

group and comply with the requirements of the MIPS and all other applicable laws (including, but not limited to, Federal criminal law, the Federal False Claims Act, the Federal anti-kickback statute, the Federal civil monetary penalties law, the Federal physician self-referral law, and the Health Insurance Portability and Accountability Act of 1996).

(ix) Is executed on behalf of each party by an individual who is authorized to bind the party.

(d) *Virtual group reporting requirements.* For solo practitioners and groups of 10 or fewer eligible clinicians to participate in MIPS as a virtual group, all of the following requirements must be met:

(1) Virtual groups must meet the definition of a virtual group at all times during the applicable performance period.

(2) Solo practitioners and groups of 10 or fewer eligible clinicians that elect to participate in MIPS as a virtual group must aggregate their performance data across the virtual group's TINs, and for the Promoting Interoperability performance category, must aggregate the performance data of all of the MIPS eligible clinicians in the virtual group's TINs for whom the virtual group has data in CEHRT.

(3) Solo practitioners and groups of 10 or fewer eligible clinicians that elect to participate in MIPS as a virtual group will have their performance assessed at the virtual group level across all four MIPS performance categories.

(4) Virtual groups must adhere to the election process described in paragraph (c) of this section.

[83 FR 60077, Nov. 23, 2018, as amended at 84 FR 63195, Nov. 15, 2019]

#### §414.1317 APM Entity groups.

(a) *APM entity group determination.* The APM Entity group will be determined according to the requirements set forth in §414.1425(b)(1).

(1) In addition to the dates set forth in §414.1425(b)(1), for purposes of MIPS, the APM Entity group includes an eligible clinician who is on a Participation List on December 31 of the MIPS performance period.

(2) For purposes of MIPS scoring, the APM Entity group will be comprised

only of those eligible clinicians within the APM Entity group who are determined to be MIPS eligible at the individual or group level.

(3) For purposes of calculating the APM Entity group score, MIPS scores submitted by virtual groups will not be included.

(b) *APM Entity group scoring.* The MIPS final score calculated for the APM Entity is applied to each MIPS eligible clinician in the APM Entity group. The MIPS payment adjustment is applied at the TIN/NPI level for each of the MIPS eligible clinicians in the APM Entity group.

(1) *Determination of performance category score for each MIPS eligible clinician in an APM Entity.* For APM Entities, where a performance category is not reported by the APM Entity, CMS uses one score for each MIPS eligible clinician in an APM Entity group to derive a single average APM Entity score for the performance category. The applicable score for each MIPS eligible clinician is the higher of either:

(i) A group score based on the measure data for the performance category reported by a TIN for the MIPS eligible clinician according to MIPS submission and reporting requirements for groups.

(ii) An individual score based on the measure data for the performance category reported by the MIPS eligible clinician according to MIPS submission and reporting requirements for individuals.

(iii) In the event that a MIPS eligible clinician in an APM Entity receives an exception from the reporting requirements, such eligible clinician will be assigned a null score when CMS calculates the APM Entity's performance category score.

(2) *Performance category weights.* The cost performance category weight is zero percent of the final score for an APM Entity. The performance category reweighting scenarios under §414.1380(c)(2) apply to an APM Entity.

(3) *Improvement scoring for APM Entity groups.* For an APM Entity for which CMS calculated a total performance category score for one or more participants in the APM Entity for the preceding MIPS performance period, CMS calculates an improvement score for

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each performance category for which a previous year's total performance category score is available as specified in § 414.1380(b).

(4) *Extreme and uncontrollable circumstances.* Beginning with the 2022 MIPS payment year, an APM Entity may submit to CMS an application described at § 414.1380(c)(2)(i)(A)(6) and (c)(2)(i)(C)(2) requesting reweighting of all four MIPS performance categories and for all MIPS eligible clinicians in the APM Entity group, based on extreme and uncontrollable circumstances.

(i) An APM Entity must demonstrate in its application to CMS that greater than 75 percent of its participant MIPS eligible clinicians would be eligible for reweighting the Promoting Interoperability performance category for the applicable performance period.

(ii) If CMS approves the request for reweighting based on an APM Entity's application, and if MIPS data are submitted for the APM Entity for the applicable performance period, all four of the MIPS performance categories will be reweighted for the APM Entity group notwithstanding the data submission.

[85 FR 85030, Dec. 28, 2020, as amended at 86 FR 65671, Nov. 19, 2021]

#### § 414.1318 Subgroups.

(a) *Eligibility and special status—(1) General.* Except as provided under paragraph (a)(2) of this section and subject to paragraph (a)(4) of this section, for a MIPS payment year, determinations of meeting the low-volume threshold criteria and special status for a subgroup is determined at the group level in accordance with §§ 414.1305 and 414.1310.

(2) *Exclusions.* An individual eligible clinician or group that elects to participate in MIPS as a MIPS eligible clinician in accordance with § 414.1310(b)(1)(iii)(A) or (b)(2) is not eligible to participate in a subgroup.

(3) *Single subgroup per eligible clinician.* An individual eligible clinician (as represented by a TIN-NPI combination) may register for no more than one subgroup within a group's TIN.

(4) *Subgroup determination period.* CMS will apply the low-volume threshold criteria for a subgroup as described under paragraph (a)(1) of this section

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using information from the initial 12-month segment of the applicable MIPS determination period.

(b) *Final score.* Except as provided under § 414.1317(b) and paragraph (b)(1) of this section, each MIPS eligible clinician in the subgroup receives a final score based on the subgroup's combined performance.

(1) CMS will not assign a final score for a subgroup that registers and does not submit data as a subgroup for the applicable performance period.

(2) [Reserved]

(c) *Subgroup reporting requirements.* For individual eligible clinicians to participate in MIPS as a subgroup, all of the following requirements must be met:

(1) Individual eligible clinicians that elect to participate in MIPS as a subgroup must aggregate their quality and improvement activities performance data across the subgroup's identifier.

(2) Individual eligible clinicians that elect to participate in MIPS as a subgroup will have their performance assessed at the subgroup level across all the MIPS performance categories based on an MVP in accordance with § 414.1365. Subgroups that are MVP Participants must adhere to an election process described in § 414.1365(b).

[86 FR 65671, Nov. 19, 2021; as amended at 87 FR 70227, Nov. 18, 2022]

#### § 414.1320 MIPS performance period.

(a) For purposes of the 2019 MIPS payment year, the performance period for all performance categories and submission mechanisms except for the cost performance category and data for the quality performance category reported through the CMS Web Interface, for the CAHPS for MIPS survey, and for the all-cause hospital readmission measure, is a minimum of a continuous 90-day period within CY 2017, up to and including the full CY 2017 (January 1, 2017 through December 31, 2017). For purposes of the 2019 MIPS payment year, for data reported through the CMS Web Interface or the CAHPS for MIPS survey and administrative claims-based cost and quality measures, the performance period under MIPS is CY 2017 (January 1, 2017 through December 31, 2017).