

by EPs that are neither qualifying nor potentially qualifying MA EPs with respect to a qualifying MA organization; and

(iii) The applicable percent identified in paragraph (d)(4) of this section.

(4) *Applicable percent.* The applicable percent is as follows:

(i) For 2015, 1 percent;

(ii) For 2016, 2 percent;

(iii) For 2017, 3 percent.

(iv) For 2018, 3 percent, except, in the case described in paragraph (d)(4)(vi) of this section, 4 percent.

(v) For 2019 and each subsequent year, 3 percent, except, in the case described in paragraph (d)(4)(vi) of this section, the percent from the prior year plus 1 percent. In no case will the applicable percent be higher than 5 percent.

(vi) Beginning with payment adjustment year 2018, if the percentage in paragraph (d)(2) of this section is more than 25 percent, the applicable percent is increased in accordance with paragraphs (d)(4)(iv) and (v) of this section.

(e) *Payment adjustments effective for 2015 and subsequent years with respect to MA-affiliated eligible hospitals.* (1)(i) The payment adjustment set forth in this paragraph (e) applies if a qualifying MA organization that previously received an incentive payment (or a potentially qualifying MA-affiliated eligible hospital on behalf of its qualifying MA organization) attests that a qualifying MA-affiliated eligible hospital is not a meaningful EHR user for a payment adjustment year.

(ii) The payment adjustment is calculated by multiplying the qualifying MA organization's monthly prospective payment for the payment adjustment year under section 1853(a)(1)(A) of the Act by the percent set forth in paragraph (e)(2) of this section.

(2) The percent set forth in this paragraph (e) is the product of—

(i) The percentage point reduction to the applicable percentage increase in the market basket index for the relevant Federal fiscal year as a result of § 412.64(d)(3) of this chapter;

(ii) The Medicare Hospital Expenditure Proportion percent specified in paragraph (e)(3) of this section; and

(iii) The percent of qualifying and potentially qualifying MA-affiliated eli-

gible hospitals that are not meaningful EHR users. Qualifying MA organizations are required to report to CMS

[the number of potentially qualifying MA-affiliated eligible hospitals] / [(the total number of potentially qualifying MA-affiliated eligible hospitals) + (the total number of qualifying MA-affiliated eligible hospitals)].

(3) The Medicare Hospital Expenditure Proportion for a year is the Secretary's estimate of expenditures under Parts A and B that are not attributable to Part C, that are attributable to expenditures for inpatient hospital services, adjusted for the proportion of expenditures that are provided by hospitals that are neither qualifying nor potentially qualifying MA-affiliated eligible hospitals with respect to a qualifying MA organization.

[77 FR 54159, Sept. 4, 2012]

§ 495.212 Limitation on review.

(a) There is no administrative or judicial review under section 1869 or 1878 of the Act, or otherwise of the methodology and standards for determining payment amounts and payment adjustments under the MA EHR incentive program. This includes provisions related to duplication of payment avoidance and rules developed related to the fixed schedule for application of limitation on incentive payments for all qualifying MA EPs related to a specific qualifying MA organization. It also includes the methodology and standards developed for determining qualifying MA EPs and the methodology and standards for determining a meaningful EHR user, including the means of demonstrating meaningful use and the selection of measures.

(b) There is no administrative or judicial review under sections 1869 or 1878 of the Act, or otherwise, of the methodology and standards for determining payment amounts and payment adjustments under the MA EHR hospital incentive program. This includes provisions related to duplication of payment avoidance. It also includes the methodology and standards developed for determining qualifying MA-affiliated eligible hospitals and the methodology

and standards for determining a meaningful EHR user, including the means of demonstrating meaningful use and the selection of measures.

Subpart D—Requirements Specific to the Medicaid Program

§ 495.300 Basis and purpose.

This subpart implements section 4201 of the American Reinvestment and Recovery Act of 2009 and sections 1903(a)(3)(F) and 1903(t) of the Act, which authorize States, at their option, to provide for incentive payments to Medicaid providers for adopting, implementing, or upgrading certified EHR technology or for meaningful use of such technology. This subpart also provides enhanced Federal financial participation (FFP) to States to administer these incentive payments.

§ 495.302 Definitions.

As used in this subpart—

Acceptance documents mean written evidence of satisfactory completion of an approved phase of work or contract and acceptance thereof by the State agency.

Acquisition means to acquire health information technology (HIT) equipment or services for the purpose of implementation and administration under this part from commercial sources or from State or local government resources.

Acute care hospital means a health care facility—

(1) Where the average length of patient stay is 25 days or fewer; and

(2) With a CMS certification number (previously known as the Medicare provider number) that has the last four digits in the series 0001–0879 or 1300–1399

Adopt, implement or upgrade means—

(1) Acquire, purchase, or secure access to certified EHR technology capable of meeting meaningful use requirements;

(2) Install or commence utilization of certified EHR technology capable of meeting meaningful use requirements; or

(3) Expand the available functionality of certified EHR technology capable of meeting meaningful use requirements at the practice site, including staffing, maintenance, and

training, or upgrade from existing EHR technology to certified EHR technology per the ONC EHR certification criteria.

(4) For payment year 2014, the references to “certified EHR technology” in paragraphs (1) through (3) of this definition are deemed to be references to paragraph (2) of the definition of “Certified EHR Technology” under 45 CFR 170.102 (that is, the definition of “Certified EHR Technology” for FY and CY 2015 and subsequent years).

Children’s hospital means a separately certified children’s hospital, either freestanding or hospital-within-hospital that—

(1) Has a CMS certification number (CCN), (previously known as the Medicare provider number), that has the last 4 digits in the series 3300–3399; or

(2) Does not have a CCN but has been provided an alternative number by CMS for purposes of enrollment in the Medicaid EHR Incentive Program as a children’s hospital and;

(3) Predominantly treats individuals under 21 years of age.

Entities promoting the adoption of certified electronic health record technology means the State-designated entities that are promoting the adoption of certified EHR technology by enabling oversight of the business, operational and legal issues involved in the adoption and implementation of certified EHR technology or by enabling the exchange and use of electronic clinical and administrative data between participating providers, in a secure manner, including maintaining the physical and organizational relationship integral to the adoption of certified EHR technology by eligible providers.

Health information technology planning advance planning document (HIT PAPD) means a plan of action that requests FFP and approval to accomplish the planning necessary for a State agency to determine the need for and plan the acquisition of HIT equipment or services or both and to acquire information necessary to prepare a HIT implementation advanced planning document or request for proposal to implement the State Medicaid HIT plan.

HIT implementation advance planning document (HIT IAPD) means a plan of action that requests FFP and approval