

QUESTIONS SURROUND CMS'S ANNOUNCEMENT OF PARTICIPATION OPTIONS FOR MIPS AND ADVANCED APMS FOR 2017

As has been widely reported, CMS's Acting Administrator, Andy Slavitt, recently announced four participation options under the Quality Payment Program (i.e., participation in the MIPS and Advanced APM programs) for 2017. In part because the September 8 announcement provides only summary descriptions, many questions surround the four participation options and their implementation for 2017.

The first and second participation options summarized in the announcement are new as they were not included in CMS's May 9 proposed rule. The options are as follows.

First Option: Test the MIPS Program. As summarized in the announcement, a MIPS eligible clinician need only report "some data" to MIPS ("including data from after January 1, 2017") to avoid a negative payment adjustment in 2019. The announcement provides no definition of "some data," nor does it indicate whether some or all of the reported data must pertain to the four MIPS performance categories. Presumably, a MIPS eligible clinician who does not meet this standard will be subject to a negative payment adjustment in 2019 (however, the announcement does not state the amount of any such negative adjustment). In addition, the announcement does not indicate, at least not explicitly, whether this option will be available to MIPS eligible clinicians who opt to report their MIPS performance data as a group.

Second Option: Participate for Part of 2017. A practice (or a MIPS eligible clinician reporting individually) may choose to submit data for a reduced number of days during 2017. In doing so, the practice (or a MIPS eligible clinician reporting individually) "could" qualify for a "small" positive payment adjustment in 2019. It appears that this option will require a practice (or individual clinician) to submit data for three of the four MIPS performance categories (i.e., quality, advancing care information and clinical practice improvement activity). The announcement does not state whether CMS will also score a practice or individual clinician on the fourth MIPS performance category, resource use. The announcement also does not indicate what a small positive payment adjustment would be (and there is no explanation concerning the relationship, if any, between a small positive payment adjustment and the four percent base positive payment adjustment for 2019 provided for in the proposed rule). According to the announcement, "choosing" this second participation option – *or choosing any of the other three participation options* – "would ensure" that a negative payment adjustment is not imposed in 2019. Given this statement, it appears that simply reporting the required data under this option will be sufficient to avoid a negative payment adjustment in 2019, regardless of how poor a practice's or clinician's MIPS comprehensive performance score ("CPS") may be.

It is less clear whether the third participation option identified in the announcement is new. It could be that the description of the third option in the announcement is merely CMS's way of summarizing the proposed rule's provisions regarding the reporting of performance data for 2017 and the 2019 payment adjustments. However, the announcement's description of the option nevertheless gives rise to questions about whether the option is, in actuality, a programmatic scheme different from what CMS laid out in the proposed rule.

Third Option: Participate for all of 2017. A practice (or a MIPS eligible clinician reporting individually) may choose to submit MIPS performance data for the entirety of 2017. The practice (or individual clinician) will apparently be required to submit data for the quality, advancing care information and clinical practice improvement activity MIPS performance categories for 2017. This approach would be consistent with the requirements set forth in the proposed rule, so long as CMS also scores the practice or clinician on the resource use performance category using the practice's or clinician's Medicare claims data (however, the announcement's summary of this option does not mention whether the resource use performance category will be scored). Pursuant to the announcement, this option will provide for a "modest" positive payment adjustment in 2019. However, modest is not defined, and there is no explanation about the criteria that must be satisfied in order to earn a modest positive payment adjustment (nor is there any explanation about how, if at all, such a modest adjustment would relate to the four percent base positive payment adjustment for 2019, or to the additional positive payment adjustment available in 2019 for exceptional performers, provided for in the proposed rule). As noted previously in this memorandum, the announcement states that "choosing" this third participation option (or choosing any of the other three participation options) "would ensure" that a negative payment adjustment is not imposed in 2019. At least at face value, this

statement would be a departure from the approach taken by CMS in the proposed rule. Under the proposed rule, a poor 2017 CPS could result in a negative payment adjustment in 2019.

The fourth participation option identified in the announcement appears to simply be a summary of the provisions in the proposed rule regarding Advanced Alternative Payment Models ("Advanced APMs") and how a MIPS eligible clinician may earn an APM incentive payment by meeting the criteria for a Qualifying APM Participant ("QP").

Fourth Option: Participate in an Advanced APM. A MIPS eligible clinician, typically through his/her practice, may participate in an Advanced APM (such as Medicare Shared Savings Track 2 or 3) in 2017. If the clinician receives enough of his/her Medicare payments or sees enough of his/her Medicare patients through an Advanced APM in 2017, then the clinician would qualify as a QP and would be entitled to a five percent incentive payment in 2019.

Finally, the announcement states that the final rule will fully describe the details of these four participation options. In this regard, the announcement advises that CMS will publish the final rule "by November 1, 2016."

Mr. Slavitt's September 8 announcement can be found [here](#).

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