ACO Repayment Mechanisms – Surety Bonds

Medicare Shared Savings Program ("MSSP") Track 1+, Track 2 and Track 3 ACOs, and NextGen ACOs, have two-sided risk. CMS requires these ACOs to provide a repayment mechanism to assure that shared losses can be repaid.

Depending on its track, an ACO's repayment mechanism equals 1% or 2% of the ACO's total per capita Medicare Parts A and B fee-for-service expenditures for its assigned beneficiaries, as determined based on expenditures used to establish the ACO's benchmark.

CMS accepts letters of credit (LOC), cash held in escrow, and/or surety bonds for this purpose. While LOCs are an acceptable form of collateral, LOCs are costly and inflexible, and ACOs often struggle to find the capital to place into escrow funds. The better, more cost-effective option for ACOs is using a surety bond.

Reasons to consider a surety bond as an alternative to a LOC:

1. **Credit capacity:** An LOC ties up the company's credit capacity, thus reducing financial flexibility. Surety bonds are not credited against a company's bank line.
2. **Covenants:** Banks may place restrictive covenants on the client in return for extending a bank line of credit, or they may require extensive financial reporting. Surety companies typically offer more flexibility.
3. **Security:** Banks may choose to take a security interest in the client's assets. This security is required to be perfected through the filing of public documents (UCC filings) that publicize their secured lender status. A surety is generally an unsecured creditor and a UCC filing is rarely made.
4. **Default defenses:** A bank LOC is a demand instrument; a surety bond typically is not. An LOC may be drawn down at any time, without any reason; the company has no defenses. With a surety bond, the surety requests proof of a company's default from the obligee and works with the principal to identify defenses. This protects the principal from the obligee taking possession of the bond proceeds without merit.
5. **Claim handling:** the surety typically has a professional, dedicated claims staff available to handle disputes and to assist in the claim resolution process. Banks do not have a claims staff, which requires a client to resolve disputes on its own.
6. **Rates:** LOC rates can be volatile: the LOC rate may include a commitment fee or utilization fee, as well as issuance fees, in addition to a stated rate. Surety rates tend to be stable and are directly tied to the credit quality of the principal and to the types of obligations bonded.

Why a Surety Bond?

Surety Bonds

- Keep your capital intact
- Are unsecured and don't require UCC filings
- Have stable rates
- Don't have restrictive covenants
- Are not demand instruments like a Letter of Credit
- You don't have to wait for the CMS Agreement renewal date to switch

About Risk Strategies

Risk Strategies is a privately held, national brokerage and consulting firm. Ranked in the top 20 brokers in the country, we offer risk management advice and insurance and reinsurance placement for health care, property and casualty, and employee-benefits risks.

By bringing together one of the largest teams of dedicated health care insurance and reinsurance professionals in the U.S.A., Risk Strategies is able to bring its health care clients a focused, integrated and responsive liability and risk management service that is best in class.

With offices across the country, Risk Strategies gives you the reach and resources of a nationwide firm with the focused expertise and attention of a boutique specialist.

A Better Approach

Your dynamic world defies pre-packaged approaches to risk management. Risk Strategies goes beyond routine every time.

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Our National Health Care Practice offers the following

- **Surety Bonds –** helping ACOs securitize their downside risk with a surety bond in lieu of a Letter of Credit for their repayment mechanism
- **Reinsurance –** providing reinsurance protection across the entire spectrum of health care risk including the self-funded community, as well as to the life, accident and disability markets
- **Managed Care –** providing managed care stop loss coverage for hospitals, health plans, physicians, ACO's and others in the health care industry
- **Professional Liability –** providing professional liability coverage for a variety of health care organizations, such as hospitals, IPAs, physicians, ACOs, long-term care organizations, behavioral health and miscellaneous medical facilities
- **Life and Disability Benefits –** providing health care organizations with customized solutions for their employee benefits plans
- **Cyber –** providing health care organizations a comprehensive suite of data security and privacy insurance solutions that are custom-tailored for the unique needs of healthcare businesses
- **Property & Casualty –** providing Property & Casualty coverage for a variety of health care organizations, such as hospitals, physicians, ACOs, long term care organizations, behavioral health, miscellaneous medical facilities, life sciences, medical products, and managed care organizations