

§512.310

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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 down-side 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.

(8) Only EPM participants may use the dispute resolution process described in this part.

(c) *Exception to the notice of calculation error process.* If the EPM participant contests a matter that does not involve an issue contained in, or a calculation which contributes to, a reconciliation report or CR incentive payment report a notice of calculation error is not required. In these instances, if CMS does not receive a request for reconsideration from the EPM participant within 10 calendar days of the notice of the initial determination, the initial determination is deemed final and CMS proceeds with the action indicated in the initial determination. This does not apply to the limitations on review in paragraph (e) of this section.

(d) *Notice of an EPM participant's termination from the EPM.* If an EPM participant receives notification that it has been terminated from the EPM and wishes to appeal such termination, it must provide a written request for reconsideration to CMS requesting review of the termination within 10 calendar days of the notice. CMS has 30 days to respond to the EPM participant's request for review. If the EPM participant fails to notify CMS, the termination is deemed final.

(e) *Limitations on review.* In accordance with section 1115A (d)(2) of the Act, there is no administrative or judicial review under sections 1869 or 1878 of the Act or otherwise for the following:

(1) The selection of models for testing or expansion under section 1115A of the Act.

(2) The selection of organizations, sites, or participants to test those models selected.

(3) The elements, parameters, scope, and duration of such models for testing or dissemination.

(4) Determinations regarding budget neutrality under section 1115A(b)(3) of the Act.

(5) The termination or modification of the design and implementation of a model under section 1115A(b)(3)(B) of the Act.

(6) Decisions to expand the duration and scope of a model under section 1115A(c) of the Act, including the deter-

mination that a model is not expected to meet criteria described in paragraph (e)(1) or (2) of this section.

§ 512.315 Composite quality scores for determining reconciliation payment eligibility and effective and applicable discount factors.

(a) *General.* An EPM participant's eligibility for a reconciliation payment under § 512.305, and the determination of effective discount factors and applicable discount factors for reconciliation and repayment, respectively, under paragraphs (b)(5), (c)(5), and (d)(5) of this section, for a performance year depend on the EPM participant's EPM composite quality score (including any quality performance points and quality improvement points earned) for that performance year.

(b) *AMI model*—(1) *AMI model composite quality score.* CMS calculates an AMI model composite quality score for each AMI model participant for each performance year, which equals the sum of the following:

(i) The AMI model participant's quality performance points for the Hospital 30-Day, All-Cause, Risk-Standardized Mortality Rate (RSMR) Following Acute Myocardial Infarction (NQF #0230) measure described in § 512.411(a)(1). This measure is weighted at 50 percent of the AMI model composite quality score.

(ii) The AMI model participant's quality performance points for the Excess Days in Acute Care after Hospitalization for AMI measure described in § 512.411(a)(2). This measure is weighted at 20 percent of the AMI model composite quality score.

(iii) The AMI model participant's quality performance points for the Hospital Consumer Assessment of Healthcare Providers and Systems Survey (NQF #0166) measure described in § 512.411(a)(3). This measure is weighted at 20 percent of the AMI model composite quality score.

(iv) Any additional quality improvement points the AMI model participant may earn as a result of demonstrating improvement on the quality measures in § 512.411(a), as described in paragraph (b)(3) of this section.

(v) If applicable, 2 additional points for successful Hybrid Hospital 30-Day,