Section on Small Practice Hardship Exemption in 2018 QPP Proposed Rule

(II) SIGNIFICANT HARDSHIP EXCEPTION FOR MIPS ELIGIBLE CLINICIANS IN SMALL PRACTICES

Section 1848(q)(2)(B)(iii) of the Act requires the Secretary to give consideration to the circumstances of small practices (consisting of 15 or fewer professionals) and practices located in rural areas and geographic HPSAs in establishing improvement activities under MIPS. In the CY 2017 Quality Payment Program final rule (81 FR 77187 through 77188), we finalized that for MIPS eligible clinicians and groups that are in small practices or located in rural areas, or geographic health professional shortage areas (HPSAs), to achieve full credit under the improvement activities category, one high-weighted or two medium-weighted improvement activities are required.

While there is no corresponding statutory provision for the advancing care information performance category, we believe that special consideration should also be available for MIPS eligible clinicians located in small practices. Through comments received on the CY 2017 Quality Payment Program proposed rule (81 FR 28161-28586), we heard many concerns about the impact of MIPS on eligible clinicians in small practices. Some commenters stated that there was not a meaningful exclusion for small practices that cannot afford the upfront investments (including investments in EHR technology) (81 FR 77066). Many noted there are still many small practices that have not adopted EHRs due to the administrative and financial burden. Some expressed concern that small group and solo practices would be driven out of business because of the potential negative payment adjustments under MIPS (81 FR 77055). A few commenters were concerned about the impact of MACRA on small practices and asked CMS to remain sensitive to this concern and offer special opportunities for MIPS eligible clinicians in areas threatened by access problems (81 FR 77055).

Based on these concerns, we are proposing a significant hardship exception for the advancing care information performance category for MIPS eligible clinicians who are in small practices, under the authority in section 1848(o)(2)(D) of the Act, as amended by section 4002(b)(1)(B) of the 21st Century Cures Act (see discussion of the statutory authority for significant hardship exceptions in section II.C.6.f.(7)(ii). We are proposing that this hardship exception would be available to MIPS eligible clinicians in small practices as defined under § 414.1305 (15 or fewer clinicians and solo practitioners). We are proposing in section II.C.1.e. of this proposed rule, that CMS would make eligibility determinations regarding the size of small practices for performance periods occurring in 2018 and future years. We are proposing to reweight the advancing care information performance category to zero percent of the MIPS final score for MIPS eligible clinicians who qualify for this hardship exception. We are proposing this exception would be available beginning with the 2018 performance period and 2020 MIPS payment year. We are proposing a MIPS eligible clinician seeking to qualify for this exception would submit an application in the form and manner specified by us by December 31st of the performance period or a later date specified by us. We are also proposing MIPS eligible clinicians seeking this

exception must demonstrate in the application that there are overwhelming barriers that prevent the MIPS eligible clinician from complying with the requirements for the advancing care information performance category. In accordance with section 1848(a)(7)(B) of the Act, the exception would be subject to annual renewal. Under our proposal in section II.C.6.f.(7)(a), the 5-year limitation under section 1848(a)(7)(B) of the Act would not apply to this significant hardship exception for MIPS eligible clinicians in small practices.

We believe that applying the significant hardship exception in this way would be appropriate given the challenges small practices face as described by the commenters. In addition, we believe this application would be similar to the manner in which the exception applies with respect to the payment adjustment made under section 1848(a)(7)(A) of the Act because weighting the advancing care information performance category to zero percent is similar in effect to an exemption from the requirements of that performance category.

While we would be making this significant hardship exception available to small practices in particular, we are considering whether other categories or types of clinicians might similarly require an exception. We solicit comment on what those categories or types are, why such an exception is required, and any data available to support the necessity of the exception. We note that supporting data would be particularly helpful to our consideration of whether any additional exceptions would be appropriate.

We are seeking comments on these proposals.