

Puerto Rico eligible hospital means a subsection (d) Puerto Rico hospital as defined in section 1886(d)(9)(A) of the Social Security Act.

Qualifying CAH means a CAH that is a meaningful EHR user for the EHR reporting period applicable to a payment year or payment adjustment year in which a cost reporting period begins.

Qualifying eligible professional (qualifying EP) means an EP who is a meaningful EHR user for the EHR reporting period applicable to a payment or payment adjustment year and who is not a hospital-based EP, as determined for that payment or payment adjustment year.

Qualifying hospital means an eligible hospital that is a meaningful EHR user for the EHR reporting period applicable to a payment or payment adjustment year.

[75 FR 44565, July 28, 2010, as amended at 77 FR 54157, Sept. 4, 2012; 83 FR 41710, Aug. 17, 2018]

§ 495.102 Incentive payments to EPs.

(a) *General rules.* (1) Subject to paragraph (b) of this section, in addition to the amount otherwise paid under section 1848 of the Act, there must be paid to a qualifying EP (or to an employer or entity in the cases described in section 1842(b)(6)(A) of the Act) for a payment year an amount equal to 75 percent of the estimated allowed charges for covered professional services furnished by the EP during the payment year.

(2) For purposes of this paragraph (a) of this section, the estimated allowed charges for the qualifying EP's covered professional services during the payment year are determined based on claims submitted no later than 2 months after the end of the payment year, and, in the case of a qualifying EP who furnishes covered professional services in more than one practice, are determined based on claims submitted for the EP's covered professional services across all such practices.

(b) *Limitations on amounts of incentive payments.* (1) Except as otherwise provided in paragraphs (b)(2) and (c) of this section, the amount of the incentive payment under paragraph (a) of this section for each payment year is limited to the following amounts:

(i) For the first payment year, \$15,000 (or, if the first payment year for such qualifying EP is 2011 or 2012, \$18,000).

(ii) For the second payment year, \$12,000.

(iii) For the third payment year, \$8,000.

(iv) For the fourth payment year, \$4,000.

(v) For the fifth payment year, \$2,000.

(vi) For any succeeding payment year for such professional, \$0.

(2)(i) If the first payment year for a qualifying EP is 2014, then the payment limit for a payment year for the qualifying EP is the same as the amount specified in paragraph (b)(1) of this section for such payment year for a qualifying EP whose first payment year is 2013.

(ii) If the first payment year for a qualifying EP is after 2014, then the payment limit specified in this paragraph for such EP for such year and any subsequent year is \$0.

(c) *Increase in incentive payment limit for EPs who predominantly furnish services in a geographic HPSA.* In the case of a qualifying EP who furnishes more than 50 percent of his or her covered professional services during the payment year in a geographic HPSA that is designated as of December 31 of the prior year, the incentive payment limit determined under paragraph (b) of this section is to be increased by 10 percent.

(d) *Payment adjustment effective in CY 2015 and subsequent years for nonqualifying EPs.* (1) Subject to paragraphs (d)(3) and (4) of this section, for CY 2015 through the end of CY 2018, for covered professional services furnished by an EP who is not hospital-based, and who is not a qualifying EP by virtue of not being a meaningful EHR user (for the EHR reporting period applicable to the payment adjustment year), the payment amount for such services is equal to the product of the applicable percent specified in paragraph (d)(2) of this section and the Medicare physician fee schedule amount for such services.

(2) *Applicable percent.* Applicable percent is as follows:

(i) For 2015, 99 percent if the EP is not subject to the payment adjustment for an EP who is not a successful electronic prescriber under section 1848(a)(5) of the Act, or 98 percent if the

EP is subject to the payment adjustment for an EP who is not a successful electronic prescriber under section 1848(a)(5) of the Act).

(ii) For 2016, 98 percent.

(iii) For 2017, 97 percent.

(iv) For 2018, 97 percent, except as provided in paragraph (d)(3) of this section.

(3) *Decrease in applicable percent in certain circumstances.* In CY 2018, if the Secretary finds that the proportion of EPs who are meaningful EHR users is less than 75 percent, the applicable percent must be decreased by 1 percentage point for EPs from the applicable percent in the preceding year.

(4) *Exceptions.* The Secretary may, on a case-by-case basis, exempt an EP from the application of the payment adjustment under paragraph (d)(1) of this section if the Secretary determines that compliance with the requirement for being a meaningful EHR user would result in a significant hardship for the EP. To be considered for an exception, an EP must submit, in the manner specified by CMS, an application demonstrating that it meets one or more of the criteria in this paragraph (d)(4) unless otherwise specified in the criteria. The Secretary's determination to grant an EP an exemption may be renewed on an annual basis, provided that in no case may an EP be granted an exemption for more than 5 years.

(i) During any 90-day period from the beginning of the year that is 2 years before the payment adjustment year to July 1 of the year preceding the payment adjustment year, or a later date specified by CMS, the EP was located in an area without sufficient Internet access to comply with the meaningful use objectives requiring internet connectivity, and faced insurmountable barriers to obtaining such internet connectivity. Applications requesting this exception must be submitted no later than July 1 of the year before the applicable payment adjustment year, or a later date specified by CMS.

(ii) The EP has been practicing for less than 2 years.

(iii)(A) During the calendar year that is 2 calendar years before the payment adjustment year, the EP that has previously demonstrated meaningful use

faces extreme and uncontrollable circumstances that prevent it from becoming a meaningful EHR user. Applications requesting this exception must be submitted no later than July 1 of the year before the applicable payment adjustment year, or a later date specified by CMS.

(B) During the calendar year preceding the payment adjustment year, the EP that has not previously demonstrated meaningful use faces extreme and uncontrollable circumstances that prevent it from becoming a meaningful EHR user. Applications requesting this exception must be submitted by July 1 of the year before the applicable payment adjustment year, or a later date specified by CMS.

(iv) An EP may request an exception through an application submitted by July 1 of the year before the applicable payment adjustment year, or a later date specified by CMS due to difficulty in meeting meaningful use based on any one of the following during the period that begins 2 calendar years before the payment adjustment year through the application deadline:

(A) The EP practices at multiple locations and can demonstrate inability to control the availability of Certified EHR Technology at one such practice location or a combination of practice locations, and where the location or locations constitute more than 50 percent of their patient encounters.

(B) The EP can demonstrate difficulty in meeting meaningful use on the basis of lack of face-to-face or telemedicine interaction with patients and lack of need for follow up with patients.

(C) The EP has a primary specialty listed in PECOS as anesthesiology, radiology or pathology 6 months prior to the first day of the payment adjustments that would otherwise apply. Such an EP may be deemed to qualify for this exception, subject to the 5-year limit that applies to all exceptions under this paragraph.

(v) For the 2018 payment adjustment only, an EP who has not successfully demonstrated meaningful use in a prior year, intends to attest to meaningful use for an EHR reporting period in 2017

by October 1, 2017 to avoid the 2018 payment adjustment, and intends to transition to the Merit-Based Incentive Payment System (MIPS) and report on measures specified for the advancing care information performance category under the MIPS in 2017. The EP must explain in the application why demonstrating meaningful use for an EHR reporting period in 2017 would result in a significant hardship. Applications requesting this exception must be submitted no later than October 1, 2017, or a later date specified by CMS.

(5) *Exception for decertified EHR technology.* The Secretary shall exempt an EP from the application of the payment adjustment for CY 2018 under paragraph (d)(1) of this section if the Secretary determines that compliance with the requirement for being a meaningful EHR user is not possible because the certified EHR technology used by the EP has been decertified under ONC's Health IT Certification Program. To be considered for an exception, an EP must submit, in the manner specified by CMS, an application demonstrating that the certified EHR technology was decertified during the 12-month period preceding the applicable EHR reporting period for the CY 2018 payment adjustment year, or during the applicable EHR reporting period for the CY 2018 payment adjustment year, and that the EP made a good faith effort to obtain another certified EHR technology for that EHR reporting period. Applications requesting this exception must be submitted no later than October 1, 2017, or a later date specified by CMS.

(6) *Payment adjustments not applicable to hospital-based EPs.* No payment adjustment under paragraphs (d)(1) through (3) of this section may be made in the case of a hospital-based eligible professional, as defined in § 495.4.

(7) *Payment adjustments not applicable to ambulatory surgical center-based EPs.* For the CY 2017 and CY 2018 payment adjustment years, no payment adjustment under paragraphs (d)(1) through (3) of this section may be made in the case of an ambulatory surgical center-

based eligible professional, as defined in § 495.4.

[75 FR 44565, July 28, 2010, as amended at 77 FR 54157, Sept. 4, 2012; 77 FR 54157, Sept. 4, 2012; 79 FR 68009, Nov. 13, 2014; 81 FR 77557, Nov. 4, 2016; 81 FR 79892, Nov. 14, 2016; 82 FR 38518, Aug. 14, 2017]

§ 495.104 Incentive payments to eligible hospitals.

(a) *General rule.* A qualifying hospital (as defined in this subpart) must receive the special incentive payment as determined under the formulas described in paragraph (c) of this section for the period specified in paragraph (b) of this section.

(b) *Transition periods.* Subject to paragraph (d) of this section and the payment formula specified in paragraph (c) of this section, qualifying hospitals may receive incentive payments during transition periods which comprise the following fiscal years:

(1) Hospitals whose first payment year is FY 2011 may receive such payments for FYs 2011 through 2014.

(2) Hospitals whose first payment year is FY 2012 may receive such payments for FYs 2012 through 2015.

(3) Hospitals whose first payment year is FY 2013 may receive such payments for FYs 2013 through 2016.

(4) Hospitals whose first payment year is FY 2014 may receive such payments for FY 2014 through 2016.

(5) Hospitals whose first payment year is FY 2015 may receive such payments for FY 2015 through 2016.

(6) Puerto Rico eligible hospitals whose first payment year is FY 2016 may receive such payments for FYs 2016 through 2019.

(7) Puerto Rico eligible hospitals whose first payment year is FY 2017 may receive such payments for FYs 2017 through 2020.

(8) Puerto Rico eligible hospitals whose first payment year is FY 2018 may receive such payments for FYs 2018 through 2021.

(9) Puerto Rico eligible hospitals whose first payment year is FY 2019 may receive such payments for FYs 2019 through 2021.

(10) Puerto Rico eligible hospitals whose first payment year is FY 2020 may receive such payments for FYs 2020 through 2021.