Circumstances Policy (EUC) for mitigating shared losses. The EUC will be in effect through the duration of the PHE, which must be renewed every 90 days[2]. It was last renewed January 16th, 2022.

The Intent and Application of the Extreme and Uncontrollable Circumstances Policy

The overall intent of the EUC policy is to mitigate the amount of an ACO's shared losses during the duration of an extreme event or circumstance. This is due to the fact that the organization may be constrained in their ability to optimally perform in the MSSP model, in some cases exacerbating downside losses. Generally, this policy only reduces the amount of the ACO's shared losses for the percentage of assigned beneficiaries in the county impacted by the EUC. However, due to the fact that the PHE is Nationwide, the EUC will apply to all beneficiaries for all ACOs involved in the MSSP program regardless of the specific counties they serve. Effectively, this means that no ACOs will be required to pay shared losses for performance year 2021.

Additionally, the EUC policy is intended to only reduce shared losses for the time period of the emergency. As there was a PHE in place for all of 2021, the EUC will apply for all performance months

[1] https://www.cms.gov/files/document/medicare-shared-savings-program-shared-savings-and-losses-and-assignment-methodology-specifications.pdf

[2] https://www.phe.gov/emergency/news/healthactions/phe/Pages/default.aspx

of 2021. With the most recent extension of the PHE starting January 2022, there will be at a minimum of one month included under the EUC for performance year 2022.

Which ACOs Will See an Impact

While all ACOs participating in the MSSP will fall under the EUC policy, the impact of the suspension of shared losses will vary across different models within the program. The MSSP Program has a variety of Tracks that an ACO can participate in, and these Tracks treat shared savings and losses differently.

Table 1

Track Name	Risk Type
Basic Track Levels A&B	One Sided Risk
Track 1	One Sided Risk
Basic Track Levels C&D	Two Sided Risk
Basic Track Level E	Two Sided Risk
Enhanced Track	Two Sided Risk
Track 1+ Model	Two Sided Risk
Track 2	Two Sided Risk
Track 3	Two Sided Risk

As shown in Table 1 above, each ACO MSSP Track has a specific manner of participating in risk. Basic Track Levels A & B, along with Track 1, each only have what we have referred to as One Sided Risk, while the remaining Tracks have Two Sided Risk. One Sided Risk means that the ACO will only participate in the shared savings, and does not participate in any shared losses. Two Sided Risk indicates that not only does the ACO participate in shared savings, they also participate in shared losses.

The EUC is structured to mitigate the shared losses portion of the performance calculation. Therefore, participants in a two-sided Track will not be required to pay out shared losses for the 2021 performance year, and at least a portion of the 2022 performance year. ACOs participating in a one-sided Track will not benefit from this policy.

Looking Ahead

If the PHE does not cover the full 2022 performance year, then the EUC policy will only apply to ACO's for the proportion of the year in which the PHE was in effect. Below is an illustration of how the EUC will impact an ACO with shared losses when the PHE covers only 8 months of the year.

$$ACO\ Shared\ Losses\ Before\ Application\ of\ EUC: \$2{,}500{,}000$$

$$Percentage\ of\ Year\ Affected\ by\ the\ EUC: 66.67\%\ (=\ 8\ /\ 12\ )$$

$$Percentage\ of\ Assigned\ Beneficiaries\ in\ affected\ counties: 100\%$$

$$Reduction\ to\ Shared\ Losses\ =\ \$2{,}500{,}000\ *\ 66.67\%\ *\ 100\%\ =\ \$1{,}666{,}667$$

$$Total\ Shared\ Losses, After\ Adjustment\ for\ EUC: \$2{,}500{,}000\ -\ \$1{,}666{,}667\ =\ \$833{,}333$$

In this example, you can see that the EUC policy reduced the shared losses for the ACO by approximately $1.67M, illustrating that the monetary impact of the policy is substantial, even for a partial year.

Conclusion

While it is still uncertain when the global COVID-19 pandemic will end, or when the administration will cease to renew the declaration of the PHE, we know that the application of the MSSP EUC policy is guaranteed for the full 2021 performance year and is likely to continue for at least part of the 2022 performance year. Wakely will be continually monitoring any new announcements regarding changes and is poised to be positioned to help ACOs manage this uncertainty now and after the end of the PHE.

Please contact Sara Hemmingson sara.hemmingson@wakely.com or Hunter Schouweiler hunter.schouweiler@wakely.com with any questions or to follow up on any of the concepts presented here.

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