

§512.715

(7) The total amount of the CR incentive payment.

(g) *Timing of CR incentive payments.* CMS makes CR incentive payments on a retrospective basis subject to the following:

(1) For EPM-CR participants, CMS makes the CR incentive payment, if any, concurrently with EPM reconciliation payments or repayment amounts assessed for a specific EPM and CR performance year, subject to the appeals process for EPM participants in §512.310.

(2) For FFS-CR participants, CMS makes the CR incentive payments, if any, at the same time as for EPM-CR participants, subject to the provisions in §512.720.

PROVISIONS FOR FFS-CR PARTICIPANTS

§512.715 Access to records and retention for FFS-CR participants.

FFS-CR participants and any other individuals or entities providing items or services to a FFS-CR beneficiary must do all of the following:

(a) Allow the Government, including CMS, OIG, HHS and the Comptroller General or their designees, scheduled and unscheduled access to all books, contracts, records, documents, and other evidence (including data related to CR/ICR service utilization and payments, billings, and the documentation required under §512.740(d)) sufficient to enable the audit, evaluation, inspection, or investigation of the following:

(1) The individual's or entity's compliance with CR incentive payment model requirements.

(2) The obligation to repay any CR incentive payments owed to CMS.

(b) Maintain all such books, contracts, records, documents, and other evidence for a period of 10 years from the last day of the FFS-CR participant's participation in the CR incentive payment model or from the date of completion of any audit, evaluation, inspection, or investigation, whichever is later, unless—

(1) CMS determines a particular record or group of records should be retained for a longer period and notifies the FFS-CR participant at least 30 calendar days before the disposition date; or

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(2) There has been a dispute or allegation of fraud or similar fault against the FFS-CR participant or any other individual or entity providing items or services to a FFS-CR beneficiary, in which case the records must be maintained for 6 years from the date of any resulting final resolution of the dispute or allegation of fraud or similar fault.

§512.720 Appeals process for FFS-CR participants.

(a) *Notice of calculation error (first level of appeal).* Subject to the limitations on review in subpart H of this part, if a FFS-CR participant wishes to dispute calculations involving a matter related to a CR incentive payment, the FFS-CR participant is required to provide written notice of the calculation error, in a form and manner specified by CMS.

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

(2) If CMS receives a notice of a calculation error within 45 calendar days of the issuance of the applicable 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 FFS-CR participant.

(3) Only FFS-CR participants may use notice of calculation error process described in this part.

(b) *Dispute resolution process (second level of appeal).* (1) If the FFS-CR participant is dissatisfied with CMS' response to the notice of a calculation error, the FFS-CR 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 FFS-CR participant's assertion that CMS or its representatives did not accurately calculate the CR incentive payment in accordance with subpart H of this part.

(3) If CMS does not receive a request for reconsideration from the FFS-CR participant within 10 calendar days of the issue date of CMS' response to the FFS-CR 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 H of this part.

(4) The CMS reconsideration official notifies the FFS-CR participant in writing within 15 calendar days of receiving the FFS-CR 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 FFS-CR participant.

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

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

(c) *Exception to the notice of calculation error process.* If the FFS-CR participant contests a matter that does not involve an issue contained in, or a calculation which contributes to a 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 FFS-CR 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 FFS-CR participant termination from the CR incentive payment model.* If an FFS-CR participant re-

ceives notification that it has been terminated from the CR incentive payment model, 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 FFS-CR participant's request for review. If the FFS-CR 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 Act.

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

(6) Decisions to expand the duration and scope of a model under section 1115A(c) of the Act, including the determination that a model is not expected to meet criteria described in paragraph (e)(1) or (2) of this section.

§ 512.725 Data sharing for FFS-CR participants.

(a) *General.* CMS makes available to FFS-CR participants, through the most appropriate means, data that CMS determines may be useful to FFS-CR participants to do the following:

(1) Determine appropriate ways to increase the coordination of care.

(2) Improve quality.

(3) Enhance efficiencies in the delivery of care.

(4) Otherwise achieve the goals of the model described in this section.

(b) *Beneficiary-identifiable data.* (1) CMS makes beneficiary-identifiable data available to a FFS-CR participant in accordance with applicable privacy and security laws and only in response