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of the year before the payment adjustment year.

(3) For a CAH—

(i) Except as provided in paragraph (3)(ii) of this definition, the Federal fiscal year that is the payment adjustment year.

(ii) If the CAH is demonstrating it is a meaningful EHR user for the first time in the payment adjustment year, any continuous 90-day period within the Federal fiscal year that is the payment adjustment year.

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Hospital-based EP. Unless it meets the requirements of § 495.5 of this part, a hospital-based EP means an EP who furnishes 90 percent or more of his or her covered professional services in sites of service identified by the codes used in the HIPAA standard transaction as an inpatient hospital or emergency room setting in the year preceding the payment year, or in the case of a payment adjustment year, in either of the 2 years before such payment adjustment year.

(1) For Medicare, this is calculated based on—

(i) The FFY preceding the payment year; and

(ii) For the payment adjustments, on the—

(A) FFY preceding the payment adjustment year; or

(B) FFY 2 years before the payment adjustment year.

(2) For Medicaid, it is at the State's discretion if the data is gathered on the Federal fiscal year or calendar year preceding the payment year.

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Meaningful EHR user * * *

(1) Subject to paragraph (3) of this definition, an EP, eligible hospital or CAH that, for an EHR reporting period for a payment year or payment adjustment year, demonstrates in accordance with § 495.8 meaningful use of Certified EHR Technology by meeting the applicable objectives and associated measures under § 495.6 and successfully reporting the clinical quality measures selected by CMS to CMS or the States, as applicable, in the form and manner specified by CMS or the States, as applicable; and

* * * * *

(3) To be considered a meaningful EHR user, at least 50 percent of an EP's patient encounters during an EHR reporting period for a payment year (or, in the case of a payment adjustment year, during an applicable EHR reporting period for such payment adjustment year) must occur at a practice/location or practices/locations equipped with Certified EHR Technology.

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Payment adjustment year means either of the following:

(1) For an EP, a calendar year beginning with CY 2015.

(2) For a CAH or an eligible hospital, a Federal fiscal year beginning with FY 2015.

* * * * *

§ 495.5 Requirements for EPs seeking to reverse a hospital-based determination under § 495.4.

(a) *Exception for certain EPs*. Beginning with payment year 2013, an EP who meets the definition of hospital-based EP specified in § 495.4 but who can demonstrate to CMS that the EP funds the acquisition, implementation, and maintenance of Certified EHR Technology, including supporting hardware and interfaces needed for meaningful use without reimbursement from an eligible hospital or CAH, and uses such Certified EHR Technology in the inpatient or emergency department of a hospital (instead of the hospital's Certified EHR Technology), may be determined by CMS to be a nonhospital-based EP.

(b) *Process for determining a nonhospital-based EP*. When an EP registers for a given payment year they should receive a determination of whether they have been determined ''hospital-based.''

(1) An EP determined ''hospital-based,'' but who wishes to be determined nonhospital-based as specified in paragraph (a) of section, may use an administrative process to provide documentation and seek a nonhospital-based determination. Such administrative process will be available throughout the incentive payment year and including the 2 months following the incentive payment year in which the EP may attest to being a meaningful EHR user.

(2) If an EP is determined nonhospital-based under paragraph (a) of this section, to be considered nonhospital-based for subsequent payment years, the EP must attest in such payment year (or by the time the EP must attest it is a meaningful EHR user for

such year) that the EP continues to meet the criteria of paragraph (a) of this section.

(c) *Requirements for nonhospital-based EPs.* An EP determined nonhospital-based must—

(1) Continue to meet all applicable requirements to receive an incentive payment, including meeting all requirements for meaningful use; and

(2) Demonstrate meaningful use using all encounters at all locations equipped with Certified EHR Technology, including those in the inpatient and emergency departments of the hospital.

EFFECTIVE DATE NOTE: At 77 FR 54149, Sept. 4, 2012, § 495.5 was added, effective Nov. 5, 2012.

§ 495.6 Meaningful use objectives and measures for EPs, eligible hospitals, and CAHs.

(a) *Stage 1 criteria for EPs*—(1) *General rule regarding Stage 1 criteria for meaningful use for EPs.* Except as specified in paragraphs (a)(2) and (a)(3) of this section, EPs must meet all objectives and associated measures of the Stage 1 criteria specified in paragraph (d) of this section and five objectives of the EP's choice from paragraph (e) of this section to meet the definition of a meaningful EHR user.

(2) *Exclusion for non-applicable objectives.* (i) An EP may exclude a particular objective contained in paragraphs (d) or (e) of this section, if the EP meets all of the following requirements:

(A) Must ensure that the objective in paragraph (d) or (e) of this section includes an option for the EP to attest that the objective is not applicable.

(B) Meets the criteria in the applicable objective that would permit the attestation.

(C) Attests.

(ii) An exclusion will reduce (by the number of exclusions applicable) the number of objectives that would otherwise apply. For example, an EP that has an exclusion from one of the objectives in paragraph (e) of this section must meet four (and not five) objectives of the EP's choice from such paragraph to meet the definition of a meaningful EHR user.

(3) *Exception for Medicaid EPs who adopt, implement or upgrade in their first payment year.* For Medicaid EPs who adopt, implement, or upgrade certified EHR technology in their first payment year, the meaningful use objectives and associated measures of the Stage 1 criteria specified in paragraphs (d) and (e) apply beginning with the second payment year, and do not apply to the first payment year.

(b) *Stage 1 criteria for eligible hospitals and CAHs*—(1) *General rule regarding Stage 1 criteria for meaningful use for eligible hospitals or CAHs.* Except as specified in paragraphs (b)(2) and (b)(3) of this section, eligible hospitals and CAHs must meet all objectives and associated measures of the Stage 1 criteria specified in paragraph (f) of this section and five objectives of the eligible hospital's or CAH's choice from paragraph (g) of this section to meet the definition of a meaningful EHR user.

(2) *Exclusions for nonapplicable objectives.* (i) An eligible hospital or CAH may exclude a particular objective that includes an option for exclusion contained in paragraphs (f) or (g) of this section, if the hospital meets all of the following requirements:

(A) The hospital meets the criteria in the applicable objective that would permit an exclusion.

(B) The hospital so attests.

(ii) An exclusion will reduce (by the number of exclusions received) the number of objectives that would otherwise apply. For example, an eligible hospital that is excluded from one of the objectives in paragraph (g) of this section must meet four (and not five) objectives of the hospital's choice from such paragraph to meet the definition of a meaningful EHR user.

(3) *Exception for Medicaid eligible hospitals that adopt, implement or upgrade in their first payment year.* For Medicaid eligible hospitals that adopt, implement, or upgrade certified EHR technology in their first payment year, the meaningful use objectives and associated measures of the Stage 1 criteria specified in paragraphs (f) and (g) of this section apply beginning with the second payment year, and do not apply to the first payment year.