

Health Law Alert: Federal Money for EHR Meaningful Users in Closer Reach

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On July 13, 2010, the Department of Health and Human Services (HHS) and the Centers for Medicare & Medicaid Services (CMS) released, final regulations implementing the Health Information Technology for Economic and Clinical Health (HITECH) Act of 2009 provisions that provide incentive payments for the meaningful use of certified electronic health record (EHR) technology. These regulations finalize the January 13, 2010 proposed rule,¹ much of which was not well-received by the health care industry. This was in large part due to the requirement that eligible professionals meet 25 criteria (or 23 for hospitals) to demonstrate meaningful use, which the health care industry believed was too burdensome, given the novelty of EHR technology. CMS has attempted to address this—as well as other concerns—raised by the proposed regulations.

The final regulations set forth the initial criteria that eligible providers² must satisfy in payment years 2011 and 2012 to qualify for incentive payments, calculation of incentive payment amounts, Medicare payment adjustments for services provided by eligible providers failing to demonstrate meaningful use, as well as other participation requirements.

After reviewing over 2,000 comments to the proposed rule, CMS made the following key changes in the final regulations:

- Eligible providers no longer have to meet the laundry list of meaningful use objectives. Instead, the final regulations give an eligible provider more latitude with respect to how it becomes a meaningful user. Specifically, the final regulations establish two separate categories of objectives. One is a “core set” of objectives with associated measures, and the other is a “menu set” of objectives with associated measures. In order to qualify as a meaningful EHR user, an eligible provider must successfully meet the measure for each of the objectives³ in the “core set” and all but five of the objectives⁴ in the “menu set.” An eligible provider may select any five objectives from the “menu set” to be removed from consideration for the determination of qualifying as a meaningful EHR user because such objectives are inapplicable.
- A definition of a hospital-based eligible professional as one who furnishes 90% or more of covered professional services in a hospital setting in the year preceding the payment year.
- An amendment to the definition of an acute care hospital for purposes of the Medicaid EHR incentive payment program to generally include critical access hospitals that meet the Medicaid patient volume criteria.

Eligible providers will be able to register for both the Medicare and Medicaid incentive programs at one virtual location managed by CMS beginning in January 2011. The Medicare incentive payments will begin in May 2011.

Endnotes

¹ See our related Advisory from January 10, 2010 at <http://www.mintz.com/newsletter/2010/Advisories/0061-0110-NAT-HL/web.htm>.

² Eligible providers include eligible professionals, eligible hospitals, and critical access hospitals.

³ There are fifteen Stage 1 “core set” objectives for eligible professionals and fourteen Stage 1 “core set” objectives for eligible hospitals and critical access hospitals.

⁴ There are ten Stage 1 “menu set” objectives for eligible professionals, eligible hospitals, and critical access hospitals.

For assistance in this area please contact one of the attorneys listed below or any member of your Mintz Levin client service team.

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