# CMS ANNOUNCES RELIEF FOR MIPS REPORTING IN RESPONSE TO COVID-19

In response to COVID-19, the Centers for Medicare & Medicaid Services ("CMS") has implemented multiple updates to the Merit-Based Incentive Payment System ("MIPS") to relieve clinicians of certain reporting requirements including an extension for the 2019 performance year data submission deadline and the extension of the MIPS Extreme and Uncontrollable Circumstances policy for individual clinicians. These exceptions and extensions are intended to support clinicians fighting COVID-19 on the front lines and remove certain bureaucratic barriers so the health care delivery system can direct its time and resources toward caring for patients.

## 2019 DATA SUBMISSION DEADLINE EXTENDED

With an understanding that the overwhelming nature of patient care during this pandemic has prevented some providers from timely submitting their 2019 performance year data, CMS extended the MIPS 2019 performance year data submission from March 31, 2020 to **April 30, 2020**. Individual clinicians, groups, and virtual groups participating in MIPS have until 8 PM on April 30 to submit their 2019 MIPS data (the "Extended Deadline"). Clinicians who have already completed a 2019 MIPS submission do not need to take any further action.

CMS will provide scores for individual clinicians who submit data by the Extended Deadline for two or more performance categories. Individual clinicians that do not submit their data by the Extended Deadline will automatically qualify for the 2019 Extreme and Uncontrollable Circumstances Policy, detailed below. The 2019 Extreme and Uncontrollable Circumstances Policy does not automatically apply to groups or virtual groups.

## EXTREME AND UNCONTROLLABLE CIRCUMSTANCES EXCEPTION FOR COVID-19

In order to relieve clinicians responding to the COVID-19 pandemic, CMS extended the automatic MIPS Extreme and Uncontrollable Circumstances Policy (the "Policy") to individual clinicians and re-opened the Extreme and Uncontrollable Circumstances Exception Application (the "Application") for MIPS eligible clinicians, groups and virtual groups, including those who have already submitted data for the 2019 performance year. The Policy only automatically applies to individual clinicians, but all MIPS participants should consider the effects of the Policy on their 2019 data submissions.

*Individual Clinicians*

The Policy applies to all individual MIPS eligible clinicians for the 2019 performance period. Therefore, individual clinicians unable to submit 2019 data by the Extended Deadline and those that submit 2019 data for just one performance category by the Extended deadline will automatically receive a neutral payment adjustment in 2021. This includes MIPS eligible clinicians who qualify for facility-based measurement. Individual clinicians who submit 2019 data for two or three performance categories by the Extended Deadline will receive a final score based on the performance categories for the data submitted, resulting in either a negative, neutral or positive payment adjustment. Under the Policy, the Cost performance category will always be weighted 0%, even if you submit data for the other performance categories.

*Medicare Shared Savings Program and Other MIPS Alternative Payment Models*

For MIPS eligible clinicians participating in Medicare Shared Savings Program Accountable Care Organizations or in APM entities participating in other MIPS Alternative Payment Models ("APMs"), the APM quality score reflects any changes made under the terms of each MIPS APM's respective Policy; the Cost performance category is always weighted at 0% of the MIPS final score for MIPS APM participants; and the Promoting Interoperability performance category is reweighted to 0% of the MIPS final score if no data is submitted. As a result, MIPS APM participants that do not submit quality data would only have a score in one performance category (improvement activities), and thus they would receive a neutral payment adjustment for the 2021 MIPS payment year.

*Groups and Virtual Groups*

The Policy does not apply to group or virtual group participation. Therefore, clinicians in practices that have already submitted data as a group will be scored in all performance categories in accordance with the existing MIPS scoring policies and receive a final score and payment adjustment based on the data submitted. Groups and virtual groups unable to complete their data submission by the Extended

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Deadline can submit an application.

**EXTREME AND UNCONTROLLABLE CIRCUMSTANCES APPLICATION**

Additionally, CMS reopened the 2019 Extreme and Uncontrollable Circumstances Application to allow clinicians, groups and virtual groups to request reweighting of the MIPS performance categories to 0%. Providers who do not automatically qualify for the Policy should consider submitting an application. Approved applications will override any previous data submission and result in the reweighting of all four performance categories and a neutral payment adjustment for the 2021 payment year. **The Application will close on April 30, 2020, at 8 PM ET**.

The application is available for:

- Individual clinicians who have submitted partial data for two or more performance categories and currently have a preliminary MIPS score below thirty points but are not able to complete their data submission;
- Small practices that were automatically scored as a group on Medicare Part B claims quality measures;
- Groups who started but are not able to complete their data submission and have a preliminary score below 30 points; and
- Virtual groups unable to start or complete their data submission.

Applications can be submitted by a third party with permission from the clinician or practice. For more information regarding the Policy and the Application, see the Quality Payment Program COVID-19 Response fact sheet.

**NEW COVID-19 CLINICAL TRIAL IMPROVEMENT ACTIVITY**

On April 20, 2020, CMS announced that in order to incentivize provider exchange of data to create treatments to combat the virus, clinicians can now earn a MIPS credit if they participate in a clinical trial and report the clinical information on COVID-19 to CMS. Reporting of this information specifically applies to the improvement activity performance category.

To receive credit for the new MIPS COVID-19 Clinical Trials improvement activity, clinicians must attest to CMS that they are participating in a clinical trial on a COVID-19 drug or biologic to treat patients via a clinical data repository or data registry for the duration of the study. CMS has permitted flexibility on the types of trials, including traditional double-blind and placebo-controlled trials to more advanced designs. The agency also pointed out that COVID-19 clinical trials conducted by the National Institute of Health will satisfy the new improvement activity criteria. MIPS will also accept data reporting through a clinical data repository like Oracle's donated COVID-19 Therapeutic Learning System. The donated system enables clinicians and patients to record the effectiveness of potential COVID-19 drug therapies at no cost.

This new improvement activity carries a high weight from a scoring perspective. Clinicians who report this activity will automatically earn half of the total credit needed to earn a maximum score in the MIPS improvement activities performance category, which counts as fifteen percent of the MIPS final score. For more information from CMS, see the CMS Letter to Clinicians on the new COVID-19 Clinical Trials improvement activity.

**PRACTICAL TAKEAWAYS**

- The MIPS 2019 performance year data submission deadline has been extended to April 30, 2020 at 8 PM.
- Individual clinicians who do not submit any 2019 data by the extended deadline will automatically qualify for the extreme and uncontrollable circumstances policy and receive a neutral payment adjustment in 2021.
- CMS reopened the Extreme and Uncontrollable Circumstances application for any individual, group, or virtual group that started submitting data but are unable to complete their submission due to COVID-19. Approved applications will result in the reweighting of all four performance categories and a neutral payment adjustment for 2021.
- Clinicians can receive a MIPS credit under the new Clinical Trial improvement activity by attesting that they participate in a COVID-19 clinical trial utilizing a drug or biological product to treat a patient with a COVID-19 infection and report their findings through a clinical data repository or clinical data registry for the duration of their study.
- CMS is still evaluating options for providing relief around participation and data submission for the 2020 performance year.

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Hall Render will continue to monitor and update providers as to further MIPS program updates and guidance in response to COVID-19 as well as any relief provided for the 2020 performance year. For more information about the MIPS program, the content detailed above, or any questions related to this matter, please contact:

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Special thanks to Macauley Rybar, law clerk, for his assistance with drafting this article.

Hall Render's attorneys and professionals continue to maintain the most up-to-date information and resources at our COVID-19 Resource page, through our 24/7 COVID-19 Hotline at (317) 429-3900 or by contacting your regular Hall Render attorney.

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