

Appendix E: New Repayment Mechanism Checklist, Version 4

This checklist summarizes the requirements outlined within the [Repayment Mechanism Arrangements Guidance](#) document and appendices. Accountable Care Organizations (ACOs) can use this checklist as a quick reference to review repayment mechanism documentation before submission to Centers for Medicare & Medicaid Services (CMS). Repayment mechanisms submitted to CMS are subject to review, and use of the checklist does not preclude an ACO from receiving deficiencies.

✓ Repayment Mechanism Preparation Checklist

- ☐ My ACO has reviewed the [Repayment Mechanism Arrangements Guidance](#) document.
- ☐ My ACO has considered using the RM Generator in the [ACO Management System \(ACO-MS\)](#) to draft RM documents.
- ☐ 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, and/or a surety bond.
- ☐ My ACO will only submit **draft** documents until notified by CMS that drafts are ready for finalization.

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

- ☐ Is the repayment mechanism established with an insured financial institution or company included on the U.S. Department of Treasury's List of Certified Companies 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 ACO legal entity name on the repayment mechanism match the legal entity name 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 (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 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, citing the regulations in 42 CFR Part 425?
- ☐ 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 repayment mechanism documentation?
- ☐ If the repayment mechanism includes an automatic extension clause, does it state that the financial institution will notify CMS at least 90 days in advance if it elects not to extend the repayment mechanism or if it wishes to terminate the repayment mechanism before it expires?

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✓ Funds Placed in Escrow (Applies to Escrow Agreement)

- ☐ Is CMS designated as the sole Recipient of the escrow agreement?
- ☐ 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 and that CMS will receive advance notice of any change in the amount of funds held in escrow?
- ☐ Does the escrow agreement reflect that the funds are invested in a permissible type of investment, such as 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?
- ☐ Is the financial institution either FDIC-insured or for a credit union insured under the National Credit Union Share Insurance Fund program?
- ☐ 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' standard escrow instructions)?

✓ 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 it is an "irrevocable letter of credit" or "irrevocable standby letter of credit?"
- ☐ Does the letter of credit include a term that allows CMS to demand payment for an amount available under the letter of credit for an amount as provided under the Shared Savings Program regulations at [42 CFR Part 425](#) and specify the manner of presentation of the demand and documents to the issuing institution?
- ☐ Does the letter of credit include language allowing for partial or multiple drawings?
- ☐ Does the letter of credit specify all the issuing institution's charges and fees are paid by the ACO and shall not be deducted from any payment the issuing institution makes to CMS under the letter of credit?
- ☐ Is the financial institution either FDIC-insured or insured under the National Credit Union Share Insurance Fund program (if for a credit union)?
- ☐ Does the letter of credit specifically state it is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) and/or International Chamber of Commerce Publication No. 600 or No. 590 for an Irrevocable Standby Letter of Credit? Adherence to these regulations ensures that letters of credit and the issuing financial institution complies with generally accepted principles regarding the issuance and use of letters of credit.

✓ 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?

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- ☐ 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\(f\)\(2\)\(ii\)](#)?
- ☐ Does the surety bond include the Surety's legal entity name, street address or post office box number, city, state, and 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 state that the Surety agrees to pay the shared losses within thirty (30) days of receiving CMS' written notice of the shared losses demonstrating that the ACO has failed to pay the shared losses in full?
- ☐ Does the surety bond state 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 all indebtedness of the Principal to the Obligor 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 promptly in writing if there is a lapse in surety bond coverage or if there is any change in the bond amount?
- ☐ Does the surety bond include a statement defining "sufficient evidence" as "the documents the Obligor may supply to the Surety to establish that the Principal has failed to pay the Shared Losses in full?"
- ☐ Does the surety bond exclude a statement that the surety's aggregate liability shall not be cumulative and that the surety's liability shall be limited to the stated penal sum of the bond?

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Final Repayment Mechanism Amount

The repayment mechanism amount released at Phase 1 RFI-1 is only an estimate and **should not** be used to finalize repayment mechanism documentation. The final repayment mechanism amount will be released at Phase 1 RFI-2. Review the Revenue Repayment Mechanism tab in the *Participation Options Report* or the Application Cycle Subtab in ACO-MS for the final repayment mechanism amount. Please ensure the following requirements are met prior to sending the final documentation to CMS.

IMPORTANT! Final Documentation



- ☐ Does your repayment mechanism task in ACO-MS reflect a status of “Ready for Finalization?”
- ☐ Is the dollar value of the repayment mechanism equal to or greater than the final value specified by CMS in both numerical and written form?
- ☐ Does the repayment mechanism state the execution date?
- ☐ Is the repayment mechanism signed by the financial institution and ACO if applicable?
- ☐ If the repayment mechanism was digitally signed, has your ACO provided a copy of the digital signature audit report to CMS?
- ☐ Have all “draft” references been removed from the final repayment mechanism?
- ☐ If ACO is establishing funds placed in escrow as its repayment mechanism, has the Escrow Agent provided a signed letter on its letterhead providing a statement that the repayment mechanism amount funds are on deposit?