

495.40 Demonstration of meaningful use criteria.

(a) Demonstration by EPs. An EP must demonstrate that he or she satisfies each of the applicable objectives and associated measures under § 495.20, § 495.22 or § 495.24, supports information exchange and the prevention of health information blocking, and engages in activities related to supporting providers with the performance of CEHRT:

(1) For CY 2011 - (i) Attestation. Attest, through a secure mechanism, in a manner specified by CMS (or for a Medicaid EP, in a manner specified by the State), that during the EHR reporting period, the EP -

(A) Used certified EHR technology, and specify the technology used;

(B) Satisfied the required objectives and associated measures under § 495.20 or § 495.24;

(C) Must specify the EHR reporting period and provide the result of each applicable measure for all patients seen during the EHR reporting period for which a selected measure is applicable;

(ii) Additional requirements for Medicaid EPs. For Medicaid EPs, if, in accordance with §§ 495.316 and 495.332, CMS has approved a State's revised definition for meaningful use, in addition to meeting paragraphs (a)(1)(i) through (ii) of this section, the EP must also demonstrate meeting the State revised definition using the method approved by CMS; and

(iii) Exception for Medicaid EPs. If a Medicaid EP has adopted, implemented or upgraded certified EHR technology in the first payment year, the EP need not demonstrate meaningful use until the second payment year, as described in § 495.20 or §§ 495.24 and 495.40.

(2) For CY 2012 and subsequent years -

(i) Attestation. Attest, through a secure mechanism, in a manner specified by CMS (or for a Medicaid EP, in a manner specified by the State) that during the EHR reporting period, the EP -

(A) Used certified EHR technology and specify the technology used.

(B) For calendar years before 2015, satisfied the required objectives and associated measures under § 495.20 for the EP's stage of meaningful use.

(C) Must specify the EHR reporting period and provide the result of each applicable measure for all patients seen during the EHR reporting period for which a selected measure is applicable.

(D) For 2014 only, if the EP uses one of the options specified in § 495.20(a)(4) or (h)(3), the EP must attest that he or she is unable to fully implement 2014 Edition certified EHR technology for an EHR reporting period in 2014 due to delays in 2014 Edition certified EHR technology availability.

(E) For CYs 2015 through 2016, satisfied the required objectives and associated measures under § 495.22(e) for meaningful use.

(F) For CY 2017 and CY 2018: An EP that has successfully demonstrated it is a meaningful EHR user in any prior year may satisfy either the objectives and measures specified in § 495.22(e) for meaningful use or the objectives and measures specified in § 495.24(d) for meaningful use; an EP that has never successfully demonstrated it is a meaningful EHR user in any prior year must satisfy the objectives and measures specified in § 495.22(e) for meaningful use.

(G) For CY 2019 and subsequent years, satisfied the required objectives and associated measures under § 495.24(d) for meaningful use.

(H) Supporting providers with the performance of CEHRT (SPPC). To engage in activities related to supporting providers with the performance of CEHRT, the EP -

(1) Must attest that he or she:

(i) Acknowledges the requirement to cooperate in good faith with ONC direct review of his or her health information technology certified under the ONC Health IT Certification Program if a request to assist in ONC direct review is received; and

(ii) If requested, cooperated in good faith with ONC direct review of his or her health information technology certified under the ONC Health IT Certification Program as authorized by 45 CFR part 170, subpart E, to the extent that such technology meets (or can be used to meet) the definition of CEHRT, including by permitting timely access to such technology and demonstrating its capabilities as implemented and used by the EP in the field.

(2) Optionally, may also attest that he or she:

(i) Acknowledges the option to cooperate in good faith with ONC-ACB surveillance of his or her health information technology certified under the ONC Health IT Certification Program if a request to assist in ONC-ACB surveillance is received; and

(ii) If requested, cooperated in good faith with ONC-ACB surveillance of his or her health information technology certified under the ONC Health IT Certification Program as authorized by 45 CFR part 170, subpart E, to the extent that such technology meets (or can be used to meet) the definition of CEHRT, including by permitting timely access to such technology and demonstrating capabilities as implemented and used by the EP in the field.

(I) Support for health information exchange and the prevention of information blocking. For an EHR reporting period in CY 2017 and subsequent years, the EP must attest that he or she

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(1) Did not knowingly and willfully take action (such as to disable functionality) to limit or restrict the compatibility or interoperability of certified EHR technology.

(2) Implemented technologies, standards, policies, practices, and agreements reasonably calculated to ensure, to the greatest extent practicable and permitted by law, that the certified EHR technology was, at all relevant times -

(i) Connected in accordance with applicable law;

(ii) Compliant with all standards applicable to the exchange of information, including the standards, implementation specifications, and certification criteria adopted at 45 CFR part 170;

(iii) Implemented in a manner that allowed for timely access by patients to their electronic health information; and

(iv) Implemented in a manner that allowed for the timely, secure, and trusted bi-directional exchange of structured electronic health information with other health care providers (as defined by 42 U.S.C. 300jj(3)), including unaffiliated providers, and with disparate certified EHR technology and vendors.

(3) Responded in good faith and in a timely manner to requests to retrieve or exchange electronic health information, including from patients, health care providers (as defined by 42 U.S.C. 300jj(3)), and other persons, regardless of the requestor's affiliation or technology vendor.

(ii) Reporting clinical quality information. Successfully report the clinical quality measures selected by CMS to CMS or the States, as applicable, in the form and manner specified by CMS or the States, as applicable.

(iii) Additional requirements for Medicaid EPs. For Medicaid EPs, if, in accordance with §§ 495.316 and 495.332, CMS has approved a State's additional criteria for meaningful use, in addition to meeting paragraphs (a)(2)(i) through (iii), the EP must also demonstrate meeting such additional criteria using the method approved by CMS.

(iv) Exception for Medicaid EPs. If a Medicaid EP has adopted, implemented, or upgrade certified EHR technology in the first payment year, the EP need not demonstrate that it is a meaningful EHR user until the second payment year, as described in § 495.20 or §§ 495.24 and 495.40.

(v) Exception for Medicare EPs for 2012 and 2013 - Participation in the Physician Quality Reporting System-Medicare EHR Incentive Pilot. To satisfy the clinical quality measure reporting requirements of meaningful use, aside from attestation, an EP participating in the

Physician Quality Reporting System may also participate in the Physician Quality Reporting System-Medicare EHR Incentive Pilot through one of the following methods:

(A) Submission of data extracted from the EP's certified EHR technology through a Physician Quality Reporting System qualified EHR data submission vendor; or

(B) Submission of data extracted from the EP's certified EHR technology, which must also be through a Physician Quality Reporting System qualified EHR.

(3) For all CYs, an EP who practices in multiple physical locations, not all of which have certified EHR technology available, will demonstrate meaningful use using only the locations where the EP has certified EHR technology available. (See also § 495.4 regarding the definition of meaningful EHR user).

(b) Demonstration by eligible hospitals and CAHs. An eligible hospital or CAH must demonstrate that it satisfies each of the applicable objectives and associated measures under § 495.20, § 495.22, or § 495.24, supports information exchange and the prevention of health information blocking, and engages in activities related to supporting providers with the performance of CEHRT:

(1) For FY 2011 -

(i) Attestation. Attest, through a secure mechanism, in a manner specified by CMS (or for a Medicaid eligible hospital, in a manner specified by the State), that during the EHR reporting period, the eligible hospital or CAH -

(A) Used certified EHR and specify the technology used.

(B) Satisfied the required objectives and associated measures under § 495.20 or § 495.24.

(C) Must specify the EHR reporting period and provide the result of each applicable measure for all patients admitted to the inpatient or emergency department (POS 21 or 23) of the hospital during the EHR reporting period for which a selected measure is applicable.

(ii) Additional requirements for Medicaid eligible hospitals. For Medicaid eligible hospitals, if, in accordance with §§ 495.316 and 495.332, CMS has approved a State's revised definition for meaningful use, in addition to meeting paragraphs (b)(1)(i) through (ii) of this section, the eligible hospital must also demonstrate meeting the State's revised definition using the method approved by CMS.

(iii) Exception for Medicaid eligible hospitals. If a Medicaid eligible hospital has adopted, implemented or upgraded certified EHR technology in the first payment year, the eligible hospital need not demonstrate meaningful use until the second payment year, as described in § 495.20 or §§ 495.24 and 495.40.

(2) For FY 2012 and subsequent years -

(i) Attestation. Attest, through a secure mechanism, in a manner specified by CMS (or for a Medicaid eligible hospital, in a manner specified by the State), that during the EHR reporting period, the eligible hospital or CAH -

(A) Used certified EHR and specify the technology used;

(B) For fiscal years before 2015, satisfied the required objectives and associated measures under § 495.20 for the eligible hospital or CAH's stage of meaningful use.

(C) Must specify the EHR reporting period and provide the result of each applicable measure for all patients admitted to the inpatient or emergency department (POS 21 or 23) of the hospital during the EHR reporting period for which a selected measure is applicable.

(D) For 2014 only, if the eligible hospital or CAH uses one of the options specified in § 495.20(b)(4) or (h)(3), it must attest that it is unable to fully implement 2014 Edition certified EHR technology for an EHR reporting period in 2014 due to delays in 2014 Edition certified EHR technology availability.

(E) For CYs 2015 through 2016, satisfied the required objectives and associated measures under § 495.22(e) for meaningful use.

(F) For CY 2017 and CY 2018:

(1) For an eligible hospital or CAH attesting to CMS: An eligible hospital or CAH that has successfully demonstrated it is a meaningful EHR user in any prior year may satisfy either the objectives and measures specified in § 495.22(f) for meaningful use or the objectives and measures specified in § 495.24(c) for meaningful use; an eligible hospital or CAH that has never successfully demonstrated it is a meaningful EHR user in any prior year must satisfy the objectives and measures specified in § 495.22(f) for meaningful use.

(2) For an eligible hospital or CAH attesting to a State for the Medicaid EHR Incentive Program: An eligible hospital or CAH that has successfully demonstrated it is a meaningful EHR user in any prior year may satisfy either the objectives and measures specified in § 495.22(e) for meaningful use or the objectives and measures specified in § 495.24(d) for meaningful use; an eligible hospital or CAH that has never successfully demonstrated it is a meaningful EHR user in any prior year must satisfy the objectives and measures specified in § 495.22(e) for meaningful use.

(G) For CY 2019:

(1) For an eligible hospital or CAH attesting to CMS, satisfied the required objectives and associated measures under § 495.24(c) for meaningful use.

(2) For an eligible hospital or CAH attesting to a State for the Medicaid EHR Incentive Program, satisfied the required objectives and associated measures under § 495.24(d) for meaningful use.

(H) Supporting providers with the performance of CEHRT (SPPC). To engage in activities related to supporting providers with the performance of CEHRT, the eligible hospital or CAH -

(1) Must attest that it:

(i) Acknowledges the requirement to cooperate in good faith with ONC direct review of his or her health information technology certified under the ONC Health IT Certification Program if a request to assist in ONC direct review is received; and

(ii) If requested, cooperated in good faith with ONC direct review of its health information technology certified under the ONC Health IT Certification Program as authorized by 45 CFR part 170, subpart E, to the extent that such technology meets (or can be used to meet) the definition of CEHRT, including by permitting timely access to such technology and demonstrating its capabilities as implemented and used by the eligible hospital or CAH in the field.

(2) Optionally, may attest that it:

(i) Acknowledges the option to cooperate in good faith with ONC-ACB surveillance of his or her health information technology certified under the ONC Health IT Certification Program if a request to assist in ONC-ACB surveillance is received; and

(ii) If requested, cooperated in good faith with ONC-ACB surveillance of his or her health information technology certified under the ONC Health IT Certification Program as authorized by 45 CFR part 170, subpart E, to the extent that such technology meets (or can be used to meet) the definition of CEHRT, including by permitting timely access to such technology and demonstrating its capabilities as implemented and used by the eligible hospital or CAH in the field.

(I) Support for health information exchange and the prevention of information blocking. For an EHR reporting period in CY 2017 and subsequent years, the eligible hospital or CAH must attest that it -

(1) Did not knowingly and willfully take action (such as to disable functionality) to limit or restrict the compatibility or interoperability of certified EHR technology.

(2) Implemented technologies, standards, policies, practices, and agreements reasonably calculated to ensure, to the greatest extent practicable and permitted by law, that the certified EHR technology was, at all relevant times -

(i) Connected in accordance with applicable law;

(ii) Compliant with all standards applicable to the exchange of information, including the standards, implementation specifications, and certification criteria adopted at 45 CFR part 170;

(iii) Implemented in a manner that allowed for timely access by patients to their electronic health information; and

(iv) Implemented in a manner that allowed for the timely, secure, and trusted bi-directional exchange of structured electronic health information with other health care providers (as defined by 42 U.S.C. 300jj(3)), including unaffiliated providers, and with disparate certified EHR technology and vendors.

(3) Responded in good faith and in a timely manner to requests to retrieve or exchange electronic health information, including from patients, health care providers (as defined by 42 U.S.C. 300jj(3)), and other persons, regardless of the requestor's affiliation or technology vendor.

(ii) Reporting clinical quality information. Successfully report the clinical quality measures selected by CMS to CMS or the States, as applicable, in the form and manner specified by CMS or the States, as applicable.

(iii) [Reserved]

(iv) Additional requirements for Medicaid eligible hospitals. For Medicaid eligible hospitals if, in accordance with §§ 495.316 and 495.332, CMS has approved a State's revised definition for meaningful use, in addition to meeting paragraphs (b)(2)(i) through (iii) of this section, the eligible hospital must also demonstrate meeting the State's revised definition using the method approved by CMS.

(v) Exception for Medicare EPs for 2012 and 2013 - Participation in the Physician Quality Reporting System-Medicare EHR Incentive Pilot. To satisfy the clinical quality measure reporting requirements of meaningful use, aside from attestation, an EP participating in the Physician Quality Reporting System may also participate in the Physician Quality Reporting System-Medicare EHR Incentive Pilot through one of the following methods:

(A) Submission of data extracted from the EP's certified EHR technology through a Physician Quality Reporting System qualified EHR data submission vendor; or

(B) Submission of data extracted from the EP's certified EHR technology, which must also be through a Physician Quality Reporting System qualified EHR.

(vi) Exception for Medicare eligible hospitals and CAHs for FY 2012 and 2013 - Participation in the Medicare EHR Incentive Program Electronic Reporting Pilot. In order to satisfy the clinical quality measure reporting requirements of meaningful use, aside from attestation, a Medicare eligible hospital or CAH may participate in the Medicare EHR Incentive Program Electronic Reporting Pilot.

(vii) Exception for dual-eligible eligible hospitals and CAHs beginning in CY 2019. (A) Beginning with the EHR reporting period in CY 2019, dual-eligible eligible hospitals and CAHs (those that are eligible for an incentive payment under Medicare for meaningful use of CEHRT and/or subject to the Medicare payment reduction for failing to demonstrate

meaningful use, and are also eligible to earn a Medicaid incentive payment for meaningful use) must satisfy the requirements under paragraph (b)(2) of this section by attestation and reporting information to CMS, not to their respective state Medicaid agency.

(B) Dual-eligible eligible hospitals and CAHs that demonstrate meaningful use to their state Medicaid agency may only qualify for an incentive payment under Medicaid and will not qualify for an incentive payment under Medicare and/or avoid the Medicare payment reduction.

(c) Review of meaningful use. (1) CMS (and in the case of Medicaid EPs and eligible hospitals, States) may review an EP, eligible hospital or CAH's demonstration of meaningful use.

(2) All EPs, eligible hospitals, and CAHs must keep documentation supporting their demonstration of meaningful use for 6 years.