inappropriate and systemic under delivery of care as specified in § 512.460(b)(1)(i)(C), the quality of the care provided must be considered to be seriously compromised and the EPM participant must be ineligible to receive or retain a reconciliation payment for any period in which such under delivery of care was found to occur.

(f) Reconciliation report. (1) CMS issues each EPM participant a reconciliation report for the performance year. Each reconciliation report contains the following:
   (i) Information on the EPM participant’s composite quality score described in § 512.315.
   (ii) The total actual episode payments for the EPM participant.
   (iii) The NPRA.
   (iv) Whether the EPM participant is eligible for a reconciliation payment or must make a repayment to Medicare.
   (v) The NPRA and subsequent reconciliation calculation amount for the previous performance year, as applicable.
   (vi) The post-episode spending amount and ACO overlap calculation for the previous performance year, as applicable.
   (vii) The reconciliation payment or repayment amount.

(2) For performance year 2, the reconciliation report would also include information separately for the performance year 2 (DR) and performance year 2 (NDR) portions of that year.

§ 512.307 Subsequent calculations.

(a) Subsequent reconciliation calculation. (1) Fourteen months after the end of each performance year, CMS performs an additional calculation, which accounts for changes since the calculation of the initial NPRA, using claims data and non-claims-based payment data available at that time, to account for final claims run-out, final changes in non-claims-based payment data, and any additional episode cancellations due to overlap or other reasons as specified in § 512.240(a)(2), (b)(2), and (c)(2).

(2) The additional calculation occurs concurrently with the reconciliation process for the most recent performance year and determines the subsequent calculation amount as follows:

   (i) If the result of the subsequent reconciliation calculation is different than zero, CMS applies the stop-loss and stop-gain limits in § 512.305(c)(2)(iii)(A) through (D) to the calculations in aggregate for that performance year (the initial reconciliation from § 512.305(c)(2)(ii)(C), before application of the stop-loss and stop-gain limits, and the subsequent reconciliation calculation) to ensure the calculations in aggregate do not exceed the stop-loss or stop-gain limits. CMS then takes the difference between that amount and the initial NPRA after application of the stop-loss and stop-gain limits in § 512.305(c)(2)(iii)(A) through (D) to determine the subsequent calculation amount.

   (ii) CMS then applies the subsequent calculation amount to the NPRA for the most recent performance year in order to determine the reconciliation amount or repayment amount for the most recent performance year.

   (iii) Because EPM participants that elected downside risk in performance year do not have financial repayment responsibility for performance year 1, for the performance year 2 reconciliation report only, the subsequent calculation amount (for performance year 1) is applied to the performance year 1 NPRA to ensure that the combined amount is not less than zero.

   (iv) Because EPM participants that have not elected downside risk in performance year 2 do not have financial repayment responsibility for performance years 1 or 2, for the performance year 2 and performance year 3 reconciliation reports only, the subsequent calculation amount (for performance year 1 or performance year 2) is applied to the performance year 1 NPRA or performance year 2 NPRA to ensure that the combined amount is not less than zero.

(b) Additional calculations to determine the reconciliation payment or repayment amount. CMS reduces the reconciliation payment or increase the repayment amount for the subsequent performance year to account for shared savings paid to the ACO in the prior performance year by the amount of the EPM discount factor paid out to the ACO as shared savings in the prior performance year. This adjustment is only
made when the EPM participant is a participant or provider/supplier in the ACO and the EPM beneficiary is not prospectively assigned to one of the following:

(1) An ACO in the Next Generation ACO model.
(2) An ACO in Track 3 of the Medicare Shared Savings Program.
(3) An ACO in the Comprehensive ESRD Care Model that includes downside risk.

(c) Increases in post-episode spending. If the average post-episode Medicare Parts A and B payments for an EPM participant in the prior performance year is greater than 3 standard deviations above the regional average post-episode payments for the same performance year, then the spending amount exceeding 3 standard deviations above the regional average post-episode payments for the same performance year is added to the calculation of the reconciliation or repayment amount for the subsequent performance year.

§ 512.310 Appeals process.

(a) Notice of calculation error (first level of appeal). Subject to the limitations on review in subpart D of this part, if an EPM participant wishes to dispute calculations involving a matter related to payment, a CR incentive payment, reconciliation amounts, repayment amounts, the use of quality measure results in determining the composite quality score, or the application of the composite quality score during reconciliation, the EPM participant is required to provide written notice of the calculation error, in a form and manner specified by CMS.

(1) Unless the EPM participant provides such notice, CMS deems final the reconciliation report and CR incentive payment report 45 calendar days after the reconciliation report or CR incentive payment report is issued and proceeds with the payment or repayment processes as applicable.

(2) If CMS receives a notice of a calculation error within 45 calendar days of the issuance of the reconciliation report or CR incentive payment report, CMS responds in writing within 30 calendar days to either confirm that there was an error in the calculation or verify that the calculation is correct, although CMS reserves the right to an extension upon written notice to the EPM participant.

(3) Only EPM participants may use the notice of calculation error process described in this part.

(b) Dispute resolution process (second level of appeal). (1) If the EPM participant is dissatisfied with CMS’ response to the notice of a calculation error, the EPM participant may request a reconsideration review in a form and manner as specified by CMS.

(2) The reconsideration request must provide a detailed explanation of the basis for the dispute and include supporting documentation for the EPM participant’s assertion that CMS or its representatives did not accurately calculate the NPRA, the reconciliation payment, the CR incentive payment, or the repayment amount in accordance with subpart D of this part.

(3) If CMS does not receive a request for reconsideration from the EPM participant within 10 calendar days of the issue date of CMS’ response to the EPM participant’s notice of calculation error, then CMS’ response to the calculation error is deemed final and CMS proceeds with the applicable processes, as described in subpart D of this part.

(4) The CMS reconsideration official notifies the EPM participant in writing within 15 calendar days of receiving the EPM participant’s review request of the following:

(i) The date, time, and location of the review.
(ii) The issues in dispute.
(iii) The review procedures.
(iv) The procedures (including format and deadlines) for submission of evidence.

(5) The CMS reconsideration official takes all reasonable efforts to schedule the review to occur no later than 30 days after the date of receipt of the notification.

(6) The provisions at §425.804(b), (c), and (e) of this chapter are applicable to reviews conducted in accordance with the reconsideration review process for the EPM.

(7) The CMS reconsideration official issues a written determination within 30 days of the review. The determination is final and binding.