

(C) The corrective actions to be implemented by the third party intermediary to ensure that the non-compliance has been resolved and will not recur in the future.

(D) The detailed timeline for achieving compliance with the applicable requirements.

(E) The communication plan for communicating the impact to the parties identified in paragraph (e)(1)(i)(B) of this section.

(ii) Publicly disclose the entity's data error rate on the CMS website until the data error rate falls below 3 percent.

(2) CMS may immediately or with advance notice terminate a third party intermediary for one or more of the following reasons:

(i) CMS has grounds to impose remedial action;

(ii) CMS has not received a CAP within the specified time-period or the CAP is not accepted by CMS; or

(iii) The third party intermediary fails to correct the deficiencies or data errors by the date specified by CMS.

(3) A data submission that contains data inaccuracies affecting the third party intermediary's total clinicians may lead to remedial action/termination of the third party intermediary for future program year(s) based on CMS discretion.

(4) For purposes of this paragraph (e), CMS may determine that submitted data are inaccurate, unusable, or otherwise compromised, including but not limited to, if the submitted data:

(i) Includes, without limitation, TIN/NPI mismatches, formatting issues, calculation errors, or data audit discrepancies.

(ii) [Reserved]

(5) Beginning with the CY 2024 performance period/2026 MIPS payment year, a QCDR or qualified registry that submits a participation plan as required under paragraph (b)(3)(viii) of this section, but does not submit MIPS data for the applicable performance period for which they self-nominated under paragraph (b)(3)(viii) of this section, will be terminated.

(f) *Auditing of entities submitting MIPS data.* Any third party intermediary must comply with the following procedures as a condition of its qualification

and approval to participate in MIPS as a third party intermediary.

(1) The entity must make available to CMS the contact information of each MIPS eligible clinician, group, virtual group, subgroup, or APM Entity on behalf of whom it submits data. The contact information must include, at a minimum, the MIPS eligible clinician, group, virtual group, subgroup, or APM Entity phone number, address, and, if available, email.

(2) The entity must retain all data submitted to CMS for purposes of MIPS for 6 years from the end of the MIPS performance period.

(3) For the purposes of auditing, CMS may request any records or data retained for the purposes of MIPS for up to 6 years from the end of the MIPS performance period.

[86 FR 65677, Nov. 19, 2021, as amended at 87 FR 70229, Nov. 18, 2022]

#### § 414.1405 Payment.

(a) *General.* Each MIPS eligible clinician receives a MIPS payment adjustment factor, and if applicable an additional MIPS payment adjustment factor for exceptional performance, for a MIPS payment year determined by comparing their final score to the performance threshold and additional performance threshold for the year.

(b) *Performance threshold.* A performance threshold will be specified for each MIPS payment year.

(1) MIPS eligible clinicians with a final score at or above the performance threshold receive a zero or positive MIPS payment adjustment factor on a linear sliding scale such that an adjustment factor of 0 percent is assigned for a final score at the performance threshold and an adjustment factor of the applicable percent is assigned for a final score of 100.

(2) MIPS eligible clinicians with a final score below the performance threshold receive a negative MIPS payment adjustment factor on a linear sliding scale such that an adjustment factor of 0 percent is assigned for a final score at the performance threshold and an adjustment factor of the negative of the applicable percent is assigned for a final score of 0; further, MIPS eligible clinicians with final scores that are equal to or greater than

zero, but not greater than one-fourth of the performance threshold, receive a negative MIPS payment adjustment factor that is equal to the negative of the applicable percent.

(3) A scaling factor not to exceed 3.0 may be applied to positive MIPS payment adjustment factors to ensure budget neutrality such that the estimated increase in aggregate allowed charges resulting from the application of the positive MIPS payment adjustment factors for the MIPS payment year equals the estimated decrease in aggregate allowed charges resulting from the application of negative MIPS payment adjustment factors for the MIPS payment year.

(4) The performance threshold for the 2019 MIPS payment year is 3 points.

(5) The performance threshold for the 2020 MIPS payment year is 15 points.

(6) The performance threshold for the 2021 MIPS payment year is 30 points.

(7) The performance threshold for the 2022 MIPS payment year is 45 points.

(8) The performance threshold for the 2023 MIPS payment year is 60 points.

(9) Pursuant to the methodology established at paragraph (g) of this section:

(i) The performance threshold for the 2024 MIPS payment year is 75 points. The prior period used to determine the performance threshold is the 2019 MIPS payment year.

(ii) The performance threshold for the 2025 MIPS payment year is 75 points. The prior period used to determine the performance threshold is the 2019 MIPS payment year.

(c) *Applicable percent.* For MIPS payment year 2019, 4 percent. For MIPS payment year 2020, 5 percent. For MIPS payment year 2021, 7 percent. For MIPS payment year 2022 and each subsequent MIPS payment year, 9 percent.

(d) *Additional performance threshold.* An additional performance threshold will be specified for each of the MIPS payment years 2019 through 2024.

(1) In addition to the MIPS payment adjustment factor, MIPS eligible clinicians with a final score at or above the additional performance threshold receive an additional MIPS payment adjustment factor for exceptional performance on a linear sliding scale such that an additional adjustment factor of

0.5 percent is assigned for a final score at the additional performance threshold and an additional adjustment factor of 10 percent is assigned for a final score of 100, subject to the application of a scaling factor as determined by CMS, such that the estimated aggregate increase in payments resulting from the application of the additional MIPS payment adjustment factors for the MIPS payment year shall not exceed \$500,000,000 for each of the MIPS payment years 2019 through 2024.

(2) [Reserved]

(3) The additional performance threshold for the 2019 MIPS payment year is 70 points.

(4) The additional performance threshold for the 2020 MIPS payment year is 70 points.

(5) The additional performance threshold for the 2021 MIPS payment year is 75 points.

(6) The additional performance threshold for the 2022 and 2023 MIPS payment years is 85 points.

(7) The additional performance threshold for the 2024 MIPS payment year is 89 points.

(e) *Application of adjustments to payments.* Except as specified in paragraph (f) of this section, in the case of covered professional services (as defined in section 1848(k)(3)(A) of the Act) furnished by a MIPS eligible clinician during a MIPS payment year beginning with 2019, the amount otherwise paid under Part B with respect to such covered professional services and MIPS eligible clinician for such year, is multiplied by 1, plus the sum of the MIPS payment adjustment factor divided by 100, and as applicable, the additional MIPS payment adjustment factor divided by 100.

(f) *Exception to application of MIPS payment adjustment factors to model-specific payments under section 1115A APMs.* Beginning with the 2019 MIPS payment year, the payment adjustment factors specified under paragraph (e) of this section are not applicable to payments that meet all of the following conditions:

(1) Are made only to participants in a model tested under section 1115A of the Act;

(2) Would otherwise be subject to the requirement to apply the MIPS payment adjustment factors if the payment is made with respect to a MIPS eligible clinician participating in a section 1115A model; and

(3) Either have a specified payment amount or are paid according to a methodology for calculating a model-specific payment that is applied in a consistent manner to all model participants, such that application of the MIPS payment adjustment factors would potentially interfere with CMS's ability to effectively evaluate the impact of the APM.

(g) *Performance threshold methodology.* For each of the 2024, 2025, and 2026 MIPS payment years, the performance threshold is the mean of the final scores for all MIPS eligible clinicians from a prior period as specified under paragraph (b) of this section.

[81 FR 77537, Nov. 4, 2016, as amended at 82 FR 53960, Nov. 16, 2017; 83 FR 60089, Nov. 23, 2018; 84 FR 63200, Nov. 15, 2019; 86 FR 65681, Nov. 19, 2021; 87 FR 70229, Nov. 18, 2022]

**§ 414.1410 Advanced APM determination.**

(a) *General.* An APM is an Advanced APM for a payment year if CMS determines that it meets the criteria in § 414.1415 during the QP Performance Period.

(b) *Advanced APM determination process.* CMS determines Advanced APMs in the following manner:

(1) *Advanced APM determination.* (i) No later than January 1, 2017, CMS will post on its Web site a list of all Advanced APMs for the first QP Performance Period.

(ii) CMS updates the Advanced APM list on its Web site at intervals no less than annually.

(iii) CMS will include notice of whether a new APM is an Advanced APM in the first public notice of the new APM.

(2) [Reserved]

[81 FR 77537, Nov. 4, 2016, as amended at 82 FR 53960, Nov. 16, 2017]

**§ 414.1415 Advanced APM criteria.**

(a) *Use of certified electronic health record technology (CEHRT)*—(1) *Required use of CEHRT.* To be an Advanced APM, an APM must:

(i) Require at least 50 percent, or for QP Performance Periods beginning in 2019, 75 percent of eligible clinicians in each participating APM Entity group, or for APMs in which hospitals are the APM Entities, each hospital, to use CEHRT to document and communicate clinical care to their patients or health care providers; or

(ii) For QP Performance Periods prior to 2019, for the Shared Savings Program, apply a penalty or reward to an APM Entity based on the degree of the use of CEHRT of the eligible clinicians in the APM Entity.

(b) *Payment based on quality measures.*

(1) To be an Advanced APM, an APM must include quality measure performance as a factor when determining payment to participants for covered professional services under the terms of the APM.

(2) At least one of the quality measures used in the payment arrangement as specified in paragraph (b)(1) of this section must:

(i) For QP Performance Periods before January 1, 2020, have an evidence-based focus, be reliable and valid, and meet at least one of the following criteria:

(A) Used in the MIPS quality performance category, as described in § 414.1330;

(B) Endorsed by a consensus-based entity;

(C) Developed under section 1848(s) of the Act;

(D) Submitted in response to the MIPS Call for Quality Measures under section 1848(q)(2)(D)(ii) of the Act; or

(E) Any other quality measures that CMS determines to have an evidence-based focus and to be reliable and valid; and

(ii) For QP Performance Periods beginning on or after January 1, 2020, be:

(A) Finalized on the MIPS final list of measures, as described in § 414.1330;

(B) Endorsed by a consensus-based entity; or

(C) Determined by CMS to be evidenced-based, reliable, and valid.

(3) The quality measures upon which an Advanced APM bases the payment in paragraph (b)(1) of this section must include at least one measure that is an outcome measure unless CMS determines that there are no available or