

(G) *Factor 7.* It is not feasible to implement the measure specifications.

(H) *Factor 8.* The costs associated with a measure outweigh the benefit of its continued use in the program.

(ii) *Application of measure removal factors.* CMS assesses the benefits of removing a measure from the Hospital VBP Program on a case-by-case basis.

(iii) *Patient safety exception.* Upon a determination by CMS that the continued requirement for hospitals to submit data on a measure raises specific patient safety concerns, CMS may elect to immediately remove the measure from the Hospital VBP measure set. CMS will, upon removal of the measure—

(A) Provide notice to hospitals and the public at the time CMS removes the measure, along with a statement of the specific patient safety concerns

that would be raised if hospitals continued to submit data on the measure; and

(B) Provide notice of the removal in the FEDERAL REGISTER.

[77 FR 53674, Aug. 31, 2012, as amended at 83 FR 41704, Aug. 17, 2018; 86 FR 45520, Aug. 13, 2021; 88 FR 59333, Aug. 28, 2023]

§412.165 Performance scoring under the Hospital Value-Based Purchasing (VBP) Program.

(a) *Points awarded based on hospital performance.* (1) CMS will award points to hospitals for performance on each measure for which the hospital reports the applicable minimum number of cases during the applicable performance period. The applicable minimum number of cases are set forth as follows:

TABLE 1 TO PARAGRAPH (a)(1)—MINIMUM CASE NUMBER REQUIREMENTS FOR HOSPITAL VBP PROGRAM

Measure short name	Minimum number of cases
Person and Community Engagement Domain	
HCAHPS	Hospitals must report a minimum number of 100 completed Hospital Consumer Assessment of Healthcare providers and Systems (HCAHPS) surveys.
Clinical Outcomes Domain	
MORT-30-AMI	Hospitals must report a minimum number of 25 cases.
MORT-30-HF	Hospitals must report a minimum number of 25 cases.
MORT-30-PN (updated cohort)	Hospitals must report a minimum number of 25 cases.
MORT-30-COPD	Hospitals must report a minimum number of 25 cases.
MORT-30-CABG	Hospitals must report a minimum number of 25 cases.
COMP-HIP-KNEE	Hospitals must report a minimum number of 25 cases.
Safety Domain	
CAUTI	Hospitals have a minimum of 1,000 predicted infections as calculated by the Centers for Disease Control and Prevention (CDC).
CLABSI	Hospitals have a minimum of 1,000 predicted infections as calculated by the CDC.
Colon and Abdominal Hysterectomy SSI	Hospitals have a minimum of 1,000 predicted infections as calculated by the CDC.
MRSA Bacteremia	Hospitals have a minimum of 1,000 predicted infections as calculated by the CDC.
CDI	Hospitals have a minimum of 1,000 predicted infections as calculated by the CDC.
SEP-1	Hospitals must report a minimum number of 25 cases.
Efficiency and Cost Reduction Domain	
MSPB	Hospitals must report a minimum number of 25 cases.

(2) CMS will award from 1 to 9 points for achievement to each hospital whose performance on a measure during the applicable performance period meets or exceeds the achievement threshold but is less than the benchmark for that measure.

(3) CMS will award from 0 to 9 points for improvement to each hospital whose performance on a measure during the applicable performance period exceeds the improvement threshold but is less than the benchmark for that measure.

(4) CMS will award 10 points to a hospital whose performance on a measure during the applicable performance period meets or exceeds the benchmark for that measure.

(b) *Calculation of the Total Performance Score.* The hospital's Total Performance Score for a program year is calculated as follows:

(1) CMS will calculate a domain score for a hospital when it reports the minimum number of measures in the domain.

(2) CMS will sum all points awarded for each measure in a domain to calculate an unweighted domain score.

(3) CMS will normalize each domain score to ensure that it is expressed as a percentage of points earned out of 100.

(4) CMS will weight the domain scores with the finalized domain weights for each fiscal year.

(5) Beginning with FY 2026, CMS will calculate the number of health equity adjustment bonus points the hospital has earned for the fiscal year as follows:

(i) Calculating the measure performance scaler for each domain in which the hospital reported the minimum number of cases by—

(A) Awarding 4 points where the hospital's performance on the domain for the fiscal year meets or exceeds the top third of performance of all hospitals on the domain for the same fiscal year;

(B) Awarding 2 points where the hospital's performance on the domain for the fiscal year meets or exceeds the middle third of performance, but is less than the top third of performance, of all hospitals on the domain for the same fiscal year;

(C) Awarding 0 points where the hospital's performance on the domain is less than the middle third of performance of all hospitals on the domain for the fiscal year; and

(D) Summing the points awarded under paragraph (b)(5)(i) of this section to calculate the measure performance scaler for the hospital.

(ii) Calculating the underserved multiplier for the hospital.

(iii) Multiplying the measure performance scaler calculated under paragraph (b)(5)(i) of this section by the underserved multiplier and, if the result-

ing product is greater than 10, capping that product at 10.

(6) The hospital's Total Performance Score for the fiscal year is as follows:

(i) For fiscal years before FY 2026, the sum of the weighted domain scores up to a maximum score of 100.

(ii) Beginning with FY 2026, the sum of the weighted domain scores and the health equity adjustment bonus points up to a maximum score of 110.

(c) *Extraordinary circumstances exception.* (1) A hospital may request and CMS may grant exceptions to the Hospital VBP Program's requirements under this section when there are certain extraordinary circumstances beyond the control of the hospital.

(2) A hospital may request an exception within 90 calendar days of the date that the extraordinary circumstances occurred by submitting a completed Extraordinary Circumstances Request Form (available on the Hospital Value-Based Purchasing (HVBP) Program section of the QualityNet website (<https://qualitynet.cms.gov/>)), and any available evidence of the impact of the extraordinary circumstances on the hospital's quality measure performance. The form must be sent via secure file transfer via the *QualityNet Secure portal*, secure fax, email, or conventional mail.

(3) Following receipt of the request form, CMS will provide a written acknowledgement using the contact information provided in the request, to the CEO and any additional designated personnel, notifying them that the hospital's request has been received, and provide a written response to the CEO and any additional designated personnel using the contact information provided in the request.

(4) CMS may grant an exception to one or more hospitals that have not requested an exception if CMS determines that an extraordinary circumstance has affected an entire region or locale, which may include the entire United States. CMS will notify hospitals that it has granted an exception under this paragraph via multiple methods, which may include memos,

emails, and notices posted on the public QualityNet website (<https://qualitynet.cms.gov/>).

[50 FR 12741, Mar. 29, 1985, as amended at 85 FR 27621, May, 8, 2020; 86 FR 45520, Aug. 13, 2021; 88 FR 59333, Aug. 28, 2023]

§ 412.167 Appeal under the Hospital Value-Based Purchasing (VBP) Program.

(a) A hospital may appeal the following issues:

(1) CMS' decision to deny a hospital's correction request that the hospital submitted under the review and corrections process;

(2) Whether the achievement/improvement points were calculated correctly;

(3) Whether CMS properly used the higher of the achievement/improvement points in calculating the hospital's measure/dimension score;

(4) Whether CMS correctly calculated the domain scores, including the normalization calculation;

(5) Whether CMS used the proper lowest dimension score in calculating the hospital's HCAHPS consistency points;

(6) Whether CMS calculated the HCAHPS consistency points correctly;

(7) Whether the correct domain scores were used to calculate the Total Performance Score;

(8) Whether each domain was weighted properly;

(9) Whether the weighted domain scores were properly summed to arrive at the Total Performance Score; and,

(10) Whether the hospital's open/closed status (including mergers and acquisitions) is properly specified in CMS' systems.

(b) Appeals must be submitted within 30 days of CMS' decision to deny a corrections request under § 412.163 or within 30 days of the conclusion of the review and corrections period, as applicable, and must contain the following information:

(1) Hospital's CMS Certification Number (CCN).

(2) Hospital name.

(3) Hospital's basis for requesting an appeal. This must identify the hospital's specific reason(s) for appealing the hospital's Total Performance Score or performance assessment with respect to the performance standards.

(4) CEO contact information, including name, email address, telephone number, and mailing address (must include the physical address, not just the post office box).

(5) QualityNet security official contact information, including name, email address, telephone number, and mailing address (must include the physical address, not just the post office box).

(c) If a hospital is dissatisfied with CMS' decision on an appeal request submitted under paragraph (b) of this section, the hospital may request an independent CMS review of that decision.

(d) *Limitations on review.* There is no administrative or judicial review of the following:

(1) The methodology used to determine the amount of the value-based incentive payment under section 1886(o)(6) of the Act and the determination of such amount.

(2) The determination of the amount of funding available for value-based incentive payments under section 1886(o)(7)(A) of the Act and the payment reduction under section 1886(o)(7)(B)(i) of the Act.

(3) The establishment of the performance standards under section 1886(o)(3) of the Act and the performance period under section 1886(o)(4) of the Act.

(4) The measures specified under section 1886(b)(3)(B)(viii) of the Act and the measures selected under section 1886(o)(2) of the Act.

(5) The methodology developed under section 1886(o)(5) of the Act that is used to calculate hospital performance scores and the calculation of such scores.

(6) The validation methodology that is specified under section 1886(b)(3)(B)(viii)(XI) of the Act.

[50 FR 12741, Mar. 29, 1985, as amended at 78 FR 75196, Dec. 10, 2013; 86 FR 45520, Aug. 13, 2021]

§ 412.168 Special rules for FY 2022 and FY 2023.

(a) This section sets forth the scoring and payment methodology for each of fiscal years 2022 and 2023 Hospital VBP Program.

(b) CMS calculates a measure rate for all measures selected under § 412.164(a)