

§ 416.315 Public reporting of data under the ASCQR Program.

Data that an ASC submitted for the ASCQR Program will be made publicly available on a CMS Web site after providing the ASC an opportunity to review the data to be made public. CMS will publicly display ASC data by the National Provider Identifier (NPI) when data are submitted by the NPI. CMS will publicly display ASC data by the CMS Certification Number (CCN) when data are submitted by the CCNs.

§ 416.320 Retention and removal of quality measures under the ASCQR Program.

(a) *General rule for the retention of quality measures.* Quality measures adopted for an ASCQR Program measure set for a previous payment determination year are retained in the ASCQR Program for measure sets for subsequent payment determination years, except when they are removed, suspended, or replaced as set forth in paragraphs (b) and (c) of this section.

(b) *Immediate measure removal.* In cases where CMS believes that the continued use of a measure as specified raises patient safety concerns, CMS will immediately remove a quality measure from the ASCQR Program and will promptly notify ASCs and the public of the removal of the measure and the reasons for its removal through the ASCQR Program ListServ and the ASCQR Program QualityNet Web site. CMS will confirm the removal of the measure for patient safety concerns in the next ASCQR Program rulemaking.

(c) *Removal of quality measures—(1) General rule for the removal of quality measures.* Unless a measure raises specific safety concerns as set forth in paragraph (b) of this section, CMS will use the regular rulemaking process to remove, suspend, or replace quality measures in the ASCQR Program to allow for public comment.

(2) *Factors for consideration of removal of quality measures.* CMS will weigh whether to remove measures based on the following factors:

(i) *Factor 1.* Measure performance among ASCs is so high and unvarying that meaningful distinctions and improvements in performance can no longer be made (topped-out measures);

(ii) *Factor 2.* Performance or improvement on a measure does not result in better patient outcomes;

(iii) *Factor 3.* A measure does not align with current clinical guidelines or practice;

(iv) *Factor 4.* The availability of a more broadly applicable (across settings, populations, or conditions) measure for the topic;

(v) *Factor 5.* The availability of a measure that is more proximal in time to desired patient outcomes for the particular topic;

(vi) *Factor 6.* The availability of a measure that is more strongly associated with desired patient outcomes for the particular topic;

(vii) *Factor 7.* Collection or public reporting of a measure leads to negative unintended consequences other than patient harm; and

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

(3) *Criteria to determine topped-out measures.* For the purposes of the ASCQR Program, a measure is considered to be topped-out under paragraph (c)(2)(i) of this section when it meets both of the following criteria:

(i) Statistically indistinguishable performance at the 75th and 90th percentiles (defined as when the difference between the 75th and 90th percentiles for an ASC's measure is within two times the standard error of the full data set); and

(ii) A truncated coefficient of variation less than or equal to 0.10.

(4) *Application of measure removal factors.* The benefits of removing a measure from the ASCQR Program will be assessed on a case-by-case basis. A measure will not be removed solely on the basis of meeting any specific factor or criterion.

[80 FR 70604, Nov. 13, 2015, as amended at 83 FR 59178, Nov. 21, 2018]

§ 416.325 Measure maintenance under the ASCQR Program.

(a) *Measure maintenance under the ASCQR Program.* CMS follows different procedures to update the measure specifications under the ASCQR Program based on whether the change is substantive or nonsubstantive. CMS will

determine what constitutes a substantive versus a nonsubstantive change to a measure's specifications on a case-by-case basis.

(b) *Substantive changes.* CMS will continue to use rulemaking to adopt substantive updates to measures in the ASCQR Program.

(c) *Nonsubstantive changes.* If CMS determines that a change to a measure previously adopted in the ASCQR Program is nonsubstantive, CMS will use a subregulatory process to revise the ASCQR Program Specifications Manual so that it clearly identifies the changes to that measure and provide links to where additional information on the changes can be found. When a measure undergoes subregulatory maintenance, CMS will provide notification of the measure specification update on the QualityNet Web site and in the ASCQR Program Specifications Manual, and will provide sufficient lead time for ASCs to implement the revisions where changes to the data collection systems would be necessary.

§ 416.330 Reconsiderations under the ASCQR Program.

(a) *Reconsiderations of ASCQR Program decisions.* An ASC may request reconsideration of a decision by CMS that it has not met the requirements of the ASCQR Program for a particular payment determination year. An ASC must submit a reconsideration request to CMS by no later than the first business day on or after March 17 of the affected payment year.

(b) *Requirements for reconsideration requests.* A reconsideration request must contain the following information:

- (1) The ASC CCN and related NPI(s);
- (2) The name of the ASC;
- (3) The CMS-identified reason for not meeting the requirements of the ASCQR Program for the affected payment determination year as provided in any CMS notification to the ASC;

(4) The ASC's basis for requesting reconsideration. The ASC must identify its specific reason(s) for believing it met the ASCQR Program requirements for the affected payment determination year and should not be subject to the reduced ASC annual payment update;

(5) The ASC-designated personnel contact information, including name, email address, telephone number, and mailing address (must include physical mailing address, not just a post office box); and

(6) A copy of all materials that the ASC submitted to comply with the requirements of the affected ASCQR Program payment determination year. With regard to information on claims, ASCs are not required to submit copies of all submitted claims, but instead may focus on the specific claims at issue. For these claims, ASCs should submit relevant information, which could include copies of the actual claims at issue.

(c) *Reconsideration process.* Upon receipt of a request for reconsideration, CMS will do the following:

(1) Provide an email acknowledgment, using the contact information provided in the reconsideration request, notifying the ASC that the request has been received; and

(2) Provide a formal response to the ASC contact using the information provided in the reconsideration request notifying the ASC of the outcome of the reconsideration process.

(d) *Final ASCQR Program payment determination.* For an ASC that submits a timely reconsideration request, the reconsideration determination is the final ASCQR Program payment determination. For an ASC that does not submit a timely reconsideration request, the CMS determination is the final payment determination. There is no appeal of any final ASCQR Program payment determination.

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

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