

A. The Medicare Electronic Health Record Incentive Program - Final Rule. In addressing comments on the creation of an appeal process for the EHR Incentive Program CMS stated in the Final rule for Stage 1 that a Medicare appeals process would be addressed through future guidance.

1. FR 44439: Comment: We received a comment suggesting that Medicare adopt an appeals process similar to the one proposed for Medicaid.

Response: We expect to address Medicare appeals in future guidance.

The Final Rule for Stage 1 provides language relative to an appeals process for a CAH participating in the Medicare EHR Incentive Program.

2. FR44464: Comment: We received some comments requesting clarification of whether CAHs will be able to appeal their incentive payment amounts.

Response: We believe that the limitation of administrative and judicial review does not apply to the amount of the CAH incentive payment. The CAH may appeal the statistical and financial amounts from the Medicare cost report used to determine the CAH incentive payment. The CAH would utilize the current provider appeal process pursuant to section 1878 of the Act.

CMS is currently working to develop both the policy and procedures for an appeal process as it relates to Medicare providers participating in the EHR Incentive program.

B. The Medicaid Electronic Health Record Incentive Program - Final Rule The Final Rule for Stage 1 established requirements for states to provide an appeal process for EP's, EH's and CAH's that participated in the Medicaid EHR Incentive Program. States are required to explain this appeal process into their State Health IT Plan (SMHP).

- FR44514: As a result of the authority extended to the Secretary under section 1902(a)(4) of the Act requiring the effective and efficient administration of the State plan, as well as section 1903(t)(9) of the Act, requiring that a State demonstrate to the satisfaction of the Secretary that it is conducting adequate oversight of the program, we also are requiring States to establish § 495.370, Provider Appeals. This section specifies that Medicaid providers who believe that they have been denied an incentive payment or have received an incorrect

payment amount under this part because of incorrect determinations of eligibility, including, but not limited to, measuring patient volume; demonstrating meaningful use of, or the efforts to adopt, implement, or upgrade to, certified EHR technology; whether the professional is hospital-based; whether the professional is practicing predominantly in an FQHC or RHC; whether the hospital qualifies as an acute care or children's hospital; or whether the provider is already participating in the Medicare incentive program and therefore ineligible duplicate Medicaid incentive program payments can appeal the decision using current Federal processes.