



# REQUESTING TECHNICAL ASSISTANCE, RECONSIDERATION REVIEW, OR REOPENING OF A PAYMENT DETERMINATION

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## REVISION HISTORY – VERSION 11

Revised Section/Description of Revision	Link to Section Affected
<ul style="list-style-type: none"> <li>Incorporated references to the process for an ACO to request a reopening of a payment determination.</li> </ul>	<a href="#">Guidance title; Section 1</a>
<ul style="list-style-type: none"> <li>Added Section 2 heading on Reconsideration Review, and revised numbering and formatting of headings for Sections 3 – 7 (version 10) to Sections 2.1 – 2.5 (version 11). Revised the text for clarity and consistency.</li> </ul>	<a href="#">Section 2</a>
<ul style="list-style-type: none"> <li>Added Section 3 on ACO Reopening Requests.</li> </ul>	<a href="#">Section 3</a>
<ul style="list-style-type: none"> <li>Revised description on sharing PHI/PII and added related reference to section heading.</li> </ul>	<a href="#">Section 4</a>

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# 1 Introduction

This guidance describes actions a new applicant and/or a currently participating Accountable Care Organization (ACO) participating in the Medicare Shared Savings Program (Shared Savings Program) may take in connection with the following:

- Receiving technical assistance from CMS on questions or concerns regarding the ACO's participation in the Shared Savings Program.
- Requesting a reconsideration review of an initial determination, as specified in [42 CFR part 425, subpart I](#).
- Requesting reopening of an initial determination, or a final agency determination under [subpart I](#), of shared savings or shared losses under [42 CFR § 425.315\(b\)](#).

[Section 2](#) of this document describes the steps of the reconsideration review process, including the ACO's submission of a written request for reconsideration review, among other information. ACOs may only request a reconsideration review of a CMS initial determination that is not prohibited from administrative or judicial review (refer to [Section 2.1](#))<sup>1</sup> and must submit a written reconsideration request within 15 days of the notice of initial determination (refer to [Section 2.2](#)). Under the reconsideration review process, the burden of proof is on the ACO to demonstrate to the reconsideration official with convincing evidence that the initial determination is not consistent with the requirements of [42 CFR part 425](#) or the applicable statutory authority. The reconsideration review process is not an opportunity for ACOs to seek exceptions to CMS requirements and/or deadlines or to request relief from their own errors.

[Section 3](#) of this document describes the process by which an ACO may request a reopening of an initial determination or a final agency determination under [42 CFR part 425, subpart I](#), of shared savings or shared losses. CMS has the sole discretion to determine whether to reopen a payment determination in the case of fraud or similar fault or to determine whether good cause exists to reopen a payment determination. In accordance with [42 CFR § 425.315\(a\)\(2\)](#), good cause may be established when (i) there is new and material evidence that was not available or known at the time of the payment determination and may result in a different conclusion, or (ii) the evidence that was considered in making the payment determination clearly shows on its face that an obvious error was made at the time of the payment determination. If CMS determines that the amount of shared savings due to the ACO or the amount of shared losses owed by the ACO has been calculated in error, CMS may reopen the initial determination or a final agency determination under [42 CFR part 425, subpart I](#) and issue a revised initial determination, at any time in the case of fraud or similar fault, or not later than 4 years after the date of the notification to the ACO of the initial determination of savings or losses for the relevant performance year for good cause, in accordance with [42 CFR § 425.315\(a\)\(1\)](#).

We encourage ACOs to use our technical assistance resources (refer to [Section 4](#)), including submitting their questions or concerns to their assigned ACO Coordinators or the Shared Savings Program Helpdesk.

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<sup>1</sup> Refer to [section 1899\(g\) of the Social Security Act; 42 U.S.C. 1395jii\(g\)](#), specifying limitations on review; and the Shared Savings Program regulations at [42 CFR part 425 subpart I](#).

## 2 Reconsideration Review

### 2.1 PRECLUSION OF ADMINISTRATIVE AND JUDICIAL REVIEW

An ACO may only request a reconsideration review of an initial determination<sup>2</sup> that is not precluded from administrative or judicial review under [42 CFR § 425.800\(a\)](#). Specifically, there is no reconsideration, appeal, or other administrative or judicial review of the following Shared Savings Program determinations:

- Specification of quality and performance standards under [42 CFR §§ 425.510](#) and [425.512](#).
- Assessment of the quality of care furnished by an ACO under the performance standards established in [42 CFR § 425.512](#), as applicable.
- Assignment of Medicare fee-for-service (FFS) beneficiaries under [42 CFR part 425, subpart E](#).<sup>3</sup>
- Initial or revised determination of whether an ACO is eligible for shared savings, and the amount of such shared savings, including the initial determination or revised initial determination of the estimated average per capita Medicare expenditures under the ACO for Medicare FFS beneficiaries assigned to the ACO and the average benchmark for the ACO in accordance with section 1899(d) of the Social Security Act, as implemented under 42 CFR §§ [425.601](#), [425.602](#), [425.603](#), [425.604](#), [425.605](#), [425.606](#), [425.610](#), and [425.652](#).<sup>4</sup>
- Percent of shared savings specified by the Secretary of Health and Human Services and the limit on the total amount of shared savings under 42 CFR §§ [425.604](#), [425.605](#), [425.606](#), and [425.610](#).
- Termination of an ACO for failure to meet the quality performance standards established under [42 CFR § 425.512](#), as applicable.
- The termination of a beneficiary incentive program established under [42 CFR § 425.304\(c\)](#).

### 2.2 REQUESTS FOR RECONSIDERATION REVIEW

Pursuant to [42 CFR § 425.802](#), an ACO may only request a reconsideration review<sup>5</sup> of an initial determination that is not precluded from administrative or judicial review under [42 CFR § 425.800\(a\)](#) (refer to [Section 2.1](#)). The burden of proof is on the ACO to demonstrate to the

<sup>2</sup> CMS will clearly state in any notice containing an initial determination that the communication is an initial determination.

<sup>3</sup> Including the determination that the ACO has under 5,000 assigned beneficiaries.

<sup>4</sup> Including certain calculations used in determining the ACO's performance year financial reconciliation results (e.g., calculation of risk adjustment for newly assigned and continuously assigned beneficiaries and of hierarchical condition category risk scores).

<sup>5</sup> An ACO that submits a request for reconsideration review of an initial determination regarding termination of the ACO from the Shared Savings Program will remain operational throughout the reconsideration review process as provided in [42 CFR § 425.802\(b\)](#).

reconsideration official with convincing evidence that the initial determination is not consistent with the requirements of [42 CFR part 425](#) or the applicable statutory authority ([42 CFR § 425.804\(b\)](#)). The reconsideration official is an independent CMS official who did not participate in the initial determination that is being reviewed ([42 CFR § 425.804\(c\)](#)).

Any request for reconsideration review of a determination that the reconsideration official finds to be precluded from administrative or judicial review will be dismissed for lack of jurisdiction.

The reconsideration review must be held on the record (review of submitted documentation) ([42 CFR § 425.802\(a\)\(2\)](#)). In-person, phone, and video hearings are not permitted.

The general steps for the reconsideration review process are described below. Refer to [42 CFR part 425, subpart I](#) for further details.

### Step 1: ACO submits a written request for reconsideration review.

An ACO-authorized official<sup>6</sup> must submit a written request for reconsideration review in accordance with the instructions below:

- The request for reconsideration review should include the name, phone number, and email address of the individual(s) within the organization whom CMS may contact regarding the request.
- The ACO is encouraged to describe the initial determination that it wants CMS to reconsider and the reason(s) the ACO believes CMS' initial determination is not consistent with the requirements of [42 CFR part 425](#) or applicable statutory authority in its request for reconsideration review. Refer to [Section 2.1](#) for a list of initial determinations that are precluded from reconsideration review. It is also helpful if the ACO submits any evidence that supports its request or includes a statement explaining the evidence it plans to submit. Although a detailed explanation of the reasons for the ACO's request for reconsideration review and submission of evidence are not required in the initial request for reconsideration review, doing so will help CMS investigate the concern prior to receiving the formal brief (refer to Step 2). Providing supporting information with the request—including the section, cell, and/or specific calculation of the initial determination that is being challenged, if applicable—can help CMS investigate and respond to the inquiry, which potentially mitigates the need for subsequent steps of the formal reconsideration review process.

**Note:** ACOs must verify whether any file(s)/document(s) (e.g., request for reconsideration review, brief, and/or exhibits) they are submitting to CMS, the reconsideration official, and any others copied on the ACO's request for reconsideration review contain any PHI and/or PII. If any file(s)/document(s) contain PHI and/or PII, ACOs must use safeguards to protect and encrypt the file(s)/document(s) in question prior to submission (refer to [Section 4](#)).

- CMS must receive the request for reconsideration review within 15 calendar days (by 11:59 p.m. Eastern Time) from the date of CMS' notice of initial determination.<sup>7</sup>

<sup>6</sup> The ACO Executive and Authorized to Sign contacts (primary and secondary), specified in ACO-MS, are considered ACO-authorized officials for this purpose.

<sup>7</sup> If the 15<sup>th</sup> day falls on a weekend or federal holiday, the request must be received by 11:59 p.m. Eastern Time on the next business day.

Per [42 CFR § 425.802](#), a request for reconsideration review received after the 15-day deadline will be denied.

- CMS recommends that the ACO send its request for reconsideration review by email rather than regular mail.
  - Send requests for reconsideration review and/or withdrawal requests (refer to [Section 2.3](#)) via email to: ACO Reconsideration Docketing Official, [ACOReconsiderations@cms.hhs.gov](mailto:ACOReconsiderations@cms.hhs.gov).
  - In the subject of the email, include your ACO ID (Axxxx), if applicable, and the phrase “Request for Reconsideration Review.”

**Note:** If you do not wish to send the request for reconsideration review by e-mail, contact the docketing official at [ACOReconsiderations@cms.hhs.gov](mailto:ACOReconsiderations@cms.hhs.gov) to request the mailing address for submission of the request for reconsideration review via a traceable, overnight carrier.

### Step 2: CMS docketing official acknowledges the request for reconsideration review and sends further instructions.

The CMS docketing official emails the ACO and CMS a docketing notice that acknowledges receipt of the ACO’s request for reconsideration review and includes the following information:

- CMS reconsideration official’s name and contact information.
- Review procedures.
- Procedures for submitting evidence, including format and timelines.
- A briefing schedule permitting each party to submit one written brief, including any relevant evidence (refer to [Section 4](#) for how to safeguard file(s)/document(s) submitted to CMS if they include PHI and/or PII). The submission of any additional briefs or supplemental evidence will be at the sole discretion of the reconsideration official.
- A notice that the burden of proof is on the ACO to demonstrate to the reconsideration official with convincing evidence that the CMS initial determination is not consistent with the requirements of [42 CFR part 425](#) or the applicable statutory authority.
- Approval of any requested extension is at the sole discretion of the reconsideration official pursuant to [42 CFR § 425.804\(a\)\(3\)](#). Extension requests can be submitted via email to the CMS docketing official.
- The CMS docketing official will respond to the request and include the points of contact for both parties (ACO and CMS).

### Step 3: Reconsideration official reviews the evidence provided.

- The reconsideration review (review of the documentation submitted by the ACO and CMS according to the terms of the docketing notice) will be held on the record.

- The reconsideration official will base his/her review only on evidence submitted by the reconsideration official's deadline, unless otherwise requested by the reconsideration official. The reconsideration official will email a letter to the parties to notify them of their recommendation and will include instructions on how to request a review of the reconsideration official's recommendation by an independent CMS official (refer to [Section 2.4](#)).
- The reconsideration official's recommendation is final and binding unless the ACO or CMS timely requests, in writing, an on the record review of the initial determination and recommendation by an independent CMS official (refer to [Section 2.4](#)).

## 2.3 WITHDRAWING A REQUEST FOR RECONSIDERATION REVIEW

An ACO may withdraw its request for reconsideration review at any time following submission of the ACO's request and prior to the reconsideration official's recommendation by sending a written withdrawal request (via email) that is signed by the ACO's authorized official to the same CMS points of contact listed in [Section 2.2 Step 1](#) above, expressly stating that the ACO is requesting withdrawal of its request for reconsideration review.

Upon receiving the withdrawal request, the CMS docketing official sends an email informing the ACO and CMS that the withdrawal has been accepted and the request for reconsideration review has been closed.

## 2.4 REQUESTS FOR REVIEW OF THE RECONSIDERATION OFFICIAL'S RECOMMENDATION

Pursuant to [42 CFR § 425.806](#), if CMS or the ACO disagree with the reconsideration official's recommendation, they may request an on the record review of the initial determination and the reconsideration official's recommendation by an independent CMS official who was not involved in the initial determination or the reconsideration review process.

Step 1: CMS or the ACO submit an explanation of its disagreement with the reconsideration official's recommendation.

- To request an on the record review by an independent CMS official, CMS or the ACO must submit an explanation of why it disagrees with the reconsideration official's recommendation within the timeframe and in the format specified in the reconsideration official's recommendation letter.

Step 2: An independent CMS official conducts a review of the record.

- In accordance with [42 CFR § 425.806\(b\)](#), the independent CMS official's review process is based only on evidence presented during the reconsideration review.

## 2.5 EFFECT AND EFFECTIVE DATE OF DECISION

Pursuant to [42 CFR § 425.808](#):

- The decision of the independent CMS official is the final and binding agency determination.
- The reconsideration review process must not be construed to negate, diminish, or otherwise alter the applicability of existing laws, rules, regulations or determinations made by other government agencies.

Pursuant to [42 CFR § 425.810](#):

- If the initial determination denying an ACO's application to participate in the Shared Savings Program is upheld, the application will remain denied based on the effective date of the original notice of denial.
- If the initial determination to terminate an agreement with an ACO is upheld, the decision to terminate the agreement is effective as of the date indicated in the initial notice of termination.
- If the initial determination to terminate an ACO is reversed, the ACO is reinstated into the Shared Savings Program, retroactively back to the original date of termination.

## 3 ACO Reopening Request

An ACO may request a reopening of an initial determination, or a final agency determination under [42 CFR part 425 subpart I](#), of shared savings or shared losses, in accordance with [42 CFR § 425.315\(b\)](#).

This section describes the steps and content of an ACO's reopening request and how it may be submitted to CMS, including the form and manner for making the request, the timeframe for the request, and information the ACO can provide to aid in CMS' analysis of its request. This section also describes CMS' consideration of and response to the ACO's reopening request.

Step 1: ACO submits to CMS a written request to reopen a payment determination.

An ACO-authorized official<sup>8</sup> must submit a written request for reopening in accordance with the following instructions:

- *Include information about the ACO(s) making the request:* The request for reopening must include the ACO identifier (also referred to as "ACO ID") and ACO Legal Entity Name (LEN), along with the name, phone number, and email address of the individual(s) within the organization whom CMS may contact regarding the request.

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<sup>8</sup> The ACO Executive and Authorized to Sign contacts (primary and secondary), specified in ACO-MS, are considered ACO-authorized officials for this purpose. Additional considerations will be made for submission of a reopening request from an ACO whose agreement period has expired or that has terminated from the Shared Savings Program.

- *Specify each performance year to which the request pertains and ensure the timing of the request is consistent with the timeframe for a reopening specified in [42 CFR § 425.315\(a\)\(1\)\(i\) and \(ii\)](#), respectively, either: (i) at any time in the case of fraud or similar fault as defined in [42 CFR § 405.902](#); or (ii) not later than 4 years after the date of the notification to the ACO of the initial determination of savings or losses for the relevant performance year under [§ 425.604\(f\)](#), [§ 425.605\(e\)](#), [§ 425.606\(h\)](#), [§ 425.609\(e\)](#) or [§ 425.610\(h\)](#), for good cause.*
- *Provide details to aid CMS in analyzing the ACO's reopening request:* The ACO is encouraged to provide sufficient, detailed information so that CMS may evaluate an ACO's reopening request. Providing the following basic information is critical to CMS' ability to effectively identify, validate, and quantify the improper payments or evaluate the alleged fraud or similar fault, potentially impacting expenditures used in Shared Savings Program calculations:
  - Identity of the provider or supplier for which there may be improper payment(s) or that may be suspected of fraud or similar fault, including name, National Provider Identifier (NPI) or Provider Transaction Access Number (PTAN), Taxpayer Identification Number (TIN), or other identifier.
  - The time period during which potentially impacted claims were submitted, or improper conduct occurred.
  - Short description of the improper payment, alleged fraud, or similar fault and how it was identified, including information on any specific claim type codes such as Healthcare Common Procedure Coding System (HCPCS) codes or Current Procedural Terminology (CPT) codes.
  - A list of beneficiaries assigned to the ACO for whom claims were submitted by the provider or supplier suspected of fraud or similar fault, or for which expenditures may be impacted by improper payments.

*The following additional information may aid in CMS' review of the ACO's reopening request:*

- Evidence of financial impact on the ACO's shared savings or shared losses calculation, such as a brief description with any available evidence or any analysis supporting financial impact to the ACO.<sup>9</sup>
- *Submit the request to CMS:* Submit the aforementioned written request and accompanying information to CMS in one of the following ways, ensuring steps are taken to protect and encrypt the file(s)/document(s) with PHI and/or PII prior to submission (refer to [Section 4](#)):
  - SSP Helpdesk ticket: In the ACO Management System ([ACO-MS](#)), click on the SSP Helpdesk icon to establish a ticket. In the subject of your request, please include your ACO ID (Axxxx) and the phrase "ACO Reopening Request," and select "Reopening" as

<sup>9</sup> As described in the [CY 2025 Physician Fee Schedule \(PFS\) Final Rule](#) (89 FR 97710, 98175-98176, 98188-98189 (Dec. 9, 2024)), evidence or analysis of financial impact of improper payments that an ACO may provide with its reopening request does not necessarily need to involve a complex analysis or include an analysis of the impact on national expenditures, regional expenditures, or both.

the Category for the ticket. Material with PHI and/or PII may be uploaded through the secure platform.

- Encrypted email to [SharedSavingsProgram@cms.hhs.gov](mailto:SharedSavingsProgram@cms.hhs.gov). In the subject of your email, please include your ACO ID (Axxxx) and the phrase “ACO Reopening Request.” In emailing file(s)/document(s) that contain any PHI and/or PII, ACOs must use safeguards to protect and encrypt the file(s)/document(s) in question prior to submission.

If the request pertains to more than one ACO, provide the aforementioned information about the ACO LEN, ACO ID and contacts, and the details about the reopening request reopening request on behalf of each listed ACO.

An ACO may withdraw its reopening request by sending a written withdrawal request to CMS, using the same method for submission as used for the ACO’s request for reopening (that is, through the SSP helpdesk in ACO-MS or by email to [SharedSavingsProgram@cms.hhs.gov](mailto:SharedSavingsProgram@cms.hhs.gov)). The written withdrawal request must be submitted by an ACO-authorized official and expressly state that the ACO is requesting withdrawal of its reopening request and specify the performance year(s) to which the withdrawal pertains. CMS, at its sole discretion, may proceed with reopening an ACO’s payment determination (if warranted).

Step 2: CMS evaluates the ACO’s reopening request and determines whether to reopen an ACO’s performance year payment determination; and then issues a response to the ACO.

Upon receipt of an ACO’s reopening request, CMS will evaluate the request and ask the requesting ACO to provide supplemental information, if needed.

CMS will identify, validate, and quantify improper payments potentially impacting expenditures used in Shared Savings Program calculations that are not otherwise accounted for in Shared Savings Program expenditure calculations. Identification of improper payments may be contingent on the conclusion of a CMS or law enforcement investigation that is underway.

CMS may conduct an initial analysis to consider the basis for reopening the ACO’s payment determination under [42 CFR § 425.315\(a\)](#) and the significance of the improper payments to an ACO’s financial calculations under the Shared Savings Program.<sup>10</sup>

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<sup>10</sup> Refer to 89 FR 98172-98173, 98175-98176, 98187-98188.

After we have conducted an evaluation of the ACO's reopening, which could occur over a protracted period of time,<sup>11</sup> we will notify the ACO of our decision regarding whether or not to reopen a performance year payment determination. In accordance with [42 CFR § 425.315\(a\)\(4\)](#), CMS has the sole discretion to determine whether to reopen a payment determination.

If CMS decides that the ACO's reopening request for a performance year meets the standard for reopening the payment determination under [42 CFR § 425.315](#), CMS will recalculate the ACO's shared savings or shared losses, issue a revised initial determination for the performance year, and engage in payment activities and recoupment activities, as needed.<sup>12</sup> CMS' decision to reopen an initial determination for a performance year is independent of a determination by CMS to reopen an initial determination for any other performance year, including in cases where multiple performance years are impacted by the same improper payments, whether within the ACO's current agreement period or a past agreement period.<sup>13</sup>

In the event CMS recalculates a payment determination and issues a revised initial determination for a performance year in a prior agreement period that corresponds to a benchmark year of the ACO's agreement period, we will also adjust the ACO's historical benchmark for the following (as applicable):

- Recalculate benchmark year expenditures to account for the impact of improper payments in accordance with [42 CFR § 425.601\(a\)\(9\)\(iii\)](#) or [§ 425.652\(a\)\(9\)\(viii\)](#).<sup>14</sup>
- Recalculate the prior savings adjustment for changes in the ACO's savings or losses for a performance year in accordance with [42 CFR §§ 425.652\(a\)\(9\)](#) and [425.658\(e\)](#).<sup>15</sup>

The adjusted historical benchmark would be used in reaching an initial determination of financial performance for a performance year that has not yet been reconciled.

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<sup>11</sup> As discussed in the CY 2025 PFS Final Rule (89 FR 98172 and 98188-98189), our review and analysis of reopening requests could occur over a protracted period of time during which we may be able to provide little additional information to the ACO until we have reached our decision. In particular, once we are notified of potential improper payments impacting Shared Savings Program calculations, it may take months or years to determine the actual amount of any improper payments impacting an ACO's payment determination, particularly if CMS is awaiting the conclusion of program integrity and law enforcement investigations, among other possible determinations about the related conduct of providers or suppliers. In cases where CMS and law enforcement officials may have investigations underway, CMS must refrain from providing details to ACOs, and other individuals or entities, of pending actions to protect the integrity of those investigations.

<sup>12</sup> Refer to 89 FR 98173, 98187-98188.

<sup>13</sup> Refer to 89 FR 98174.

<sup>14</sup> Refer to 89 FR 98185-98187.

<sup>15</sup> Refer to [CY 2024 PFS Final Rule](#) (88 FR 78818, 79195-79200 (Nov. 16, 2023)).

## 4 Technical Assistance Resources & Sharing PHI/PII

CMS makes several technical assistance resources available to ACOs requesting help with any questions and/or concerns before, during, and after the Shared Savings Program application cycle and/or performance year. These resources may allow ACOs to receive timely responses to their questions and eliminate the need to file a formal request for reconsideration review (refer to [Section 2.2](#)). Requesting technical assistance does not preclude an ACO from submitting a formal request for reconsideration review or submitting a reopening request. ACOs typically receive answers to their questions and/or concerns in a timely manner by:

- Reviewing Shared Savings Program technical information and guidance (e.g., about the application process, program participation, shared savings and losses calculations, assignment methodology, and quality reporting) available on the [Shared Savings Program website](#); and/or
- Sending questions to the Shared Savings Program in [ACO-MS](#) via the SSP Helpdesk feature. This functionality is available to anyone within an ACO that has an active ACO-MS account.

Participating ACOs should contact their ACO Coordinator as their first point of contact.

ACO applicants should send an email to [SharedSavingsProgram@cms.hhs.gov](mailto:SharedSavingsProgram@cms.hhs.gov). Inquirers should include the ACO ID and ACO name.

Prior to submitting content in connection with a technical assistance request, request for reconsideration review, or reopening request, ACOs must verify whether the content they submit contains any protected health information (PHI) and/or personally identifiable information (PII). If any content contains PHI and/or PII, ACOs must use safeguards to protect and encrypt the file(s)/document(s) in question prior to submission (e.g., de-identify data, or password protect (do not email password; CMS will contact the ACO for the password)).<sup>16</sup> Related details are provided within [Section 2](#) and [Section 3](#).

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<sup>16</sup> If you have any questions regarding encryption, please contact the CMS IT Service Desk at: [cms\\_it\\_service\\_desk@cms.hhs.gov](mailto:cms_it_service_desk@cms.hhs.gov) or 1-800-562-1963.