



Medicare Shared Savings Program

# **SKILLED NURSING FACILITY 3-DAY RULE WAIVER**

**Guidance Document**

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Version #5



MEDICARE  
SHARED SAVINGS  
PROGRAM

## Revision History

VERSION	DATE	REVISION/CHANGE DESCRIPTION	AFFECTED AREA
1	04/2016	Initial creation of the final document.	All
2	06/2016	Updated the SNF Affiliate Agreements, and added requirements in Section 9.	<a href="#">Section 5</a> ; <a href="#">Section 9</a>
3	12/2016	Updated document for clarification and formatted into new template.	All
3	06/01/2017	Updated to include coverage of the Medicare ACO Track 1+ Model and added new sections.	All; Sections <a href="#">4</a> , <a href="#">8</a> , <a href="#">9</a> , and <a href="#">10</a>
4	08/01/2017	Added link to the SNF Affiliate Agreement template.	<a href="#">Section 6</a>
4	08/01/2017	Updated the 2018 SNF Affiliate List Review Schedule.	Table 1
5	12/14/2017	Updated to reflect the 2018 Physician Fee Schedule final rule ( <a href="#">82 FR 53371</a> ).	<a href="#">Section 2</a>
5	12/14/2017	Revised consistent with the final rule ( <a href="#">82 FR 53371</a> ) removing reference to ACOs submitting SNF affiliate star-rating documentation.	<a href="#">Section 5.2.2</a>
5	12/14/2017	Removed SNF Affiliate Change Request Review Schedule and added clarifying language on change requests.	Formerly Table 1, <a href="#">Section 5.1.2</a>
5	01/11/2018	Added information about the transition to a new electronic management system.	<a href="#">Important Notice</a>

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## Important Notice

CMS is targeting **April 2, 2018**, for the launch of a new ACO Management System (ACO-MS) that will expand and replace the [Health Plan Management System](#) (HPMS). The aim is to develop a more user-friendly and customized system that automates and streamlines processes to expedite reviews. ACOs will continue to use HPMS until **March 2, 2018**, to submit SNF Affiliate List change requests and/or access their ACO participation information.

Thus, in this document, the term “CMS electronic management system (CMS system)” refers to HPMS until March 2, 2018. After this date, it will refer to ACO-MS. To ensure a smooth transition, CMS will institute a system blackout period for four weeks. ACOs will not have access to HPMS or the new ACO-MS from **March 3, 2018 – April 1, 2018**. ACOs should prepare to submit any [change requests](#) prior to or after the blackout period. Please note all ACO data will be migrated from HPMS to the new ACO-MS.

As the transition to the new system progresses, we will update Shared Savings Program guidance, including this document, as necessary.

# 1 Executive Summary

This document describes the policies for the waiver of the Skilled Nursing Facility (SNF) 3-Day Rule that is available to Track 3 Medicare Shared Savings Program (Shared Savings Program) Accountable Care Organizations (ACOs) and to ACOs participating in the Medicare ACO Track 1+ Model (Track 1+ Model). Specifically, this document provides background on the SNF 3-Day Rule, waiver-eligibility criteria for ACOs and SNF affiliates, as well as information on how to apply for a SNF 3-Day Rule Waiver.

Under the Shared Savings Program, the Centers for Medicare & Medicaid Services (CMS) enters into a participation agreement with each participating ACO. CMS will reward eligible ACOs when they lower growth in Medicare Parts A and B fee-for-service (FFS) costs (relative to their ACO-specific benchmark) while, at the same time, they meet performance standards on quality of care. ACOs can choose to participate under Track 1, a shared savings only model (one-sided model), or under Track 2 or Track 3, shared savings or losses models (two-sided performance-based risk models). Beginning in 2018, eligible Track 1 ACOs may also participate in a Center for Medicare and Medicaid Innovation (Innovation Center) model, the Track 1+ Model. In order to encourage more rapid progression to performance-based risk, the Track 1+ Model tests a payment design that incorporates more limited downside risk than is currently present in Track 2 or Track 3 of the Shared Savings Program.

The SNF 3-Day Rule Waiver, available under the Shared Savings Program and the Track 1+ Model, waives the requirement for a three-day inpatient hospital stay prior to a Medicare-covered, post-hospital, extended care service for eligible beneficiaries who are prospectively assigned to an ACO and who receive care from an eligible SNF. Only Shared Savings Program ACOs that are currently participating in (or applying to participate in) Track 3 or the Track 1+ Model 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 3.3](#) below.

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

- Meet specific eligibility criteria;
- Submit a SNF Affiliate List;
- Submit a SNF Affiliate Agreement template;
- Submit a sample SNF Affiliate Agreement;
- Submit an executed SNF Affiliate Agreement for each proposed SNF affiliate; and
- Submit a communication plan, beneficiary evaluation and admission plan, and a care management plan.

## 2 Introduction

This document is subject to periodic change. Any substantive changes to this document are noted in the [revision history](#).

### 2.1 STATUTORY & REGULATORY BACKGROUND

The Shared Savings Program rewards ACOs that lower growth in Medicare Parts A and B health care expenditures for FFS beneficiaries while meeting quality of care performance standards. The Shared Savings Program was mandated by the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010. These public laws are collectively known as the Affordable Care Act (ACA). Section 3022 of the ACA amended Title XVIII of the Act (42 USC 1395 et seq.) by adding section 1899 to the Social Security Act (the Act) to establish a Shared Savings Program. Under this authority, the Secretary may enter into an agreement with the ACO to participate in the Shared Savings Program for a period of no less than three years. CMS published a notice of proposed rulemaking for the program in April 2011, which was followed by a public comment period. CMS published the final rule in November 2011,<sup>1</sup> codifying regulations implementing the Shared Savings Program at 42 CFR part 425.<sup>2</sup> CMS published another notice of the proposed rulemaking for the program in December 2014, which was followed by a public comment period. This proposed rule included a proposal to add a second performance-based risk track, Track 3. CMS published the final rule in June 2015, including amendments establishing Track 3 of the Shared Savings Program.<sup>3</sup> The June 2015 final rule also established the requirements for the waiver of the SNF 3-day rule under the Shared Savings Program in § 425.612 of the regulations. Through the Calendar Year (CY) 2017 Physician Fee Schedule (PFS) final rule, CMS finalized additional beneficiary protections related to use of the SNF 3-Day Rule Waiver (81 FR 80170). The November 2017 final rule streamlined the SNF 3-Day Rule Waiver Application requirements by removing certain documentation requirements, with a goal of reducing burden for applicants.<sup>4</sup>

The Track 1+ Model is being tested under the authority of section 1115A of the Act (added by section 3021 of the ACA) (42 USC 1315a). Eligible ACOs will have the opportunity to join the Track 1+ Model as part of the 2018, 2019, and 2020 Shared

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<sup>1</sup> Medicare Shared Savings Program: Accountable Care Organizations, 76 Fed. Reg. 67802 (Nov. 2, 2011) (Amending 42 CFR Chapter IV by adding part 425).

<sup>2</sup> Unless otherwise noted, references to regulations in this document are to the Shared Savings Program regulations in 42 CFR part 425.

<sup>3</sup> Medicare Shared Savings Program: Accountable Care Organizations, 80 Fed. Reg. 32692 (Jun. 9, 2015) (Amending 42 CFR part 425). Table 8 summarizes the differences between the one-sided and two-sided models and specifies the characteristics of the Tracks as finalized under the November 2011 final rule and with this final rule (see 80 FR 32811-32812).

<sup>4</sup> Medicare Shared Savings Program: Accountable Care Organizations, 82 Fed. Reg. 53371 (Nov. 15, 2017) (Amending 42 CFR § 425.612 by removing paragraphs (a)(1)(i)(A)(4) and (a)(1)(i)(C)).

Savings Program application cycles. Additional information on the Track 1+ Model is available in the CMS [fact sheet](#).

### **3 SNF 3-Day Rule Waiver Overview**

For eligible Shared Savings Program and Track 1+ ACOs approved for use of a SNF 3-Day Rule Waiver, CMS will waive the requirement for a three-day inpatient hospital stay prior to a Medicare-covered, post-hospital, extended care service for eligible beneficiaries who fulfill both of the following conditions:

- Are prospectively assigned to an ACO participating in Track 3 or the Track 1+ Model.
- Receive otherwise Medicare-covered, post-hospital, extended care services furnished by an eligible SNF that has entered into a written agreement to partner with the ACO for purposes of this waiver.

#### **3.1 BACKGROUND ON THE SNF 3-DAY RULE**

Section 1819(a) of 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.

#### **3.2 OVERVIEW OF THE SNF 3-DAY RULE WAIVER**

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, CMS finalized a waiver of the SNF 3-Day Rule for eligible ACOs participating in Track 3 of the Shared Savings Program (§ 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 three-day inpatient hospital stay for eligible beneficiaries prospectively assigned to an ACO participating in Track 3 of the Shared Savings Program. Similarly, CMS has used the waiver authority under section 1115A(d)(1) of the Act to waive section 1861(i) of the Act for the Track 1+ Model, consistent with the SNF 3-Day Rule Waiver under 42 CFR § 425.612.

Track 3 and Track 1+ ACOs may apply for a SNF 3-Day Rule Waiver at the start or during the term of their participation agreements.

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 3.3](#) below. SNF 3-Day Rule Waivers are effective beginning January 1 of the performance year following approval of a SNF 3-Day Rule Waiver Application. 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 § 425.612(d)(3) or under the terms of the Track 1+ Model. If CMS or the ACO terminate the ACO's participation agreement, the waiver ends on the date specified by CMS in the termination notice or on the effective date of termination, as specified in the ACO's advance written notice to CMS required under § 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 participating in Track 3 and the Track 1+ Model 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 SNFs that meet the eligibility requirements in § 425.612, discussed below in [Section 4](#). Providers such as Critical Access Hospitals (CAHs) or other hospitals CMS approved to furnish swing bed services for SNF-level care are not eligible to partner with ACOs as SNF affiliates to provide services pursuant to the SNF 3-Day Rule Waiver.

A 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 FFS provider or supplier, including from a SNF or other facility that is not an affiliate of an ACO participating in the Shared Savings Program. In such circumstances, normal Medicare requirements apply, including the requirement for a three-day, inpatient hospitalization.

### **3.3 APPLYING FOR A SNF 3-DAY RULE WAIVER**

Necessary steps to apply for a SNF 3-Day Rule Waiver include:

- Submit a Notice of Intent to Apply (NOIA) for a SNF 3-Day Rule Waiver.
- Obtain a CMS User ID (if one does not already exist).
- Submit a SNF 3-Day Rule Waiver Application.

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



Applicants must submit their applications through the CMS electronic management system (CMS system) in accordance with the guidance and deadlines provided in the [2018 Application Reference Manual](#) and [Application Timeline](#) both of which are located on the Shared Savings Program [Application Types & Timeline webpage](#). Refer to this webpage to find the latest information concerning the Shared Savings Program application process.

During the application process, ACOs (including new applicants) receive multiple request for information (RFI) letters summarizing CMS' review of submitted application information. ACOs should carefully review the RFIs since they only have 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.

## 4 SNF 3-Day Rule Waiver Eligibility

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

### 4.1 BENEFICIARY ELIGIBILITY FOR THE SNF 3-DAY RULE WAIVER

To be eligible to receive covered SNF services under the waiver, a beneficiary must meet the following requirements:

- Be prospectively assigned to the ACO for the performance year in which he/she is admitted to the eligible SNF (referred to as a SNF affiliate, described in [Section 5](#));
- Not reside in a SNF or other long-term care setting;<sup>5</sup>
- 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 he/she cannot receive as an outpatient; and
- Have been evaluated and approved for admission to the SNF within three days prior to the SNF admission by an ACO provider/supplier who is a physician, consistent with the ACO's beneficiary evaluation and admission plan.

Track 3 and Track 1+ ACOs will receive a prospective assignment list from CMS at the start of each performance year. On a quarterly basis, ACOs receive a list of

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<sup>5</sup> Independent living facilities and assisted living facilities are not considered to be long-term care facilities for this purpose.

beneficiaries whom CMS has removed from the ACO's prospective assignment list as a result of meeting select assignment exclusion criteria (see Section 3.1 of the [Shared Savings and Losses and Assignment Methodology Specifications](#)).

During the performance year, a beneficiary loses his or her eligibility to receive covered SNF services under the waiver if he or she appears on a quarterly report excluding the beneficiary from the ACO's original prospective assignment list, unless the 90-day grace period applies (see [Section 4.3](#) 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. ACOs should notify their SNF affiliates of changes to beneficiary eligibility in a timely manner to comply with the waiver requirements. ACOs should refer to the Assignment List Report and Assignment Summary Report User's Guide, located on the SSP ACO Portal, for more information on the prospective assignment list and quarterly exclusion reports.

## **4.2 SNF ELIGIBILITY FOR THE SNF 3-DAY RULE WAIVER**

ACOs must provide CMS with a list of SNFs (referred to as SNF affiliates) with whom the ACO will partner along with executed written SNF Affiliate Agreements between the ACO and each listed SNF affiliate (see [Section 5](#)). SNF affiliates must have and maintain an overall rating of three stars or higher under the CMS 5-Star Quality Rating System. The SNFs 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 § 425.612. ACOs submit the SNF Affiliate List and the SNF Affiliate Agreements through the CMS system.

## **4.3 BENEFICIARY PROTECTIONS AND 90-DAY GRACE PERIOD**

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

### **90-day grace period**

CMS modified § 425.612(a)(1) to include a 90-day grace period that will permit payment for SNF services provided to certain beneficiaries without a qualifying inpatient stay who were initially included on the ACO's prospective assignment list for a performance year but 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.

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

**No payment to SNF affiliate where beneficiary is not prospectively assigned to the ACO and any 90-day grace period has lapsed**

In the event that a SNF affiliate of a Track 3 or a Track 1+ ACO that has been approved for the SNF 3-Day Rule Waiver admits a FFS beneficiary who was never prospectively assigned to the ACO (or was assigned but was later excluded and the 90-day grace period has lapsed), and the claim is rejected only for lack of a qualifying inpatient hospital stay, CMS will make no payment to the SNF, and 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 three-day hospital stay, if all other requirements for coverage are met.

## 5 SNF Affiliate List

ACOs must notify CMS of a change to their SNF Affiliate List, in the form and manner specified by CMS.

### 5.1 SNF AFFILIATE LIST REQUIREMENTS

The SNF Affiliate List must include the proposed SNF affiliate's legal business name, taxpayer identification number (TIN), CMS Certification Number (CCN), CCN legal business name, and CCN doing business as (DBA) name for each SNF that wishes to partner with the ACO for purposes of the SNF 3-Day Rule Waiver. Each proposed SNF affiliate must be Medicare-enrolled and have signed a valid SNF Affiliate Agreement with the ACO that meets the requirements in § 425.612. Additionally, the ACO must demonstrate that each proposed SNF affiliate has an overall quality rating of three or more stars under the CMS 5-Star Quality Rating System. If a SNF does not meet all of these requirements, CMS will reject the ACO's request to include the SNF on its SNF Affiliate List.

ACOs are responsible for ensuring their 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:

- Must maintain, update, and annually provide the list of SNF affiliates to CMS using the CMS system 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.
- May add or remove SNF affiliates during the term of the Shared Savings Program ACO Participation Agreement.<sup>6</sup>

SNF affiliates are not required to be ACO participants or ACO providers/suppliers. SNF affiliates may partner with more than one Shared Savings Program ACO. In addition, SNF affiliates that are not ACO participants or ACO providers/suppliers may partner with entities participating in other shared savings initiatives. Note 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 must appear on the 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.

CMS encourages ACOs to validate the proposed SNF affiliate TINs and CMS CCNs before submitting them through the CMS system. To ensure the SNF 3-Day Rule Waiver is applied and claims are processed correctly, the correct TIN and CCN must appear in Provider Enrollment, Chain, and Ownership System (PECOS) and CMS claims data. If a SNF using a CCN that does not appear on the SNF Affiliate List admits a beneficiary without a qualifying three-day inpatient stay, CMS will reject the claim.

CMS also encourages ACOs and SNF affiliates to discuss any changes to the SNF affiliate's TINs and/or CCNs that appear on the certified SNF Affiliate List. If a SNF affiliate's TIN and/or CCN change (e.g., digits change) during a performance year, the ACO must report the changes to CMS through the CMS system. Such changes will result in the SNF affiliate no longer being eligible to use the SNF 3-Day Rule Waiver because changes to a 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, in the upcoming performance year, for the SNF 3-Day Rule Waiver. Any new SNF affiliate (TIN and/or CCN) is subject to the SNF Affiliate List review cycle described below.

### 5.1.1 SNF AFFILIATE LIST REVIEW CYCLE

ACOs approved for a SNF 3-Day Rule Waiver may make changes to their SNF Affiliate Lists annually during established review cycles that will coincide with the ACO Participant List change request review cycles. Allowable changes include adding, deleting, or modifying SNF affiliates on the SNF Affiliate List. These review cycles enable ACOs to receive CMS feedback and the opportunity for an ACO to correct any issues that may be identified in advance of the upcoming performance year. Though an ACO may request a change at any time for the upcoming performance year, feedback is only provided during the review cycles.

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<sup>6</sup> Any such changes will be reviewed during a CMS review cycle.

## 5.1.2 SNF AFFILIATE LIST CHANGE REQUEST PROCESS

ACOs can make changes by submitting “change requests” in the CMS system. Change requests for the SNF Affiliate List must include accurate TINs and SNF Affiliate Agreements.

### **SNF Affiliate List Additions**

During the performance year, a currently participating ACO in the Shared Savings Program that is in an agreement period and not yet eligible to request renewal, 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. These review cycles include the provision of CMS feedback and the opportunity for an ACO to correct certain deficiencies CMS may find in advance of the upcoming performance year. Though an ACO may request a change at any time throughout the year for the upcoming performance year, there are deadlines for submitting change requests for consideration for the upcoming performance year.

It is important to note that any changes in a digit or digits to a required identifier (TIN or CCN) are considered an addition to the SNF Affiliate List and are not permitted after the deadline. For example, 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. ACOs should ensure that all information submitted for SNF Affiliate List changes is correct.

### **SNF Affiliate List Deletions**

When a SNF Affiliate Agreement terminates, the ACO must notify CMS within 30 days of the end of the agreement by submitting a “delete change request” in the CMS system. SNF waiver-approved ACOs may submit requests to delete SNF affiliates from their SNF Affiliate List at any time during the performance year. Requests are submitted through the CMS system. When a SNF waiver-approved ACO terminates a SNF affiliate record, the CMS system will prompt the ACO to enter the date on which it intends to terminate the SNF Affiliate Agreement. The SNF Affiliate Agreement end date entered by the ACO will be the date the SNF affiliate is no longer eligible for payment for services under the waiver. The ACO should alert the former SNF affiliate that it is no longer 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 three-day inpatient stay that formerly would have been covered under the SNF 3-Day Rule Waiver.

## 5.2 SNF AFFILIATE LIST DATA VALIDATION TOOLS

ACOs can use the following tools to improve the quality of the SNF affiliate data provided to CMS.

### 5.2.1 VERIFYING MEDICARE ENROLLMENT

All SNFs included on an ACO's SNF Affiliate List must be Medicare-enrolled. CMS makes available a listing of all Medicare-enrolled providers/suppliers. Using the [Medicare Revalidation Lookup Tool](#), users can search for a provider/supplier by last name, first name, organization name, National Provider Identifier (NPI), or download a list of revalidation due dates. Providers/suppliers due for revalidation display a revalidation due date, all other providers/suppliers not up for revalidation will display a "TBD" (to be determined) in the due date field. The revalidation due date is posted up to six (6) months in advance of the revalidation due date to provide sufficient notice and time for the provider/supplier to comply. For more information on provider/supplier revalidation, please visit the Medicare Revalidation webpage or have the provider/supplier contact their Medicare Administrative Contractor (MAC).

### 5.2.2 CMS 5-STAR QUALITY RATING SYSTEM

Each SNF affiliate included on the ACO's proposed SNF Affiliate List must maintain an overall rating of three stars or higher under the [CMS 5-Star Quality Rating System](#). ACOs should check their SNF affiliates' star rating on the Nursing Home Compare website before submitting their proposed SNF Affiliate Lists during the application period. CMS verifies that each proposed SNF affiliate has at least a three-star rating and will periodically check SNF affiliates' ratings during the agreement period. CMS recommends that ACOs integrate a periodic rating check into their compliance process.

For currently participating ACOs utilizing the SNF 3-Day Rule Waiver (excluding ACOs applying for a SNF 3-Day Rule Waiver), CMS will periodically review each of the SNF affiliate's star ratings. CMS will notify ACOs of SNF affiliates that have dropped below the required three-star rating. If a SNF affiliate does not have a star rating of three stars or higher at CMS' last check during the Annual Certification review cycle (see above), CMS will request that the ACO remove the SNF affiliate from the ACO's SNF Affiliate List for the upcoming performance year by entering a delete change request in the CMS system. If the ACO does not remove the SNF affiliate for the upcoming performance year, CMS will remove the SNF affiliate on behalf of the ACO.

## 6 SNF Affiliate Agreements

CMS requires ACOs to execute contractual agreements with each SNF affiliate to ensure that the ACO clearly articulates, 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 TIN has signed a SNF Affiliate Agreement with the ACO. During the



application period, ACOs must submit supporting documentation demonstrating that an agreement is in place between the ACO and each proposed SNF affiliate. CMS requires ACOs to submit for CMS approval a sample of the SNF Affiliate Agreement (SNF Affiliate Sample Agreement, created by the ACO), the SNF Affiliate Agreement template (provided by CMS and completed by the ACO), and all executed SNF Affiliate Agreements.

The SNF Affiliate Sample Agreement is a sample agreement the ACO creates and submits with its SNF 3-Day Rule Waiver Application. The SNF Affiliate Sample Agreement must be substantially similar to each agreement that the ACO executes with a SNF affiliate and must comply with the SNF Affiliate Agreement requirements. CMS does not provide a “boilerplate” agreement for ACOs, but instead reviews the sample agreement to ensure it meets all requirements. If CMS identifies deficiencies with the sample agreement, the ACO must modify the sample agreement and re-execute conforming agreements with each proposed SNF affiliate.

The [SNF Affiliate Agreement template](#) is an Excel worksheet provided by CMS that ACOs use to identify where each requirement for the SNF Affiliate Agreement is met in the document. ACOs must include the SNF Affiliate Agreement template when they submit a SNF Affiliate Sample Agreement for CMS approval. All SNF 3-Day Rule Waiver applicants must submit their SNF Affiliate Sample Agreement, SNF Affiliate Agreement template, and all executed SNF Affiliate Agreements with their SNF 3-Day Rule Waiver Application.

## 6.1 SNF AFFILIATE AGREEMENT REQUIREMENTS

The SNF Affiliate Agreement with the ACO includes all SNF affiliates under the Medicare-enrolled TIN that agree to affiliate with the ACO for purposes of a SNF 3-Day Rule Waiver. While the TIN signs the SNF Affiliate Agreement on behalf of the SNF affiliates, the TIN should notify all providers and suppliers billing through each of the CCNs on the SNF Affiliate List of the SNF 3-Day Rule Waiver requirements of the Shared Savings Program and Track 1+ Model, as applicable, before the SNF affiliates begin to admit beneficiaries under a SNF 3-Day Rule Waiver. CMS will ask ACOs to revise and re-execute their SNF Affiliate Agreements if they are missing one or more of the following required elements:

Requirements of § 425.612:

- Express requirement that the SNF affiliate agrees to all requirements and conditions of the Shared Savings Program (42 CFR part 425) and, if applicable, the Track 1+ Model, including those regarding the SNF 3-Day Rule Waiver (42 CFR § 425.612), and including but not limited to those specified in the ACO’s participation agreement with CMS.
- Effective dates of the SNF Affiliate Agreement.

- Express requirement that the SNF affiliate implement and comply with the ACO's beneficiary evaluation and admission plan and the care management plan.
- Express requirement that the SNF affiliate validate the eligibility of a beneficiary to receive covered SNF services in accordance with the waiver prior to admission.
- Remedial processes and penalties that may apply for noncompliance with the requirements and conditions of the Shared Savings Program, the Track 1+ Model (if applicable) and the SNF Affiliate Agreement, or in the case of other program integrity issues identified by CMS.

We note that Track 1+ ACOs must agree to the additional terms and conditions applicable to participation in the Track 1+ Model by executing an amendment to their Shared Savings Program participation agreement. This amendment imposes requirements related to a SNF 3-Day Rule Waiver that are consistent with § 425.612, for those Track 1+ ACOs that apply and are approved for a SNF 3-Day Rule Waiver.

Other agreement requirements:

- Expressly state the only parties to the agreement are the ACO and the SNF affiliate.
- Signed on behalf of the ACO and the SNF affiliate by individuals who are authorized to bind the ACO and the SNF affiliate, respectively. The Medicare-enrolled TIN is authorized to bind the SNF affiliate CCN(s) billing under the TIN.
- The legal business names of the parties on the SNF Affiliate Agreement must match those provided in the CMS system and on the SNF Affiliate List.
- On the signature page (see sample signature page below) of the sample SNF Affiliate Agreement, include a section to list the SNF affiliate CCN numbers, CCN legal business names and CCN DBAs under the Medicare-enrolled TIN, and in each executed SNF Affiliate Agreement, list the SNF affiliate's CCN number, CCN legal business name, and CCN DBA for each SNF affiliate under the Medicare-enrolled TIN that agrees to be a SNF affiliate of the ACO. ACOs should also include a statement that the Medicare-enrolled TIN agrees to the terms and conditions of the SNF Affiliate Agreement on behalf of the CCN of each listed SNF affiliate.

CMS strongly recommends ACOs include the following information in their SNF Affiliate Sample Agreement and executed SNF Affiliate Agreements to ensure each SNF affiliate understands how participating in a SNF 3-Day Rule Waiver may impact them. If this information is not included in the SNF Affiliate Agreement, ACOs 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 this waiver.



- Express requirement that the ACO is to notify the SNF affiliate when the SNF 3-Day Rule Waiver has ended.

## 6.2 EXECUTED SNF AFFILIATE AGREEMENT REQUIREMENTS

Each executed SNF Affiliate Agreement must match the SNF Affiliate Sample Agreement and include a signature page signed by individuals who have the legal authority to bind the SNF affiliate or ACO. The person signing on behalf of the ACO must be listed in the CMS system as the ACO Executive or Authorized to Sign contact roles. The signature page must reflect information (such as contact information) for both the ACO and the SNF affiliate and must be consistent with the legal entity names listed on the first page of the SNF Affiliate Agreement. Electronic signatures are not permitted. Information other than the signature should be typed for easy reference and readability. The signature page must list the SNF affiliate's CCN number, CCN legal business name, and CCN DBA for each SNF affiliate under the Medicare-enrolled TIN that agrees to be a SNF affiliate of the ACO. Include a statement that the Medicare-enrolled TIN agrees to the terms and conditions of the SNF Affiliate Agreement on behalf of the CCN of each listed SNF affiliate.

CMS must receive a copy of each executed SNF Affiliate Agreement (first page and signature page) that includes a handwritten signature by both the ACO and SNF affiliate. CMS may request original "wet signature" executed agreements.

CMS strongly encourages ACOs to include the information indicated in the format referenced in [Appendix A](#).

Please note, ACOs that choose to include their communication plan, beneficiary evaluation and admission plan, and care management plan as an appendix to their agreements or that incorporate them by reference into their agreements, will be required to amend or update and re-execute their SNF Affiliate Agreements whenever any of these plans are revised to ensure that SNF affiliates are aware of all modifications to these important documents.

## 7 ACO and SNF Affiliate Communication Plan

As part of the application for a SNF 3-Day Rule Waiver, Track 3 and Track 1+ ACOs must provide a narrative detailing the communication plan between the ACO and its SNF affiliates. CMS requires ACOs to describe the following information in their communication plan narratives:

- The process the ACO will use to evaluate and periodically update its communication plan with its SNF affiliates.
- The process the ACO will use to identify and designate person(s) at the ACO with whom SNF affiliates will communicate and coordinate admissions.

- The process each SNF affiliate will use to identify and designate person(s) at the SNF affiliate with whom the ACO will communicate and coordinate admissions, including monitoring SNF length of stay.
- The process ACOs and SNFs will use to share information across sites of care and make available to all members of the care team for optimal care integration. This includes identification of Health Insurance Portability and Accountability Act (HIPAA) compliant communication tools that the care team will use to ensure that the designated person(s) at the ACO is (are) aware of admissions to SNF affiliates pursuant to a waiver and appropriately involved in the clinical management of the beneficiary, including a plan for communicating necessary information when key contacts are not available.
- How frequently communications occur between the ACO and its SNF affiliates.
- The process the ACO will use to communicate the beneficiary evaluation and admission plan and the care management plan to the SNF affiliates and other individuals or entities responsible for or involved in providing or coordinating SNF services furnished under a waiver.
- The process the ACO will use to respond to questions and complaints related to the ACO's use of the SNF 3-Day Rule Waiver from SNF affiliates, ACO participants, ACO providers/suppliers, beneficiaries, acute care hospitals, and other stakeholders.

CMS recommends ACOs include a process for timely sharing of the prospective beneficiary assignment list, as well as the quarterly exclusion lists with SNF affiliates so that ACOs and SNF affiliates can identify correctly the beneficiaries eligible to receive covered SNF services under the SNF 3-Day Rule Waiver.

## **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 three-day inpatient hospital stay prior to a Medicare-covered, post-hospital, extended care service (42 CFR § 425.612(a)). A SNF 3-Day Rule Waiver does not change FFS billing requirements (other than the three-day inpatient stay requirement).

SNFs do not include any new data elements when submitting FFS claims to indicate their intent to use a SNF 3-Day Rule Waiver. For institutional claims, CMS will set the Demonstration Number field to "77" for claims that meet all of the following conditions:

- "Received" date on the claim is on or after January 1 of the calendar year indicated on the claim's "From" date;
- A CCN (first 6 digits) is found on the claim that is also found on the ACO's certified SNF Affiliate List;

- Beneficiary Health Insurance Claim Number (HICN) found on the claim which is also found on the ACO's prospective assignment list;
- The date of service "From" date on the claim is on or after the effective start date of a waiver; and
- The ACO ID (AXXXX) associated with the SNF affiliate is the same as the ACO ID associated with the beneficiary prospectively assigned to a waiver-approved ACO.

If a SNF claim is rejected exclusively due to a lack of a qualifying hospital stay, meaning all other Medicare FFS coverage, claims processing, and other applicable requirements are met, the SNF should verify that the ACO, SNF, and beneficiary meet waiver eligibility requirements under § 425.612, described above. If the ACO, SNF, and beneficiary meet these eligibility requirements, the SNF should contact its MAC to inquire about payment for the claim pursuant to the terms of the SNF 3-Day Rule Waiver under § 425.612.

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 certified SNF Affiliate List and that SNF admits a prospectively assigned beneficiary without a qualifying hospital stay, CMS will reject the claim for failing to meet one of the required elements (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 three-day inpatient 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 three-day inpatient hospital stay and the ACO, SNF affiliate, and/or the beneficiary did not meet the eligibility requirements (described in [Section 4](#) 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 necessary.

## 9 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 § 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 his/her freedom to choose from 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 § 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 the 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 included in the ACO Marketing Toolkit that is updated annually. ACOs are not permitted to modify template content, except in the spaces 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 their assigned beneficiaries who may be eligible to receive covered services under a SNF 3-Day Rule Waiver about the 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.

## **10 SNF 3-Day Rule Waiver Public Reporting Requirements**

Consistent with the requirements of § 425.612(d)(1), SNF waiver-approved ACOs must report their use of a SNF 3-Day Rule Waiver (reporting “yes” or “no”) as part of Shared Savings Program public reporting requirements. Please refer to the [Shared Savings Program Public Reporting Guidance](#) for specific details on how to report this SNF 3-Day Rule Waiver information.

## **11 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 (which would include, if applicable, termination from the Track 1+ Model). Additionally, CMS reserves the right to periodically review claims data, beneficiary medical records, and/or Minimum Data Set (MDS) Nursing Home Assessments to confirm whether the ACO and its SNF affiliates appropriately confirm beneficiary eligibility prior to admission to a SNF. 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 ACO SNF Affiliate Agreement Introductory Paragraph and Signature Page:

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.

<u>For the ACO</u>	<u>For the SNF Affiliate</u>
_____	_____
Legal Entity Name	Legal Entity 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, CCN legal business name, and CCN DBA >