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Achieving "Meaningful Use" for Electronic Health Records and Financial Incentive Payments

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Health Care Alert

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The Center for Medicare & Medicaid Services (CMS) recently published the final rule defining the meaningful use of electronic health records (EHR). The final rule sets forth the criteria that health care providers must meet to obtain significant financial incentives for the adoption of certified EHR technology. Under the EHR incentive program, Medicare and Medicaid incentive payments totaling as much as $27 billion from 2011 to 2021 will be available for payment to eligible professionals (EPs) and eligible hospitals.

To qualify for payments under the incentive programs, EPs and hospitals, including critical access hospitals, must establish that they are “meaningful users” of EHR. To demonstrate “meaningful use,” physicians and hospitals must generally: (1) use certified EHR technology in a meaningful manner; (2) participate in the electronic exchange of information to improve quality of care; and (3) submit information on specified health information technology (HIT) and quality measures.

CMS will utilize a phased-in, three-stage approach to implement the requirements for a provider to demonstrate meaningful use. The Stage 1 meaningful use criteria is discussed below. The requirements for Stages 2 and 3 will be defined in future rule making. Changes in the final rule (from the proposed rule) include revisions regarding meaningful use criteria, clinical quality measures, hospital based EP’s, Medicaid acute care hospitals and Medicaid patient volume.

Stage 1 establishes meaningful use criteria based on the capabilities of current HIT. It focuses on electronically capturing health information in a coded format, using that information to track key clinical conditions and communicating it for care coordination purposes, implementing clinical decision support tools to facilitate disease and medical management consistent with other provisions of Medicare and Medicaid, and reporting clinical quality measures and public health information. Stage 1 will generally apply to incentive payment years 2011 and 2012. There are two categories of objectives and associated measures to be reported on: (1) HIT objectives, which include a “core set” and a “menu set,” that focuses on an EP’s eligible hospital’s use of certain EHR functions; and (2) clinical quality measures, which focus on processes, experience and/or outcomes of patient care, observations or treatment.

Stage 1 Meaningful Use Criteria Hospitals Must Meet to Receive Financial Incentives

Health IT Measures: An eligible hospital must successfully meet all 14 core objectives and measures as well as five objectives and measures of the hospital's choice from a menu set. Hospitals have an option to exclude certain objectives/measures that are not applicable to their operations.

Clinical Quality Measures: Under the proposed rule, eligible hospitals were required to report on more than 50 clinical quality measures in order to demonstrate meaningful use. In the final rule CMS limited the required clinical quality measures to those with established electronic specifications as of the date of publication of the final rule. As a result, the number of reportable clinical quality measures required for eligible hospitals decreased from more than 50 under the proposed rule, to five. Hospitals reporting on all five clinical quality measures will qualify for both Medicare and Medicaid submission requirements for clinical quality measures.

Stage 1 Meaningful Use Criteria EPs Must Meet to Receive Financial Incentives

Health IT Measures: EPs must successfully meet all 15 core objectives and measures as well as five objectives and measures of the EP's choice from a menu set. EPs have an option to exclude certain objectives/measures that are not applicable to his or her practice.

Clinical Quality Measures: EPs are required to submit information using certified EHR technology on three core clinical quality measures. If one or more of the required core measures is not applicable to an EP, then the EP may replace such with one of the alternate core measures. EPs are also required to report on three additional clinical measures to be selected from a list of 44 possible clinical measures.

Stage 1 Meaningful Use Criteria Medicare Advantage Plans Must Meet to Receive Financial Incentives

Incentive payments are available to qualifying Medicare Advantage (MA) organizations for the adoption and meaningful use of EHR technology by their affiliated EPs. MA-affiliated EPs are employed or subcontracted by an MA organization and on average provide at least 20 hours of patient care services per week. For a subcontracted EP, at least 80 percent of his or her professional services must be furnished to enrollees of the qualifying MA organization.

The maximum financial incentives to qualified MA organizations for each of their qualified EPs who meaningfully use certified EHRs beginning on or before 2012 would be $44,000 per qualifying Medicare Advantage eligible professional or hospital, payable over four years.

Medicare Financial Incentives

Eligibility: For Medicare incentive payments, an EP must be a doctor of medicine or osteopathy, dentist or dental surgeon, podiatrist, optometrist or chiropractor. Eligible hospitals are critical access hospitals and hospitals subject to the prospective payment system, but excluding psychiatric, rehabilitation, children's, long term care hospitals and cancer hospitals.

Hospital-Based Professionals: Hospital-based EPs (i.e., inpatient and emergency room departments) are not eligible for the Medicare incentive payments. EPs providing services in outpatient settings, including ambulatory clinics, are eligible for incentives.

Reporting Period: For the first year that an EP or eligible hospital applies for and receives an incentive payment, the EHR reporting period will be 90 days for any continuous period beginning and ending within the calendar year. For every year after the first payment year, the EHR reporting period will be for the entire calendar year.

Participation in Both Medicare and Medicaid Incentive Programs: An eligible hospital can qualify to receive payments from both the Medicare and Medicaid incentive programs. EPs who meet the eligibility requirements for both of those programs may participate in only one program, and must designate which one they choose. After their initial designation and receipt of an incentive payment, EPs may change their program selection only once, and only for a payment year prior to 2015.

Payment Process: A qualifying eligible hospital may receive incentive payments for up to four years, beginning in October 2010 and lasting through fiscal year 2015. For EPs, the payment year is based on the calendar year starting in January 1, 2011. Incentive payments will be made electronically on a rolling basis by a single payment contractor as they ascertain that an EP has demonstrated meaningful use for the applicable reporting period, and has reached the threshold for maximum payment. Payments will be made as a single, consolidated, annual payment. Incentive payments will be tracked using the qualifying EP's Tax Identification Number (TIN) and NPI (National Provider Identifier). EPs who do not use TINs but instead use a social security number (SSN) will be tracked by their SSN. Incentive payments are tied to the individual EP, and not his or her place of practice. For 2011, incentive payments will be made, as early as May 2011, to EPs who successfully demonstrate that they are meaningful users of a certified EHR.

Demonstration of Meaningful Use: For 2011, EPs are required to demonstrate that they satisfy each of the proposed meaningful use objectives through a one-time attestation following the reporting period, which will also cover the identification of the certified EHR technology they are utilizing, and the results of their performance on all the measures associated with the objectives of meaningful use.

Financial Incentives and Penalties: Medicare Fee-for-Service (FFS) Incentives: EPs who are meaningful EHR users are eligible for incentives based on an amount equal to 75 percent of their allowed Medicare Part B charges for covered professional services up to a maximum of $44,000 per EP over a five-year period. Eligible hospital financial incentives will be based upon several factors (e.g., size, charity care charges, and Medicare or Medicaid patient volumes of the hospital) beginning with a $2 million base payment, plus per discharge amount based on the Medicare share of discharges. EPs and eligible hospitals that are not meaningful users of certified EHR by 2015 and beyond will be subject to financial penalties in the form of reductions in FFS or prospective payments.

Additional Incentives for Providing Services in Health Professional Shortage Areas: An EP who furnishes more than 50 percent of covered services in a geographic Health Professional Shortage Area (HPSA) is eligible for an additional 10 percent incentive on top of the maximum incentive payment amount. CMS will determine eligibility by reviewing the frequency of services provided over a one-year period (January 1 through December 31).

Medicaid Financial Incentives

Eligibility: EPs include physicians, pediatricians, dentists, nurse practitioners, certified nurse midwives, and physician assistants practicing in a Federally Qualified Health Center or Rural Health Clinic. Eligible hospitals are critical access hospitals and acute care hospitals (including children’s hospitals) that have an average length of stay less than 25 days, have at least 10 percent Medicaid patient volume, and have the last four digits of the hospitals’ CMS certification number in the series 0001 through 0879.

Hospital-Based Professionals: Hospital-based EPs are not eligible for Medicaid incentive payments if they provide “substantially all of their professional services in a hospital setting.”

Patient Volume: EPs must annually meet patient volume thresholds measured by a ratio where the numerator is the total number of Medicaid patient encounters over a 90-day period in the most recent calendar year and the denominator is all patient encounters over that same 90-day period. For all EPs except pediatricians, the patient volume threshold is 30 percent; for pediatricians it is 20 percent. Clinics and group practices may use the practice or clinic Medicaid patient volume and apply it to all EPs in their practice as long as they meet certain specified criteria.

Adopting, Implementing or Upgrading Certified EHR Technology: In their first year of participation in the Medicaid incentive payment program, EPs may qualify for an incentive payment by demonstrating that they have adopted, implemented or upgraded a certified EHR. They do not have to meet the same Stage 1 criteria as Medicare providers.

Reporting Period: There is a 90-day meaningful use EHR reporting period for a Medicaid EP’s first payment year. The second and third payment years have 12-month EHR reporting periods.

Financial Incentives: EPs could receive up to $63,750 over six years; pediatricians with a Medicaid volume between 20 percent to 29 percent of their total patient volume could receive two-thirds of the maximum amount ($42,500). EPs are responsible for 15 percent of the net average allowable costs of the certified EHR technology. Eligible hospital incentive payments are calculated using an overall EHR cost amount over four years multiplied by the Medicaid share. The

maximum amount is determined by a formula that considers the Medicaid share of discharges and a transition factor.

Conclusion

The Medicare and Medicaid financial incentive programs for achieving meaningful use provide substantial financial incentives to hospitals and eligible professionals to encourage the widespread adoption and use of interoperable EHR technology. Hospitals and EPs should immediately conduct an assessment of their existing capabilities, and assign a person or committee to assist in achieving meaningful use for EHR and selection of an EHR vendor. Hospitals and EPs should also consult with legal counsel regarding the negotiation of software licenses and related vendor contracts, and as to compliance with the exceptions under the federal physician self-referral prohibition laws and anti-kickback statutes for EHR software and technology services.

For more information, please contact Michael A. Dowell or your regular Hinshaw attorney.

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