within the specified time, CMS may disqualify the third party intermediary from the MIPS program for the subsequent performance period.

(4) If the third party intermediary has data inaccuracies including (but not limited to) TIN/NPI mismatches, formatting issues, calculation errors, data audit discrepancies affecting in excess of 3 percent (but less than 5 percent) of the total number of MIPS eligible clinicians or groups submitted by the third party intermediary, such inaccuracies will trigger paragraph (k)(3) of this section and may result in this information being posted on the CMS Web site.

(5) If the third party intermediary does not reduce their data error rate below 3 percent for the subsequent performance period, the third party intermediary will continue to be on probation and have their listing on the CMS Web site continue to note the poor quality of the data they are submitting for MIPS for one additional year. After 2 years on probation, the third party intermediary will be disqualified for the subsequent performance period.

(6) Before placing the third party intermediary on probation; CMS would notify the third party intermediary of the identified issues, at the time of discovery of such issues.

(7) If the third party intermediary does not submit an acceptable corrective action plan within 14 days of notification of deficiencies, and correct the deficiencies within 30 days or before the submission deadline—whichever is sooner, CMS may disqualify the third party intermediary from participating in MIPS for the current performance period or the following performance period, as applicable.

### § 414.1405 Payment.

(a) *General.* Each MIPS eligible clinician receives a MIPS payment adjustment factor, and if applicable an additional MIPS payment adjustment factor for exceptional performance, for a MIPS payment year determined by comparing their final score to the performance threshold and additional performance threshold for the year.

(b) *Performance threshold.* A performance threshold will be specified for each MIPS payment year.

(1) MIPS eligible clinicians with a final score at or above the performance threshold receive a zero or positive MIPS payment adjustment factor on a linear sliding scale such that an adjustment factor of 0 percent is assigned for a final score at the performance threshold and an adjustment factor of the applicable percent is assigned for a final score of 100.

(2) MIPS eligible clinicians with a final score below the performance threshold receive a negative MIPS payment adjustment factor on a linear sliding scale such that an adjustment factor of 0 percent is assigned for a final score at the performance threshold and an adjustment factor of the negative of the applicable percent is assigned for a final score of 0; further, MIPS eligible clinicians with final scores that are equal to or greater than zero, but not greater than one-fourth of the performance threshold, receive a negative MIPS payment adjustment factor that is equal to the negative of the applicable percent.

(3) A scaling factor not to exceed 3.0 may be applied to positive MIPS payment adjustment factors to ensure budget neutrality such that the estimated increase in aggregate allowed charges resulting from the application of the positive MIPS payment adjustment factors for the MIPS payment year equals the estimated decrease in aggregate allowed charges resulting from the application of negative MIPS payment adjustment factors for the MIPS payment year.

(c) *Applicable percent.* For MIPS payment year 2019, 4 percent. For MIPS payment year 2020, 5 percent. For MIPS payment year 2021, 7 percent. For MIPS payment year 2022 and each subsequent MIPS payment year, 9 percent.

(d) *Additional performance threshold.* An additional performance threshold will be specified for each of the MIPS payment years 2019 through 2024.

(1) In addition to the MIPS payment adjustment factor, MIPS eligible clinicians with a final score at or above the additional performance threshold receive an additional MIPS payment adjustment factor for exceptional performance on a linear sliding scale such that an additional adjustment factor of 0.5 percent is assigned for a final score

at the additional performance threshold and an additional adjustment factor of 10 percent is assigned for a final score of 100, subject to the application of a scaling factor as determined by CMS, such that the estimated aggregate increase in payments resulting from the application of the additional MIPS payment adjustment factors for the MIPS payment year shall not exceed $500,000,000 for each of the MIPS payment years 2019 through 2024.

(2) [Reserved]

(e) *Application of adjustments to payments.* For each MIPS payment year, the MIPS payment adjustment factor, and if applicable the additional MIPS payment adjustment factor, are applied to Medicare Part B payments for items and services furnished by the MIPS eligible clinician during the year.

### §414.1410 Advanced APM determination.

(a) *General.* An APM is an Advanced APM for a payment year if CMS determines that it meets the criteria in §414.1415 during the QP Performance Period.

(b) *Advanced APM and Other Payer Advanced APM determination process.* CMS identifies Advanced APMs and Other Payer Advanced APMs in the following manner:

(1) *Advanced APM determination.* (i) No later than January 1, 2017, CMS will post on its Web site a list of all Advanced APMs for the first QP Performance Period.

(ii) CMS updates the Advanced APM list on its Web site at intervals no less than annually.

(iii) CMS will include notice of whether a new APM is an Advanced APM in the first public notice of the new APM.

(2) *Other Payer Advanced APM determination.* (i) CMS identifies Other Payer Advanced APMs following conclusion of the QP Performance Period using information submitted to CMS according to §414.1445. CMS will not make determinations for other payer arrangements for which insufficient information is submitted.

(ii) CMS makes Other Payer Advanced APM determinations prior to QP determinations under §414.1440.

(iii) CMS makes final Other Payer Advanced APM determinations and notifies Advanced APM Entities and eligible clinicians of such determinations as soon as practicable.

### §414.1415 Advanced APM criteria.

(a) *Use of certified electronic health record technology (CEHRT)*—(1) *Required use of CEHRT.* To be an Advanced APM, an APM must:

(i) Require at least 50 percent of eligible clinicians in each participating APM Entity group, or, for APMs in which hospitals are the APM Entities, each hospital, to use CEHRT to document and communicate clinical care to their patients or other health care providers; or

(ii) For the Shared Savings Program, apply a penalty or reward to an APM Entity based on the degree of the use of CEHRT of the eligible clinicians in the APM Entity.

(b) *Payment based on quality measures.* (1) To be an Advanced APM, an APM must include quality measure results as a factor when determining payment to participants under the terms of the APM.

(2) At least one of the quality measures upon which an Advanced APM bases the payment in paragraph (b)(1) of this section must have an evidence-based focus, be reliable and valid, and meet at least one of the following criteria:

(i) Used in the MIPS quality performance category as described in §414.1330;

(ii) Endorsed by a consensus-based entity;

(iii) Developed under section 1848(s) of the Act;

(iv) Submitted in response to the MIPS Call for Quality Measures under section 1848(q)(2)(D)(ii) of the Act; or

(v) Any other quality measures that CMS determines to have an evidence-based focus and to be reliable and valid.

(3) In addition to the quality measure requirements under paragraph (b)(2) of this section, the quality measures upon which an Advanced APM bases the payment in paragraph (b)(1) of this section must include at least one outcome measure. This requirement does not apply if CMS determines that there are no available or applicable outcome