



CENTER FOR MEDICARE

DATE: May 16, 2014

TO: All Medicare Advantage Organizations

FROM: Cheri Rice /s/
Director, Medicare Plan Payment Group

SUBJECT: **2014 Electronic Health Record Incentive Program (EHR) for Medicare Advantage (MA) Organizations**

The purpose of this memorandum is to provide guidance to MA organizations that are considering participation in the MA EHR Incentive Program for payment year 2014.

An MA organization that is deemed to be organized as an HMO as defined in section 2791(b)(3) of the Public Health Service (PHS) Act, which includes a Federally qualified HMO, an organization recognized as an HMO under State law, or a similar organization regulated for solvency under State law in the same manner and to the same extent as an HMO, may claim EHR payment for individual physicians and hospitals that: (1) meet the requirements for MA eligible professionals (EPs) or MA eligible hospitals (EHs), and (2) comply with Meaningful Use guidelines of certified electronic health record (EHR) technology. The MA EHR eligibility requirements for physicians and hospitals can be found at 42 CFR§495.200. Generally, physicians must provide the majority of their services to the enrollees of the organization, and hospitals must share a common corporate governance with the qualifying MA organization.

The following three requirements must be met to qualify for payment:

1. For payment year 2014, the MA organization must attest by June 27, 2014 that it meets the PHS Act definition of an HMO if it has not submitted an attestation in a previous EHR payment year. The attestation must be signed by the Chief Executive Officer or another responsible officer of the qualifying MA organization and submitted to CMS via the CMS MA HITECH mailbox at MA_EHRincentiveprogram@cms.hhs.gov. The attestation form is attached to this document.
2. The MA organization must attest to the eligibility of EPs and their compliance with current Meaningful Use standards. Detailed information follows about how to register EPs and attest that they are eligible.
3. The MA organization must submit a methodology to substantiate the eligibility of any EPs being claimed. Detailed requirements for the methodology are included in this document. The eligibility methodology for EPs must be approved by the Division of Payment Operations at CMS. MA EHs must follow the same procedure as EHs that are paid EHR incentive payments under Fee-for-Service. (EHR MA EH payments are made directly to the

hospital under a contractual arrangement with the MA organization.)

EHR Incentive Program Registration and Attestation

Registration of MA EPs through the Health Plan Management System (HPMS): By June 27, 2014, a qualifying MA organization must use HPMS to register the MA EPs it expects to meet MA program requirements for EHR incentive payments for the 2014 EHR incentive payment year. Qualifying MA organizations must use the template located in HPMS when the 2014 registration module becomes available on June 23rd.

The list of MA EPs that a qualifying MA organization expects to claim will be processed through the National Level Repository (NLR) in order to provide feedback to qualifying MA organizations on MA EPs that:

- Do not have a valid National Provider Identifier (NPI) Type-1;
- Are on the Death Master File;
- Have also registered for the Original Medicare or Medicaid EHR Incentive Programs;
- Have already received payment under the Original Medicare or Medicaid EHR Incentive Programs;
- Have been identified as having federal exclusions; or
- Are identified as having state rejections.

Each qualifying MA organization will have the opportunity to make additions and corrections to its MA EP registration file during the last week of each month through December 2014 by using the HPMS template.

Registration by MA EHs in the NLR: Once the applicable qualifying MA organization submits its initial list of MA EHs it expects to claim, those qualifying MA EHs must also register as “MA-affiliated eligible hospitals” in the NLR. CMS will notify qualifying MA organizations of any hospital it is claiming that has not registered in the NLR as “MA-affiliated.”

Final Registration of, and Attestation for, Qualifying MA EPs through HPMS: Final registration and attestation of meaningful use for qualifying MA EPs must be completed in HPMS no later than two months after the close of the payment year for which EHR incentive payments are sought. For the 2014 EHR incentive payment year, final registration and attestation for qualifying MA EPs must be submitted on or before 11:59 p.m. EST, March 1, 2015. Additional information on the HPMS final registration and attestation module will be provided at a later date. However, please note that extensions beyond this date will not be granted unless HPMS has been unavailable due to CMS system problems.

To minimize post-payment issues, a qualifying MA organization must notify all of the physicians it plans to register as MA EPs and seek MA EHR incentive payments for. The qualifying MA organization must also inform all of the EPs that, if the qualifying MA organization receives MA EHR incentive payments for them, the EPs are not eligible to receive a *partial or full* EHR incentive payment under the Original Medicare EHR Incentive Program or Medicaid Program for the same year.

Final Registration of, and Attestation for, Qualifying MA EHs through NLR: Final registration and attestation of meaningful use for qualifying MA EHs for the 2014 EHR incentive payment year must be completed in the NLR by 11:59 p.m. on November 30, 2014.

Additional information on the HPMS final registration and attestation module will be provided at a later date.

Methodologies for Calculating Qualifying MA EP Compensation to meet Eligibility Requirements

All qualifying MA organizations registering MA EPs are required to submit the methodology or methodologies that will be used to calculate the portion of each qualifying MA EP's salary or compensation that would otherwise be covered as Part B services in the payment year. A CMS-approved methodology is a prerequisite for submitting a final registration and attestation and receiving an MA EHR incentive payment for MA EPs. Qualifying MA organizations must facilitate any methodology submitted by a third party and provide an explanation of the methodology to CMS. Proposals must be specific and thoroughly explain the methodology that will be used. CMS will not approve methodological proposals that do not contain sufficient information to allow CMS or its auditors to verify the compensation paid to each qualifying MA EP. Furthermore, CMS will require the methodologies to be reasonable in light of the specific employment and/or compensation arrangements between the MA EP and the MA organization, or the MA EP and the entity contracting with the MA organization.

Final methodological proposals will be approved by CMS on or before October 1, 2014 for the 2014 EHR incentive payments. When submitting a methodology or methodologies (whether submitted by the qualifying MA organization or a third party), the qualifying MA organization must:

- Use the attachment "2014 EHR Payment Methodology Submissions" for each methodology submitted;
- Clearly identify the name of the qualifying MA organization (and third party, as applicable);
- Clearly identify the associated qualifying MA organization contract number or numbers;
- Submit the methodology or methodologies to CMS by 11:59 p.m. EST on June 27, 2014;
- Submit methodologies to CMS via the CMS MA HITECH mailbox at MA_EHRincentiveprogram@cms.hhs.gov; and
- Submit methodologies in PDF-file, Word doc., or other similar format using the template provided with this document.

To help CMS process methodologies, qualifying MA organizations should note the following:

- If using the exact methodology that was approved for the 2013 payment year (i.e., no changes in entities or contracts covered by the methodology), the MA organization may submit a letter stating that this year's methodology has not changed from what was presented last year, the contracts included have not changed, and the method of compensation to EPs has not changed. The letter must be signed by the organization's CEO, CFO, or Compliance Officer.
- If more than one methodological explanation is needed to describe different payment arrangements with MA EPs, multiple documents should be used (i.e. if one contract employs their EPs and another contracts with an entity, two methodologies must be submitted for approval);

- An estimate of the number of qualifying MA EPs covered by a given methodology;
- The practice type or types covered by a given methodology (multi-specialty clinic, PCP clinic, solo practice, etc.);
- An estimate of the number of qualifying MA EPs that will be claiming HPSA qualification.

Qualifying MA Organization Claiming Overhead On Behalf of EPs: A qualifying MA organization may include an additional amount related to overhead, when it can be attributed to services provided by a qualifying MA EP and not already reimbursed under practice costs reimbursed under Fee-for-service Part B payments. A qualifying MA organization may develop a reasonable and auditable methodology for estimating the amount of those costs. In instances where a third party will be submitting a methodology, the qualifying MA organization must facilitate the submission and explanation of the overhead estimation methodology.

MA EPs Not Directly Compensated by the Qualifying MA Organization: A qualifying MA organization is responsible for the submission of the methodology and any explanations needed by CMS or its auditors. The MA organization may submit a compensation methodology or methodologies on behalf of its MA EPs who are not directly compensated by the qualifying MA organization. Methodologies may also be submitted by the MA EPs or the entity that employs or partners with the MA EPs, to the extent the entity or MA EPs do not wish to disclose the MA EPs' compensation arrangement to the qualifying MA organization. But in these instances, CMS will require the qualifying MA organization to *facilitate* the submission and explanation of the methodology or methodologies that are consistent with the methodology requirements.

Reporting Part B Annual Revenue for Qualifying MA EPs to Meet Eligibility Requirements

A qualifying MA organization must also submit for each qualifying MA EP (whether salaried or not salaried) the actual annual amount of compensation received by the qualifying MA EP (whether salaried or not salaried) for services provided to MA plan enrollees of the qualifying MA organization that would otherwise be covered under Part B. For payment year 2014, this information must be submitted via HPMS by 11:59 p.m. EST on March 1, 2015.

Qualifying MA EP Not Employed by the Qualifying MA Organization: While a qualifying MA organization is required to submit the actual annual amount of compensation received by each qualifying MA EP for Part B services provided to MA plan enrollees of the qualifying MA organization, in instances when a qualifying MA organization does not have such information available, the qualifying MA organization may obtain an attestation regarding such compensation amount from the qualifying MA EP (or from the entity that employs or partners with the qualifying MA EP). The qualifying MA organization may then base its submission to CMS on the attestation received from the qualifying MA EP (or from the entity that employs or partners with the qualifying MA EP). See 42 CFR §495.204(b)(5).

Each compensation attestation may cover one or more qualifying MA EP, provided the amount is auditable back to a given qualifying MA EP. If a qualifying MA EP (or entity that employs or partners with the qualifying MA EP) does not wish to disclose to the qualifying MA organization the total amount of such compensation received by the qualifying MA EP for services that would otherwise be Part B services, the attestation may be limited to the amount of such compensation that would cause the qualifying MA organization to receive the maximum MA EHR incentive payment with respect to an MA EP. For example, for the 2014 payment year, the attestation could be limited

to \$16,000 of the total amount of such compensation received by the qualifying MA EP if it is the first MA EHR incentive payment year for the qualifying MA organization. If the qualifying MA organization is in its second MA EHR incentive payment year, the attestation amount could be limited to \$10,667. Attestations are also appropriate when an EP is not employed by the MA organization for a full year. The attestation in this case would cover services provided by the EP prior to his or her employment by the MA organization.

Meaningful Use Attestation

For 2014, the reporting period for “Meaningful use of certified EHR technology” will be defined as a continuous three month period for *all participants*. This is due to the requirement for all participants to upgrade to the 2014 certified meaningful use system software. The three month reporting period constitutes one quarter of the year (January through March, April through June, July through September, or October through December). After the 2014 payment year, the reporting period for “Meaningful use of certified EHR technology” will be defined as:

- A continuous three month period for the *first* payment year that a qualifying MA organization participates in the MA EHR Incentive Program, and
- A *full calendar year* for the second and subsequent years that a qualifying MA organization participates in the MA EHR Incentive Program.

Reporting periods are based on the first year of participation.

An MA organization in year 1 or year 2 of the program will report Stage 1 measures in its attestation. An MA organization in year 3 or beyond must report Stage 2 measures in its attestation.

An additional consideration is that the payment year is always the same *for all MA EPs* claimed by the MA organization – see section 1853(l)(3)(C) of the Act and 42 CFR §495.200. This means that, in any MA organization’s subsequent payment years, all MA EPs claimed by the MA organization must meet meaningful use for the full payment year.

MA EHs are subject to the rules of the Medicare FFS incentive program as they attest through the NLR system.

For more information on the criteria and other requirements of meaningful use, see CMS’s final rule for Stage 2 of the program (75 Fed. Reg. 44314, July 28, 2010), final rule for Stage 2 of the program (77 Fed. Reg. 171, September 4, 2012) and the EHR Incentive Programs website (<http://www.cms.gov/EHRIncentivePrograms/>).

Qualifying MA EP: The qualifying MA organization must submit via HPMS the attestation of meaningful use for each qualifying MA EP. The attestation must be completed no later than two months after the close of the payment year (see 42 CFR 495.210(b)). For payment year 2014, CMS plans to open the MA EP HPMS meaningful-use-attestation portal in January 2015. The attestation must be completed no later than March 1, 2015. The qualifying MA organization will be required to attest to the meaningful use objectives for each qualifying MA EP as specified in 42 CFR §495.6. It should be noted that a qualifying MA organization will not be required to submit an attestation with respect to the ambulatory clinical quality measures (CQMs) noted in 42 CFR 495.6(d)(10) for qualifying MA EPs because these CQMs are already reported by qualifying MA organizations through other means.

Qualifying MA EHs: Qualifying MA EHs, as opposed to the qualifying MA organization, will attest to meaningful use of certified EHR technology through the NLR. Only those qualifying MA EHs that have first been registered by the applicable qualifying MA organization through HPMS as “MA-affiliated eligible hospitals” will be able to register and attest to meeting the meaningful use requirements in the NLR. Attestation for qualifying MA EHs must be completed by 11:59 p.m. on November 30, 2014, for the payment year that ends on September 30, 2014. The qualifying MA EH will submit an attestation for each of the meaningful use objectives as specified in 42 CFR §495.6. Similar to qualifying MA EPs, the qualifying MA EH will not attest with respect to hospital CQMs in 42 CFR §495.6(f)(9).

Health Professional Shortage Area (HPSA)

Section 1848(o)(1)(B)(iv) of the Social Security Act provides that the amount of the annual EHR incentive payment limit for each payment year be increased by 10 percent for MA EPs who predominantly furnish services in a HPSA. The term “predominantly” means the MA EP furnished more than 50 percent of his or her covered Medicare professional services to MA enrollees of the qualifying MA organization in a designated geographic HPSA during the payment year.

However, an MA organization does not automatically receive a HPSA bonus merely because its qualifying MA EPs predominantly served in a geographic HPSA. In order for the MA organization to receive the 10 percent increase, the MA EP would need to provide 10 percent more than the maximum allowable charges of Medicare Part B covered professional services to MA Plan enrollees of the qualifying MA organization. Thus, for MA EPs who predominantly furnish services in a geographic HPSA, the “incentive payment limit” would be \$13,200 instead of \$12,000 if the first MA EHR payment year for the qualifying MA organization with respect to the MA EP was 2014, and the maximum attestation amount would be \$17,600 instead of \$16,000. Therefore, when entering Part B covered professional services amounts into HPMS after the close of the payment year, the qualifying MA organization would need to enter an amount greater than \$16,000 in Part B covered professional services, which would then result in the qualifying MA organization receiving a HPSA bonus equal to 75 percent of the amount of Part B covered professional services between \$16,000 and \$17,600, if the first payment year is 2014. Merely indicating in HPMS that the MA EP provided services in a geographic HPSA will not result in a HPSA payment.

Qualifying MA EH Payments

A qualifying MA organization will submit its preliminary and final lists of MA EHs via HPMS. The MA EH will perform the remainder of the tasks via the NLR to receive payment, and will actually receive the payment on behalf of the qualifying MA organization. Qualifying MA organizations are required to receive payment through their qualifying MA EHs under the Original Medicare EHR Incentive Program instead of through the MA EHR Incentive Program. A qualifying MA organization that has MA EHs must sign an amendment to its contract with CMS to offer an MA plan that will permit CMS to make payment directly to the qualifying MA EH on behalf of its qualifying MA organization. Please contact CMS via the CMS MA HITECH mailbox at MA_EHRincentiveprogram@cms.hhs.gov if your organization has an MA EH but has not yet executed the necessary contract amendment. Even if a qualifying MA organization completed an MA-affiliated Hospital EHR Incentive Payment Contract Addendum for the 2013 contract year, a

new one must be executed for the 2014 contract year.

Recoupment

CMS may recoup all or a portion of a payment made to an MA organization or an MA EH on behalf of an MA organization if the payment is made based on an incorrect or fraudulent attestation, incorrect or fraudulent cost data, or any other submission required to establish eligibility or to qualify for such payment if the submission is incorrect or fraudulent (see 42 CFR §495.204(e)(4)). If an MA organization or third party on behalf of an MA organization that submitted a methodology fails to comply with an audit request to produce applicable documents and/or data, CMS will presume the MA organization or third party does not possess the requisite documents or data and may recover the incentive payment associated with the missing documentation.

Attached is a timeline of events for payment year 2014. Please send any questions about this guidance to the CMS MA HITECH mailbox at MA_EHRincentiveprogram@cms.hhs.gov.

ATTACHMENTS (3)

2014 Electronic Health Record (EHR) Payment Methodology Submission

Part I – General Information

Name of Organization: _____

List the Applicable MA Organizations by Contract Number: _____

Estimate of the Number of Qualifying Physicians: _____

Estimate of the Number of Physicians Claiming Health Professional Shortage Area (HPSA)
Qualification: _____

PLEASE NOTE: Include all steps in your calculations. Methodologies that do not specifically note how eligibility and compensation are determined will not be approved. The Medicare Advantage Organization (MAO) must be prepared to provide documentation to CMS or its agents on demand to prove that claimed Eligible Professionals (EPs) meet the criteria specified in 42 CFR 495.200. Failure to provide the requested documentation will result in CMS recovering the EHR payments associated with the missing documentation.

Part I – Eligibility

To qualify an MA-EP must be a physician (as defined in §1861(r) of the Act) employed by the qualifying MAO, or employed by or a partner of **an “entity” that through a direct contract with the qualifying MAO provides at least 80% of the “entity’s” Medicare patient care services to enrollees of the qualifying MAO. 80% of the eligible entity’s total Medicare revenue (Medicare FFS and all MA organizations) in a year must be from the single qualifying MAO.**

Describe the employment/compensation relationship(s) between the MA-EPs being claimed and the MAO.

Further, every MA EP (both those employed directly by the MAO and those employed/partnered with an eligible “entity”) must satisfy all four of the following requirements:

1. Furnish at least 80% of his or her Medicare professional services to MA plan enrollees of the qualifying MAO – **80% of the MA EP’s total Medicare revenue in a year must be from the qualifying MAO** (this is especially important for MA EPs hired during the year). Attestations from each newly hired MA EP should be provided to ensure that this 80% requirement is met);
2. Furnish a mathematical average of at least 20 hours per week of patient care services (Medicare and non-Medicare) to enrollees of the qualifying MAO. **The MA EP must provide an average of at least 20 hours per week of patient care services during the EHR reporting period** (Holidays, vacations, sick time, jury duty, military leave, or the like do not count toward the 20 hours of patient care. Also, administrative time does not count towards the 20 hour average. However, telemedicine and exchanging care-related e-mails with patients after hours – if supported by empirical evidence do count toward the 20 hours. In addition, for new hires, all hours for the reporting period are to be included in the calculation rather than the hours during the period that the MA EP was employed by the MA organization.);
3. Is a meaningful user of *certified EHR technology* in accordance with 45 CFR 170.102; AND
4. Is not a “hospital-based EP” as that term is defined in 42 CFR 495.4 of this Part.

Explain how you would verify these qualifications are accurate.

Part II – Calculation of Compensation

Describe the methodology used in the calculation of physician compensation received for Medicare Part B services provided to enrollees of the MAO (please provide an example of this calculation).

CMS requires the qualifying MA organization to develop a methodological proposal for estimating the portion of each qualifying MA EP's salary or revenue attributable to providing services that would otherwise be covered as professional services under Part B to MA plan enrollees of the MA organization in the payment year. The methodological proposal may include an additional amount related to overhead, where appropriate, estimated to account for the MA enrollee related Part B practice costs of the qualifying MA EP (see Part III – Calculation of Overhead).

Please note that you cannot include revenue from supplemental service visits not covered by Medicare Part B in an EP's compensation.

Part III – Calculation of Overhead

Explain if overhead will be claimed. If overhead is claimed, describe how it will be calculated and the percentage of overall compensation it will represent (please provide an example of this calculation).

Note: A salaried physician's compensation typically does not include an allowance for administrative practice costs. Given that Part B allowed amounts do include practice expense costs, we allow qualifying MA organizations to identify, where appropriate, an additional amount related to overhead that would be added to the qualifying MA EP's estimated Part B compensation. To the extent Medicare FFS compensation to physicians includes an amount for office space rental, office staffing, and equipment, we believe that qualifying MA organizations should also be permitted to include an amount for overhead related to such costs not directly experienced by salaried qualifying MA EPs. We require qualifying MA organizations to develop a methodology for estimating the additional amount related to overhead that is attributable to providing services that would otherwise be covered under Part B of Medicare.

Please note that if the compensation for Part B services under Original Medicare (fee-for-service) is used to calculate compensation, a separate calculation for overhead cannot be claimed because overhead is included in the reimbursement under Original Medicare.

Part IV – Additional Information Needed to Analyze Methodology

Please add any other information you feel pertinent to the evaluation and/or understanding of this methodology.

**ATTESTATION OF MA ORGANIZATION TO MEETING DEFINITION OF
HEALTH MAINTENANCE ORGANIZATION AS DEFINED IN SECTION 2791(b)(3)
OF THE PUBLIC HEALTH SERVICES ACT**

Pursuant to the contract(s) between the Centers for Medicare and Medicaid Services (CMS), and (insert name of Medicare Advantage Organization) (hereafter referred to as “the Organization”) governing the operation of the following contracts: *(insert the appropriate contract numbers)*, the Organization hereby attests to meeting the definition of qualifying MA organization in section 1853(l) of the Social Security Act and 42 CFR §495.200 by:

(check one)

___ being an Organization recognized as an HMO under State law; or,

___ being an Organization regulated for solvency under State law in the same manner and to the same extent as an HMO.

List State: _____

The Organization acknowledges that the information described above directly affects the calculation of CMS payments to the Organization under the Electronic Health Record Incentive Payment Program and that misrepresentations to CMS about the accuracy of such information may result in Federal civil action and/or criminal prosecution. This certification shall not be considered a waiver of the Organization’s right to seek payment adjustments from CMS based on information or data which does not become available until after the date the Organization submits this certification.

Based on best knowledge, information, and belief, all information submitted to CMS and/or its contractors is accurate, complete, and truthful.

Signature of Officer

Title of Signing Officer

Printed Name of Signing Officer

Date

Parent Organization Name

IMPORTANT DATES FOR MA EHR INCENTIVE PROGRAM

| DATE | ACTION |
|------------------------|---|
| June 23, 2014 | CMS will first be able to accept uploads of the initial HPMS registration information for the 2014 EHR incentive payment year. |
| June 27, 2014 | Deadline for the submission of the initial HPMS registration information for MA-affiliated hospitals and MA EPs. |
| June 27, 2014 | Deadline for MA organizations to attest that they meet the definition of HMO in the PHS Act if they have not previously attested. |
| June 27, 2014 | Deadline for MA organizations and/or MA EPs, or the entities with which they partner (or by which they are employed), to submit methodologies they will use in computing Part B reimbursement amounts with respect to MA EPs. |
| November 30, 2014 | Deadline for MA EHs to register and attest in the NLR that their MA-affiliated hospitals have meaningfully used certified EHR technology, for payment year 2014. |
| Late 2014 / Early 2015 | Initial Payment made to MA EHs that meaningfully use certified EHR. |
| March 1, 2015 | Deadline for MAs to attest in the HPMS that their MA EPs have meaningfully used certified EHR technology, for payment year 2014. |
| Spring/Summer 2015 | Payment made to MA organizations for MA EPs that meaningfully use certified EHR. |