

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)