§ 495.356 Nondiscrimination requirements.

State agencies and any other beneficiaries or subbeneficiaries of Federal financial assistance provided under this subpart are subject to the nondiscrimination requirements in 45 CFR parts 80, 84, and 91.

(a) These regulations in 45 CFR parts 80, 84, and 91 prohibit individuals from being excluded from participation in, being denied the benefits of, or being otherwise subjected to discrimination under any program or activity which receives Federal financial assistance.

(b) Specifically, 45 CFR part 80 prohibits discrimination on the basis of race, color, or national origin; 45 CFR part 84 prohibits discrimination on the basis of disability; and 45 CFR part 91 prohibits discrimination on the basis of age.

§ 495.358 Cost allocation plans.

State agencies that acquire HIT equipment and services under this subpart are subject to cost allocation plan requirements in 45 CFR part 95.

§ 495.360 Software and ownership rights.

(a) General rule. The State or local government must include a clause in all procurement instruments that provides that the State or local government will have all ownership rights in software or modifications thereof and associated documentation designed, developed or installed with FFP under this Subpart.

(b) Federal license. HHS reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use and to authorize others to use for Federal government purposes, the software, modifications, and documentation designed, developed or installed with FFP under this Subpart.

(c) Proprietary software. Proprietary operating/vendor software packages such as software that is owned and licensed for use by third parties, which are provided at established catalog or market prices and sold or leased to the general public must not be subject to the ownership provisions in paragraphs (a) and (b) of this section.

(d) Limitation. Federal financial participation is not available for proprietary applications software developed specifically for the public assistance programs covered under this subpart.

§ 495.362 Retroactive approval of FFP with an effective date of February 18, 2009.

For administrative activities performed by a State, without obtaining prior approval, which are in support of planning for incentive payments to providers, a State may request consideration of FFP by recorded request in a HIT advance planning document or implementation advance planning document update. In such a consideration, the agency takes into consideration overall Federal interests which may include any of the following:

(a) The acquisition must not be before February 18, 2009.

(b) The acquisition must be reasonable, useful, and necessary.

(c) The acquisition must be attributable to payments for reasonable administrative expenses under section 1903(a)(3)(F)(ii) of the Act.

§ 495.364 Review and assessment of administrative activities and expenses of Medicaid provider health information technology adoption and operation.

(a) CMS conducts periodic reviews on an as needed basis to assess the State’s progress described in its approved HIT planning advance planning document and health information technology implementation advance planning document.

(b) During planning, development, and implementation, these reviews will generally be limited to the overall progress, work performance, expenditure reports, project deliverables, and supporting documentation.

(c) CMS assesses the State’s overall compliance with the approved advance planning document and provide technical assistance and information sharing from other State projects.

(d) CMS will, on a continuing basis, review, assess and inspect the planning, design, development, implementation, and operation of activities and payments for reasonable administrative expenses related to the administration of payment for Medicaid provider HIT adoption and operation payments to determine the extent to
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which such activities meet the following:
(1) All requirements of this subpart.
(2) The goals and objectives stated in the approved HIT implementation advance planning document and State Medicaid HIT plan.
(3) The schedule, budget, and other conditions of the approved HIT implementation advance planning document and State Medicaid HIT plan.

§ 495.366 Financial oversight and monitoring of expenditures.

(a) General rule. (1) The State must have a process in place to estimate expenditures for the Medicaid EHR payment incentive program using the Medicaid Budget Expenditure System.
(2) The State must have a process in place to report actual expenditures for the Medicaid EHR payment incentive program using the Medicaid Budget Expenditure System.
(3) The State must have an automated payment and information retrieval mechanized system (Medicaid Management Information System) to make EHR payment incentives, to ensure Medicaid provider eligibility, to ensure the accuracy of payment incentives, and to identify potential improper payments.

(b) Provider eligibility as basis for making payment. Subject to § 495.332, the State must do all of the following:
(1) Collect and verify basic information on Medicaid providers to assure provider enrollment eligibility upon enrollment or re-enrollment to the Medicaid EHR payment incentive program.
(2) Collect and verify basic information on Medicaid providers to assure EPs are not hospital-based including the determination that substantially all health care services are not furnished in a hospital inpatient or emergency room setting.
(3) Collect and verify basic information on Medicaid providers to assure that EPs are practicing predominantly in a Federally-qualified health center or rural health clinic.
(4) Collect and verify basic information on Medicaid providers to assure that Medicaid providers who wish to participate in the EHR incentive payment program has or will have a NPI and will choose only one program from which to receive the incentive payment using the NPI, a TIN, and CMS’ national provider election database.

(c) Meaningful use and efforts to adopt, implement, or upgrade to certified electronic health record technology to make payment. Subject to § 495.312, 495.314, and § 495.332, the State must annually collect and verify information regarding the efforts to adopt, implement, or upgrade certified EHR technology and the meaningful use of said technology before making any payments to providers.

(d) Claiming Federal reimbursement for State expenditures. Subject to § 495.332, the State must do the following:
(1) Assure that State expenditures are claimed in accordance with, including but not limited to, applicable Federal laws, regulations, and policy guidance.
(2) Have a process in place to assure that expenditures for payment of Medicaid EHR incentive payments will not be claimed at amounts higher than 90 percent of the cost of such administration.
(3) Have a process in place to assure that expenditures for payment of Medicaid EHR incentive payments will not be claimed at amounts higher than 100 percent of the cost of such payments to Medicaid providers.

(e) Improper Medicaid electronic health record payment incentives.
(1) Subject to § 495.332, the State must have a process in place to assure that no duplicate Medicaid EHR payment incentives are paid between the Medicare and Medicaid programs, or paid by more than one State even if the provider is licensed to practice in multiple States, or paid within more than one area of a State.
(2) Subject to § 495.332, the State must have a process in place to assure that Medicaid EHR incentive payments are made without reduction or rebate, have been paid directly to an eligible provider or to an employer, a facility, or an eligible third-party entity to which the Medicaid eligible provider has assigned payments.
(3) Subject to § 495.332, the State must have a process in place to assure