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CMS and ONC Propose Eligibility Standards for Electronic Health Record Incentives

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Enacted as part of the American Recovery and Reinvestment Act of 2009 (ARRA), the Health Information Technology for Economic and Clinical Health Act (HITECH Act) establishes financial incentives for hospitals, physicians,[1] and other health care providers that meaningfully use certified electronic health records (EHR) technology between 2011 and 2015 (through 2016 under the Medicaid incentive program), and penalties for hospitals and physicians that fail to meet such standards beginning in 2015. The incentives are significant. Hospitals are eligible for millions in incentive payments, and physicians are eligible for up to $63,750 each.

Although the HITECH Act specifies the incentives and penalties associated with meaningful use of a certified EHR, Congress left it to the Centers for Medicare & Medicaid Services (CMS) to define "meaningful use" and to the Office of the National Coordinator for Health Information Technology (ONC) to create specifications that EHR technology must meet to become certified. On January 13, 2010, CMS published proposed regulations defining meaningful use of EHR technology and ONC published an interim final regulation concerning the specifications that must be met for EHR technology to become certified. Given the significant sums at stake, health care providers and EHR technology vendors are encouraged to scrutinize CMS's proposed rule and ONC's interim final regulation and to consider their impact.

The Proposed Definition of "Meaningful Use"

Although a single definition of “meaningful use” will apply across the Medicare and Medicaid programs (states, however, may impose additional standards on eligible physicians (“EPs”) and hospitals seeking incentives under the Medicaid program), CMS has proposed a three-staged approach to the standard, with more robust use of EHR technology required at each stage. The proposed regulations set forth only the Stage 1 criteria. Stage 2 criteria will be introduced in 2013, and Stage 3 criteria will be introduced in 2015. Providers that implement EHR technology in 2011, the first year the incentives become available, must meet Stage 1 criteria in 2011 and 2012, Stage 2 criteria in 2013 and 2014, and Stage 3 criteria in 2015 and beyond. The later a provider adopts EHR technology, the more quickly it will have to progress through the three stages of criteria.

Generally the standards criteria can be broken down into four categories:

1. Standards requiring the basic elements of a medical record to be incorporated into an electronic health record;
2. Standards requiring the use of EHR technology to promote efficiency such as requirements to incorporate clinical lab-test results into EHRs as structured data, to check insurance eligibility electronically from public and private payers, and to submit claims electronically to public and private payers;
3. Standards requiring the use of EHR technology to promote quality of care and public health such as requirements to report clinical quality measures to CMS or, as applicable to the states, and to perform medication reconciliation at relevant encounters and each transition of care; and
4. Standards to ensure patient access to their electronic health information and to promote patients’ control of their own medical care such as requirements for physicians to provide clinical summaries to patients for each office visit and for hospitals to provide patients with electronic copies of their discharge instructions.

The Interim Final Regulation Concerning EHR Certification

The ONC interim final regulation generally tracks the CMS rule in that it provides that EHR products that enable providers to meet the criteria set forth in the CMS rule are eligible to become certified.[2] The ONC rule also incorporates existing technical specifications concerning nomenclature, code sets, transport, and privacy, and security from a variety of recognized standard setting organizations.

Importantly, the rule provides that both complete EHR systems that perform all the required functions set forth in the CMS rule, and EHR modules that perform only a subset or a single function may become certified. Providers who use a combination of different EHR modules, however, bear the burden of ensuring that their EHR system will allow them to meet all of the meaningful use criteria.

In addition, providers should note that the fact that an EHR product is certified does not automatically qualify the provider for incentive payments. Rather, the provider must also meet the meaningful use criteria established by CMS.

Conclusion

Eligible physicians and hospitals have an opportunity to receive significant financial support from the Medicare and Medicaid programs if they implement EHR systems. Moving quickly is advisable for a number of reasons: incentive payments are only available to providers who implement EHR technology over the next several years; providers who begin using EHR earlier will receive significantly higher incentive payments; and providers who fail to implement and meaningfully use EHR will be subject to increasing reductions in reimbursement beginning in 2015.

The long list of meaningful use standards is daunting, but robust EHR products should allow providers to meet these requirements. Providers should obtain assurances from vendors that the vendor will update or modify the product being licensed as necessary to enable the provider to meet the eligibility standards for incentive payments, because the eligibility standards for incentive payments are not yet final, and will evolve over time.

Providers also should review CMS's proposed quality reporting measures carefully. Although CMS has not included the quality reporting measures in the proposed regulation itself, proposed measures are included in the preamble to the rule (available here: 75 Fed. Reg. 1874-1900). The proposed measures represent a significant step forward in the federal government's effort to regulate quality of care. They require physicians and hospitals to report on their compliance with medical best practices (as determined by CMS) and a variety of detailed recommendations concerning the proper course of treatment of a particular condition. As an example, one quality reporting measure requires physicians to report whether they have prescribed tamoxifen or aromatase inhibitor for female patients with Stage IC through IIIC, ER or PR positive breast cancer. Another requires physicians to report whether patients with new low back pain have received an imaging study on the episode start date or within 28 days. There are hundreds of similar measures. CMS will be accepting comments on the proposed rule (including the proposed quality reporting measures) until March 15, 2010.

[1] The HITECH Act provides that hospital-based physicians are not eligible for incentive payments for meaningful use of EHR. The proposed regulation defines "hospital-based physician" broadly to include any physician that furnishes 90 percent or more of his or her covered Medicare services in a hospital setting. Legislation has been introduced (but not passed) to clarify that physicians in hospital-affiliated group practices and outpatient clinics cannot be deemed "hospital-based" in determining eligibility for incentive payments under the HITECH Act.

[2] Certifying organizations will be identified in a separate ONC rule.