February 14, 2018

Seema Verma, Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Dear Administrator Verma:

On behalf of the American Academy of Family Physicians (AAFP), which represents 129,000 family physicians and medical students across the country, I write in response to the interim final rule with comment period titled, "Medicare Shared Savings Program: Extreme and Uncontrollable Circumstances Policies for Performance Year 2017" (CMS-1702-IFC) as published by the Centers for Medicare & Medicaid Services (CMS) in the December 26, 2017, *Federal Register*.

The AAFP appreciates the alignment made in this interim final rule with the 2018 Quality Payment Program interim final rule with comment period. We offer the following recommendations to continue to strengthen primary care for Medicare beneficiaries.

I. Background
Summary
Shared Savings Program (SSP) ACOs located in geographic areas impacted by Hurricanes Harvey, Irma, and Maria and the California wildfires have reported significant impacts on healthcare provider operations and on area infrastructure. Stakeholders report that loss of infrastructure has significantly affected the utilization and cost of services (e.g. emergency room, hospitalizations, and skilled nursing facilities) furnished to their Medicare beneficiaries. In some cases, beneficiaries located in hurricane-affected areas who are being treated for chronic conditions have limited access to their primary care provider, resulting in the inability to obtain timely medication refills. Unfortunately, this may lead to an increase in the volume of hospital admissions. Additionally, disaster-affected ACO providers/suppliers, including hospitals and skilled nursing facilities, in affected areas are struggling to meet beneficiaries' discharge needs, including housing, family support, and personal care.

ACOs have expressed concerns that disaster-related effects on their ACO participants and assigned beneficiary population could affect their ability to successfully meet quality performance standards and, in the case of ACOs under performance based risk, avoid shared losses.

AAFP Response
The AAFP appreciates and supports CMS' policy efforts that recognize extreme and uncontrollable circumstances pertaining to ACOs located in geographic areas impacted by Hurricanes Harvey, Irma, and Maria and the California wildfires.

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II. Provisions of the Interim Final Rule
A. Shared Savings Program Extreme and Uncontrollable Circumstances Policies for Performance Year 2017
Summary
For program clarity, and to reduce unnecessary burdens on ACOs, CMS is aligning the automatic extreme and uncontrollable circumstances policies under SSP with the policies established under the Quality Payment Program (QPP). The SSP extreme and uncontrollable circumstances policies will apply when CMS determines an event is an automatic triggering event under QPP. The determination of an extreme and uncontrollable circumstance includes the identification of affected geographic areas and applicable time periods with respect to both financial performance and quality reporting under SSP. These policies will also apply to the determination of an ACO's quality performance if an extreme and uncontrollable event occurs during the applicable quality data reporting period for performance year 2017 and the reporting period is not extended. If a disaster occurs after the end of the performance year, this would have no impact on the determination of an ACO's financial performance for performance year 2017.

AAFP Response
The AAFP appreciates and supports the alignment of extreme and uncontrollable circumstances policies within SSP and QPP. Specific comments for consideration are noted below.

1. Determination of Quality Performance Scores for ACOs in Affected Areas
Summary
ACOs, ACO participants, and ACO providers/suppliers are frequently located across different geographic regions and serve a mix of beneficiaries impacted by extreme and uncontrollable circumstances. CMS is proposing a policy to establish when an ACO with ACO participants and ACO provider/suppliers located in multiple geographic areas will qualify for automatic extreme and uncontrollable circumstances in determination of quality performance. The determination will be based on whether 1) twenty percent or more of the ACO's assigned beneficiaries reside in counties designated as a declared emergency area in performance year 2017 as determined under QPP or 2) the ACO's legal entity is in such an area. Twenty percent was selected as a threshold as this provides a reasonable way to identify if ACOs' quality performance has been adversely affected.

Of all the estimated ACOs impacted by disasters in 2017, 92 percent had more than 20 percent of the assigned beneficiaries residing in declared emergency areas. However, some ACOs that have fewer than 20 percent of their assigned beneficiaries residing in affected areas have a legal entity that is in an declared emergency area. Their ability to report quality may be equally impacted since the legal entity may be unable to collect the information from the ACO participants or experience infrastructure issues.

CMS will determine the percentage of the ACO's performance year assigned population affected by a disaster based on the final list of beneficiaries assigned to the ACO for the performance year. ACOs under Tracks 1 and 2 will be able to use their quarterly assignment lists, which includes beneficiaries' county of residence, for early insight into whether they are likely to meet the 20 percent threshold. If CMS determines 20 percent or more of an ACO's final list of assigned beneficiaries for the performance year reside in an area that is affected by an extreme and uncontrollable circumstance as determined under the QPP, or the ACO legal entity is in such an area, the approach to calculate the ACO's quality performance score will be the following:

- ACO's minimum quality score will be set to equal the mean SSP ACO quality score for performance year 2017
- If the ACO can completely and accurately report all quality measures, CMS will use the higher of the ACO's quality score or the mean SSP ACO quality score

- If the ACO receives a quality score based on the mean, the ACO is not eligible for bonus points awarded based on quality improvement.

CMS will apply determinations made under the QPP with respect to an extreme and uncontrollable circumstance if one has occurred in the affected areas. CMS has sole discretion to determine the time period during which an extreme and uncontrollable circumstance occurred, the percentage of the ACO's assigned beneficiaries residing in the affected area, and the location of the ACO legal entity.

AAFP Response
The AAFP appreciates and supports CMS' policy efforts that recognize extreme and uncontrollable circumstances pertaining to ACOs. We concur with CMS that extreme and uncontrollable circumstances pertaining to hurricanes and wildfires warrant new policies for assessing quality and financial performance of SSP ACOs in affected areas for performance year 2017.

We agree with CMS that, if 20 percent or more of an ACO's assigned beneficiaries reside in an area identified under QPP as being affected by an extreme and uncontrollable circumstance or if the ACO's legal entity is in such area, it is reasonable to conclude an ACO's quality performance has been adversely affected. The AAFP recommends CMS measure this 20 percent hypothesis and other percentages as test cases. For instance, CMS might test whether 5 or 10 percent is also as likely to cause an impact on quality scores.

The effects of a disaster also affect healthcare providers billing under the tax identification number (TIN) of the ACO, thereby disrupting routine operations related to participation in SSP and achievement of program goals. The AAFP encourages CMS to include physicians and other healthcare clinicians as an additional method to identify if the ACO's quality performance has been affected. To help CMS develop this policy, if 50 percent of the national provider identifiers billing under the TIN are in an impacted area, based on the practice location listed in the Provider Enrollment, Chain and Ownership System, CMS should automatically apply the extreme and uncontrollable circumstance policy. This additional criterion would be consistent with the AAFP response to "Medicare Program; CY 2018 Updates to the Quality Payment Program and Quality Payment Program: Extreme and Uncontrollable Circumstance Policy for the Transition Year."

In the event CMS determines an ACO is being affected by extreme and uncontrollable circumstances, the AAFP believes the quality performance score could be set to the mean but should not be used to calculate future benchmarks or subsequent year thresholds until complete and accurate reporting can be achieved. Setting quality benchmarks to an artificial mean is not a valid approach to determine legitimate savings and losses.

The AAFP advocates that CMS must be transparent on the criteria used to determine the time period in which an ACO is identified as being in extreme and uncontrollable circumstances. Furthermore, CMS must work closely with the Medicare Administrative Contractors and Federal Emergency Management Agency to communicate these provisions to ACO entities.

2. Mitigating Shared Losses for ACOs Participating in a Performance-Based Risk Track
Summary
CMS is modifying the payment methodology under Tracks 2 and 3 to mitigate shared losses owed by ACOs affected by extreme and uncontrollable circumstances. Under the policy, a reduction in the ACO's shared losses, if any, will be determined by multiplying the shared losses by two factors:

1. The percentage of the total months in extreme and uncontrollable circumstance
2. The percentage of the ACOs assigned beneficiaries who reside in an area affected by an extreme and uncontrollable circumstance.

CMS will determine the percentage of the ACO's performance year assigned beneficiary population that was affected by the disaster based on the final list of beneficiaries assigned to the ACO for the performance year.

Claims will be removed for services furnished to assigned beneficiaries in the impacted area by an ACO participant that are submitted with a natural disaster modifier before calculating financial performance. ACOs will be held accountable for months in which there was no applicable disaster and for the assigned beneficiary population that was outside the area affected by the disaster. ACOs will continue to be entitled to share in any savings they may achieve for performance year 2017.

The historical benchmark will not be modified. The impact of the 2017 hurricanes and wildfires on ACO expenditures will be observed. Adjustments to the methodology for calculating the benchmarks may be revisited in future rule making.

AAFP Response
The AAFP supports the modification in the payment methodology to mitigate shared losses for ACOs in Tracks 2 and 3 affected by extreme and controllable circumstances.

Should extreme and uncontrollable circumstances occur to ACOs in future years, the AAFP recommends CMS compare ACO expenditures in impacted areas under Tracks 2 and 3 to the 2017 benchmarks to determine an approach that is fair and statistically reliable.

We appreciate the opportunity to provide these comments and make ourselves available for your questions. Please contact Robert Bennett, Federal Regulatory Manager at 202-232-9033 or rbennett@aapg.org with any questions.

Sincerely,

John Meigs, Jr. MD. FAAFP
Board Chair

About Family Medicine
Family physicians conduct approximately one in five of the total medical office visits in the United States per year – more than any other specialty. Family physicians provide comprehensive, evidence-based, and cost-effective care dedicated to improving the health of patients, families and communities. Family medicine's cornerstone is an ongoing and personal patient-physician relationship where the family physician serves as the hub of each patient's integrated care team. More Americans depend on family physicians than on any other medical specialty.