

510.505 Distribution arrangements.

(a) General. (1) An ACO, PGP, NPPGP, or TGP that has entered into a sharing arrangement with a participant hospital may distribute all or a portion of any gainsharing payment it receives from the participant hospital only in accordance with a distribution arrangement.

(2) All distribution arrangements must comply with the provisions of this section and all other applicable laws and regulations, including the fraud and abuse laws.

(b) Requirements. (1) All distribution arrangements must be in writing and signed by the parties, contain the date of the agreement, and be entered into before care is furnished to CJR beneficiaries under the distribution arrangement.

(2) Participation in a distribution arrangement must be voluntary and without penalty for nonparticipation.

(3) The distribution arrangement must require the collaboration agent to comply with all applicable laws and regulations.

(4) The opportunity to make or receive a distribution payment must not be conditioned directly or indirectly on the volume or value of past or anticipated referrals or business otherwise generated by, between or among the participant hospital, any CJR collaborator, any collaboration agent, any downstream collaboration agent, or any individual or entity affiliated with a participant hospital, CJR collaborator, collaboration agent, or downstream collaboration agent.

(5) The amount of any distribution payments from an ACO, from an NPPGP to an NPPGP member, or from a TGP to a TGP member must be determined in accordance with a methodology that is substantially based on quality of care and the provision of CJR activities and that may take into account the amount of such CJR activities provided by a collaboration agent relative to other collaboration agents.

(6) The amount of any distribution payments from a PGP must be determined either in a manner that complies with § 411.352(g) of this chapter or in accordance with a methodology that is substantially based on quality of care and the provision of CJR activities and that may take into account the amount of such CJR activities provided by a collaboration agent relative to other collaboration agents.

(7) Except for a distribution payment from a PGP to a PGP member that complies with § 411.352(g) of this chapter, a collaboration agent is eligible to receive a distribution payment only if the collaboration agent furnished or billed for an item or service rendered to a CJR beneficiary during a CJR episode that occurred during the same performance year for which the participant hospital accrued the internal cost savings or earned the reconciliation payment that comprises the gainsharing payment being distributed.

(8) Except for a distribution payment from a PGP to a PGP member that complies with § 411.352(g) of this chapter, the total amount of distribution payments for a performance year paid to a collaboration agent must not exceed the following:

(i) In the case of a collaboration agent that is a physician or nonphysician practitioner, 50 percent of the total Medicare-approved amounts under the PFS for items and services furnished by the collaboration agent to the participant hospital's CJR beneficiaries during CJR episodes that occurred during the same performance year for which the participant hospital accrued the internal cost savings or earned the reconciliation payment that comprises the gainsharing payment being distributed.

(ii) In the case of a collaboration agent that is a PGP or NPPGP, 50 percent of the total Medicare-approved amounts under the PFS for items and services billed by that PGP or NPPGP for items and services furnished by PGP members or NPPGP member respectively to the participant hospital's CJR beneficiaries during CJR episodes that occurred during the same performance year for which the participant hospital accrued the internal cost savings or earned the reconciliation payment that comprises the gainsharing payment being distributed.

(9) With respect to the distribution of any gainsharing payment received by an ACO, PGP, NPPGP, or TGP, the total amount of all distribution payments must not exceed the amount of the gainsharing payment received by the CJR collaborator from the participant hospital.

(10) All distribution payments must be made by check, electronic funds transfer, or another traceable cash transaction.

(11) The collaboration agent must retain the ability to make decisions in the best interests of the patient, including the selection of devices, supplies, and treatments.

(12) The distribution arrangement must not -

(i) Induce the collaboration agent to reduce or limit medically necessary items and services to any Medicare beneficiary; or

(ii) Reward the provision of items and services that are medically unnecessary.

(13) The CJR collaborator must maintain contemporaneous documentation regarding distribution arrangements in accordance with § 510.110, including the following:

(i) The relevant written agreements;

(ii) The date and amount of any distribution payment(s);

(iii) The identity of each collaboration agent that received a distribution payment; and

(iv) A description of the methodology and accounting formula for determining the amount of any distribution payment.

(14) The CJR collaborator may not enter into a distribution arrangement with any individual or entity that has a sharing arrangement with the same participant hospital.

(15) The CJR collaborator must retain and provide access to, and must require collaboration agents to retain and provide access to, the required documentation in accordance with § 510.110.