

working with Office for Civil Rights (OCR) or the Office of the Inspector General (OIG) to develop additional guidance to physicians regarding privacy practices.

*Response:* We appreciate this feedback. We will continue to work with the OCR and ONC to develop and refine guidance.

We are finalizing the requirement that a MIPS eligible clinician must meet the Protect Patient Health Information objective and measure in order to earn any score within the advancing care information performance category.

(ii) Advancing Care Information Performance Category Base Score Primary Proposal

In the 2015 EHR Incentive Programs final rule (80 FR 62829–62871), we finalized certain objectives and measures EPs would report to demonstrate meaningful use of CEHRT for Stage 3. Under our proposal for the base score of the advancing care information performance category, MIPS eligible clinicians would be required to submit the numerator (of at least one) and denominator, or yes/no statement as appropriate (only a yes statement would qualify for credit under the base score), for each measure within a subset of objectives (Electronic Prescribing, Patient Electronic Access to Health Information, Care of Coordination Through Patient Engagement, Health Information Exchange, and Public Health and Clinical Data Registry Reporting) adopted in the 2015 EHR Incentive Programs final rule for Stage 3 to account for the base score of 50 percent of the advancing care information performance category score. Successfully submitting a numerator and denominator or yes/no statement for each measure of each objective would earn a base score of 50 percent for the advancing care information performance category. As proposed in the proposed rule, failure to meet the submission criteria (numerator/denominator or yes/no statement as applicable) and measure specifications (81 FR 28226 through 28230) for any measure in any of the objectives would result in a score of zero for the advancing care information performance category base score, a performance score of zero (discussed in section II.E.5.g. of the proposed rule 81 FR 28215) and an advancing care information performance category score of zero.

For the Public Health and Clinical Data Registry Reporting objective there is no numerator and denominator to measure; rather, the measure is a “yes/no” statement of whether the MIPS eligible clinician has completed the

measure, noting that only a yes statement would qualify for credit under the base score. Therefore we proposed that MIPS eligible clinicians would include a yes/no statement in lieu of the numerator/denominator statement within their submission for the advancing care information performance category for the Public Health and Clinical Data Registry Reporting objective. We further proposed that, to earn points in the base score, a MIPS eligible clinician would only need to complete submission on the Immunization Registry Reporting measure of this objective. Completing any additional measures under this objective would earn one additional bonus point in the advancing care information performance category score. For further information on this proposed objective, we direct readers to 81 FR 28230.

(iii) Advancing Care Information Performance Category Base Score Alternate Proposal

Under our alternate proposal for the base score of the advancing care information performance category, a MIPS eligible clinician would be required to submit the numerator (of at least one) and denominator, or yes/no statement as appropriate, for each measure, for all objectives and measures for Stage 3 in the 2015 EHR Incentives Program final rule (80 FR 62829–62871) as outlined in Table 7 of the proposed rule (81 FR 28223). Successfully submitting a numerator and denominator for each measure of each objective would earn a base score of 50 percent for the advancing care information performance category. Failure to meet the submission requirements, or measure specifications for any measure in any of the objectives would result in a score of zero for the advancing care information performance category base score, a performance score of 0 (discussed in section II.E.5.g. of the proposed rule), and an advancing care information performance category score of 0.

We proposed the same approach in the alternate proposal for the Public Health and Clinical Data Registry Reporting objective as for the primary outlined proposal. We direct readers to 81 FR 28226 through 28230 for further details on the individual objectives and measures.

The following is a summary of the comments we received regarding our base score primary and alternate proposals which differ based on whether reporting the CDS and CPOE objectives would be required.

*Comment:* Most commenters support the adoption of the base score primary proposal, which eliminates the objectives and associated measures for CPOE and CDS and agreed that most MIPS eligible clinicians already use CPOE and CDS and do very well on those measures. Several noted that measures require additional data entry and the pop-up alerts interfere with clinical workflow, and thus, removal of these measures could improve clinical workflow in the EHR.

*Response:* We agree and appreciate the support of these commenters. As we have done previously under the EHR Incentive Programs we will continue to monitor performance on objectives and measures and plan to propose to refine measures and add new measures in future years.

*Comment:* Since CPOE and CDS continue to be valuable to practices, many commenters support the alternate proposal to require the CPOE and CDS objectives in the base score for the advancing care information performance category. One commenter stated that maintaining these two objectives offers an opportunity for the development of important measures for specialists, including anesthesia-focused measures. Another commenter suggested including the CPOE objective in for the performance score of the advancing care information performance category to give more flexibility and offer an opportunity to MIPS eligible clinicians to earn more points, especially for those MIPS eligible clinicians who will be using an EHR technology certified to the 2014 Edition in 2017.

*Response:* While we agree that CPOE and CDS are valuable, we continue to believe that it is important to streamline and simplify the reporting requirements under MIPS. We note that the functionality supporting these objectives will continue to be required as part of CEHRT requirements.

*Comment:* One commenter urged CMS to clarify that even if the reporting of CPOE and CDS measures is eliminated under the primary proposal base score of the advancing care information performance category, MIPS eligible clinicians who utilize CPOE are still expected to utilize appropriately credentialed clinical staff to enter the orders and those who utilize CDS must have the required functionality turned on to receive credit in the advancing care information performance category base score.

*Response:* As for the functionality, even if the CPOE and CDS objectives and measures are not included for reporting under the advancing care information performance category, it is

still expected that MIPS eligible clinicians will continue to have the functionality enabled as a part of CEHRT.

*Comment:* Some commenters recommended retaining the CPOE and CDS objectives and associated measures, noting that while the two functionalities are widely adopted by those who were already participating in the Medicare and Medicaid EHR Incentive Programs, MIPS eligible clinicians include practitioners who were not eligible for those programs, many of whom have not yet adopted the functionalities and activities required for those objectives. Some commenters asked that, if retaining the CPOE objective and associated measures, that CMS include the low volume threshold exclusions.

*Response:* While we appreciate these concerns, we continue to believe that it is important to streamline and simplify the reporting requirements under MIPS. Practitioners who are not eligible to participate in the EHR Incentive Programs but are MIPS eligible clinicians will be subject to many new requirements and will have a considerable amount of learning to do in their initial years of the program, thus we do not believe it is necessary to add more to that list of requirements and also increase the reporting burden for clinicians with more experience using EHR who have historically had high performance on these measures in the past under the EHR Incentive Program.

We note that the functionality supporting these objectives will continue to be required as part of certification requirements and available to new adopters of EHR technology.

*Comment:* One commenter expressed skepticism about the applicability of the objectives with special emphasis in the base score to specialists. For example, the commenter expressed concern that many anesthesiologists may have difficulty attesting to the Patient Electronic Access, Coordination of Care Through Patient Engagement and Health Information Exchange objectives. They suggested developing equally valuable substitute measures and objectives that focus on the use of CEHRT by specialists and MIPS eligible clinicians who work in settings that vary from traditional office-based practices.

*Response:* We understand that the practice settings of MIPS eligible clinicians vary and that meeting the proposed objectives and measures may require different levels of effort. We will consider the development of objectives and measures for specialists and other clinicians who do not work in office settings in future rulemaking.

*Comment:* We received many suggested changes to the measures included in our primary proposal. Some requested that we allow MIPS eligible clinicians to choose which measures are most relevant to their practice. Others recommended that the base score be streamlined and focus on three critical objectives of meaningful use: Protection of personal health information, patient electronic access to his/her health information, and health information exchange. Some commenters recommended including the smallest set of objectives in the base score required by statute and including any additional objectives in the performance score category.

*Response:* We appreciate the many suggested changes to measures and measure reporting requirements and will take them into consideration in this and future rules. We are also conscious of the need to balance complexity or reporting requirements with reporting goals. In our final policy, we have restructured our base score to reduce reporting burden, and limited the required measures keeping only those measures that implement certain requirements under section 1848(o)(2)(A) of the Act, which include e-Prescribing and two of the measures under the Health Information Exchange objective; as well as Security Risk Analysis, which we have previously stated is of paramount importance to protecting patient privacy; and Provide Patient Access which is critical to increasing patient engagement and allowing patients access to their personal health data. We note that this reduction of measures is responsive to the comments we received requesting that we move away from the all-or-nothing scoring methodology in the proposed base score. While we believe all measures under the advancing care information performance category are of upmost importance, we acknowledge that we must balance the need for these data with data collection and reporting burden. We refer readers to section II.E.5.g.(6)(a) for more discussion of our final scoring policy.

After consideration of the comments, we are modifying our primary proposal with modifications described in section II.E.5.g.(6)(a) for the base score. This proposal does not require the reporting of the objectives and measures for CDS and CPOE. We note that the functionalities required for these objectives and associated measures are still required as part of ONC's certification criteria for CEHRT.

The following is a summary of the comments we received related to the

bonus for Public Health and Clinical Data Registry Reporting.

*Comment:* The majority of commenters recommended that more bonus credit should be awarded to MIPS eligible clinicians for reporting to additional registries by either increasing the bonus to 5 or 10 percent or by offering a bonus for each additional registry to which the MIPS eligible clinician reports. One commenter specifically expressed concern that only awarding 1 percent downplays the importance and benefit of submitting data to multiple registries. Many commenters supported the proposal that Immunization Registry Reporting should be the only registry required for the base score, but encouraged CMS to provide more than 1 percent as a bonus for additional registry reporting. Another suggested that for CY 2017, CMS require two public health reporting measures in the Public Health and Clinical Data Registry Reporting objective for the base score, including mandatory reporting to immunization registries and any of the optional public health measures.

*Response:* The Public Health and Clinical Data Registry reporting objective focuses on the importance of the ongoing lines of communication that should exist between MIPS eligible clinicians and public health agencies and clinical data registries thus, we agree that a larger bonus should be awarded for reporting to additional registries under the Public Health and Clinical Data Registry Reporting objective. These registries play an important part in monitoring the health status of patients across the country and some, for example syndromic surveillance registries, help in the early detection of outbreaks which is critical to public health overall.

After consideration of the comments we received, and for the reasons mentioned above, we are increasing the bonus score to 5 percent in the advancing care information performance category score for reporting to one or more public health or clinical data registries beyond the Immunization Registry Reporting measure. We note that in our effort to reduce the number of required measures in the base score and simplify reporting requirements, the Immunization Registry Reporting measure is no longer required as part of the base score, however MIPS eligible clinicians can earn 10 percent in the performance score for reporting this measure. Additionally, if the MIPS eligible clinician reports to one or more additional registries under the Public Health and Clinical Data Registry Reporting objective, they will earn the 5