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HIT Policy Committee Releases Proposed Stage 2 (and Stage 3) Meaningful Use Requirements; Requests Public Comment

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Health care providers who have begun preparations for meaningful use attestations (and are planning to receive the associated incentive payments) should take note that the Stage 2 criteria are currently under development. Providers interested in participating in the standard setting process should review the proposed Stage 2 recommendations [PDF] recently released by the Health Information Technology Policy Committee (HITPC) and comment before the February 25, 2011 close to the comment period. Comments may be submitted electronically (through www.regulations.gov) or via mail or hand delivery to the Office of the National Coordinator for Health Information Technology's (ONC) District of Columbia offices.

The HITPC is the federal advisory committee tasked with advising the Department of Health and Human Services (HHS) with regard to Health Information Technology (HIT) issues, including, especially, what demonstrated HIT capabilities should be required of providers seeking incentive payments for the meaningful use (MU) of electronic health record (EHR) technology. The HITPC does not issue regulations, as it is not a government agency. Rather, it makes recommendations to HHS with regard to the standards that it believes should be incorporated when that agency issues binding regulations. Stage 1 MU criteria have been established by final agency rule. The HITPC recently publicly posted a summary of the MU criteria it proposed recommending to HHS for Stage 2 and, to some extent, Stage 3. Interested parties are encouraged to submit comments to the HITPC regarding the Stage 2 criteria proposed. Interested parties are also encouraged to submit comments in response to a list of questions posed by the HITPC and reproduced below. The HITPC expects to issue its formal and final Stage 2 recommendations in the summer of 2011.

The HITPC has structured its recommendations in a "matrix" format. In the left-most column, existing Stage 1 criteria are identified, in the next column, the proposed Stage 2 criteria is described, and in the next column the HITPC's proposed Stage 3 criteria is described. Finally, the fourth column provides a space for the HITPC to list any notes or comments it has. As the HITPC's introduction to the proposal explains, this structure is meaningful. In order to identify desirable Stage 2 objectives, the HITPC first identified the Stage 3 objectives it expected providers to meet near the conclusion of the incentive program. It compared these "goals" with the currently applicable Stage 1 criteria and attempted to identify an appropriate Stage 2 "stepping stone" between the two. While interested parties are urged to comment on the Stage 2 criteria identified, commenters should also take care to review the Stage 3 "goals" that informed the HITPC's choice of Stage 2 criteria.

It is also worth noting that the Stage 2 criteria proposed here do not address every feature of MU. Of the five health outcome priorities identified by the HITPC, this proposal addresses only four. The fifth, ensuring adequate privacy and security protections for personal health information, will be addressed in a subsequent release. In addition, the HITPC Quality Measures workgroup recently solicited public comment on its set of proposed "measure comments." The workgroup expects to release additional guidance on its measure development priorities in the near future following its analysis of the comments received.

The HITPC proposal is accessible here [PDF]. (Past recommendations are available here.) For the most part, Stage 1 MU criteria have not changed in character, although the recommendations propose higher applicable percentages (for instance, where Stage 1 required that 50% of all patients' demographics be recorded in a certified EHR technology, the HITPC's proposed Stage 2 criteria require that 80% of all patients' demographics be so recorded). Some optional Stage 1 "menu set" items have also been made mandatory and moved to the "core" set of MU criteria. Providers who have already begun the process of developing or implementing certified EHR technology sufficient to meet Stage 1

criteria will likely not find many surprises in the increased percentages recommended for Stage 2.

The HITPC proposal also, however, lists several new criteria that are not based on existing Stage 1 criteria. The new Stage 2 and Stage 3 criteria proposed include:

- 30% of visits have at least one electronic Eligible Professionals (EP) note. The HITPC's notes explain that this note "can be scanned, narrative, structured, etc." Proposed Stage 3 criteria would increase the applicable percentage to 80%.

- 30% of Eligible Hospital (EH) patient days have at least one electronic note by a physician, Nurse Practitioner (NP), or Physician Assistant (PA). As above, the HITPC's notes explain that this note "Can be scanned, narrative, structured, etc." Proposed Stage 3 criteria would increase the applicable percentage to 80%.

- For EHs, the HITPC's proposed Stage 2 criteria would require that "80% of patients [are] offered the ability to view and download via a web based portal, within 36 hours of discharge, relevant information contained in the record about EH inpatient encounters. Data are available in human-readable and structured forms ([Health Information Technology Standards Committee] HITSC to define)." An endnote to the proposal notes that all webportals that provide online access to health information are "subject to HIPAA rules and regulations" the HITPC's notes for this criteria explain "Inpatient summaries include: hospitalization admit and discharge date and location; reason for hospitalization; providers; problem list; medication lists; medication allergies; procedures; immunizations; vital signs at discharge; diagnostic test results (when available); discharge instructions; care transitions summary and plan; discharge summary (when available); gender, race, ethnicity, date of birth; preferred language; advance directives; smoking status. [we invite comments on the elements listed above]" The proposed Stage 3 criteria would remain the same as that proposed for Stage 2.

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- For EPs, the HITPC proposed that Stage 2 MU criteria should require that "online secure messaging is in use[.]" No further comments were provided to explain this objective. Proposed Stage 3 criteria would remain the same as that proposed for Stage 2.

- Presumably applicable to both EPs and EHs, the proposed criteria require that "Patient preferences for communication medium [be] recorded for 20% of patients[.]" In the comment column, the HITPC asks "how should 'communication medium' be delineated?" For Stage 3, the applicable percentage would increase to 80%.

- Presumably applicable to both EPs and EHs, the proposed criteria require that "List of care team members (including [Primary Care Provider] PCP) available for 10% of patients in EHR. No further comments were provided to explain this objective. Proposed Stage 3 criteria would increase the applicable percentage to 50%.

- Presumably applicable to both EPs and EHs, the proposed criteria require that "Record a longitudinal care plan for 20% of patients with high-priority health conditions." In the comment column, the HITPC asks "What elements should be included in a longitudinal care plan including: care team members; diagnoses; medications; allergies; goals of care; other elements?" The proposed Stage 3 criteria for this element would slightly change the character of the requirement. For Stage 3, the HITPC proposes "longitudinal care plan available for electronic exchange for 50% of patients with high-priority health conditions."

In addition to the above criteria, for which the HITPC has proposed new Stage 2 requirements, the proposal includes some criteria for which a Stage 3 goal has been identified, but not an intermediate Stage 2 "stepping stone." The HITPC proposal specifically requests that commenters suggest intermediate steps that would be appropriate as part of Stage 2 MU requirements. These criteria include:

- "Offer electronic self-management tools to patients with high priority health conditions[.]"

- "EHRs have capability to exchange data with [Personal Health Records] PHRs using standards-based health data exchange[.]"

- "Patients offered capability to report experience of care measures on line[.]"

- "Offer capability to upload and incorporate patient-generated data (e.g., electronically collected patient survey data, biometric home monitoring data, patient suggestions of corrections to errors in the record) into EHRs and clinician workflow[.]"

- "Public Health Button for EH and EP: Mandatory test and submit if accepted. Submit notifiable conditions using a reportable public-health submission button. EHR can receive and present public health alerts or follow up requests."

- "Patient-generated data submitted to public health agencies[.]"

Finally, the HITPC's proposal specifically requests that interested parties submit comments that respond to ten questions listed in the proposal after the MU criteria matrix. These questions address a wide range of topics, and interested parties should review them and provide responses (or comments on the questions themselves) as appropriate.

Ober|Kaler's Comments

It is important that Eligible Hospitals and Professionals continue to play a role in the development of the MU criteria applicable to the latter stages of the EHR incentive program. By reviewing and commenting on proposals at every stage of the process, providers are doing what they can to ensure that requirements are reasonable and responsive to real-world concerns, which will help providers maintain the ability to qualify for available incentive payments. Further, providers' comments provide important information to the HITPC with regard to actual

implementation or communication hurdles that providers face. The government has sought to engage providers and other stakeholders at every stage in this process, and it is essential that providers continue to engage thoughtfully in the process.