

8 Things Physicians and Providers Should Know About EHR Incentive Payments

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Physicians are now able to receive incentive payments from the Centers for Medicare and Medicaid Services (CMS) for the meaningful use of Electronic Health Record (EHR) technology. On January 3, 2011, registration officially opened for the EHR incentive program administered by CMS. Pursuant to the Health Information Technology for Economic and Clinical Health Act (the HITECH Act), which is part of the American Recovery and Reinvestment Act (Recovery Act) of 2009, eligible professionals and eligible hospitals that participate in Medicare and Medicaid and that adopt and make “meaningful use” of certified EHR technology can qualify for Medicare and Medicaid incentive payments.

Physicians and entities that employ and contract with physicians should evaluate the necessary steps to qualify and earn incentive payments. Time is of the essence—Medicare eligible professionals must begin participation in 2011 or 2012 to receive the full amount of available incentive payments. This article sets forth 8 key issues that all physicians and providers should be aware of. The underlying message, however, is simple – obtain software that is certified and be a meaningful user thereof.

1. WHICH PHYSICIANS ARE ELIGIBLE?

Under the Medicare program, a physician constitutes an “eligible provider.” An eligible provider includes the following professionals: a doctor of medicine or osteopathy, a doctor of oral surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, and a chiropractor. The definition of eligible providers under the Medicaid program is broader and includes physicians, dentists, certified nurse-midwives, nurse practitioners, and physician assistants practicing in a Federally Qualified Health Center (FQHC) or a Rural Health Clinic (RHC) led by a physician assistant. Hospital-based eligible providers are generally not eligible to participate in the EHR incentive program.

Professionals who meet the eligibility requirements for both the Medicare and Medicaid EHR incentive programs must select the program in which they wish to participate when they register. Under the Medicare EHR incentive program, eligible professionals can receive as much as \$44,000 over a five-year period. Under the Medicaid program, eligible professionals can receive as much as \$63,750 over six years. However, in order to participate in the Medicaid program, a provider must meet a thirty percent minimum Medicaid patient

volume threshold (or 20% for pediatricians). Eligible professionals that qualify for payments under both the Medicare and Medicaid program may switch between the programs once prior to 2015.

2. DOES ALL EHR TECHNOLOGY QUALIFY?

Both the Medicare and Medicaid EHR incentive programs require the use of “certified EHR technology.” Standards, implementation specifications, and certification criteria for EHR technology have been adopted by the U.S. Department of Health and Human Services. EHR technology used by a provider must be tested and certified by an organization accredited as an Authorized Testing and Certification body by the Office of the National Coordinator of Health Information Technology (ONC) in order for the provider to qualify for EHR incentive payments. EHR technologies that meet the certification requirements for the Medicare and Medicaid EHR incentive programs are listed on the ONC website: <http://onc-chpl.force.com/ehrcert>.

In order to qualify for incentive payments, eligible providers who have already invested in EHR technology that is not certified must replace the non-certified software or work with their software vendor as the vendor tackles the certification process. Eligible providers

facing this predicament should contact their EHR vendor and request information regarding the vendor's plan for obtaining certification. Where possible, it is advisable to obtain written assurances in the form of a contract, that the vendor will obtain certification by a certain date or else face financial penalties or early termination of any ongoing licensing, support or maintenance agreement.

3. REGISTRATION

The Medicare incentive program is fully operational. Although registration for the Medicaid EHR incentive programs opened on January 3, 2011, not all state Medicaid programs are ready to participate. Participating Medicaid programs as of April 4, 2011, are those in Alabama, Alaska, California, Iowa, Kentucky, Louisiana, Oklahoma, Michigan, Mississippi, Missouri, North Carolina, South Carolina, Tennessee and Texas. CMS anticipates that other states that choose to participate will launch their Medicaid incentive programs during the spring and summer of 2011. Registration for the Medicare and Medicaid EHR incentive programs is available on the CMS website: <https://ehrincentives.cms.gov/hitech/login.action>.

4. AMOUNT OF MEDICARE PAYMENTS

Under the Medicare incentive program, eligible providers who meaningfully use certified EHR technology during the relevant reporting period may be eligible for an incentive payment, subject to an annual limit, equal to 75% of the eligible provider's Medicare allowed charges. Medicare eligible providers can receive as much as \$44,000 over five years. An eligible provider who does not demonstrate meaningful use before 2015 will not be eligible for any incentive payments.

5. AMOUNT OF MEDICAID PAYMENTS

Under the Medicaid incentive program,

eligible providers who adopt, implement, upgrade, or meaningfully use certified EHR technology in their first year of participation in the program may be eligible for an incentive payment of up to \$21,250. In the subsequent five years of payment, a Medicaid eligible provider's incentive payment will be limited to \$8,500 per year for the successful demonstration of meaningful use. Medicaid eligible providers can receive as much as \$63,750 over six years and may begin receiving incentive payments as late as 2016 to qualify for the full amount.

6. ASSIGNMENT OF PAYMENTS

Many management companies and entities that employ or contract with physicians are seeking to provide EHR technology to physicians and physician practices. Such entities are requiring that physicians assign any earned incentive payments to the entity providing the EHR in exchange for the entities' provision of the EHR technology. Such an arrangement can be accomplished by an amendment to an employment agreement or management contract or other written agreement. The assignment of incentive payments by a provider must be entirely voluntary. Where the eligible provider agrees to assign his or her incentive payment to an employer or other entity, both parties should clearly establish the costs to be borne by each party. For example, who will be responsible for paying the costs associated with training, ongoing hardware and software support, end-user mobile and desktop devices, clinical content, etc?

7. MEANINGFUL USE AND QUALITY MEASURES

A physician can earn an incentive payment only by demonstrating that he or she is a meaningful user of EHR technology. Meaningful use includes both a core set and a menu set of objectives. There are a total of twenty-five meaningful use objectives. To qualify for an

incentive payment, twenty of these twenty-five objectives must be met. The objectives consist of fifteen required core objectives and ten "optional" objectives of which an eligible provider can choose five objectives to meet.

To demonstrate meaningful use successfully, eligible providers are required to report clinical quality measures. Eligible providers must report on a total of six clinical quality measures: three required core measures (substituting alternate core measures where necessary), and three additional measures (selected from a set of thirty-eight clinical quality measures).

8. PAYMENT ADJUSTMENTS STARTING IN 2015

Unless an exception applies, physicians who are not "meaningful" EHR users will see a one percent reduction in their Medicare payments starting January 1, 2015. The reduction increases to two percent in 2016 and three percent in subsequent years. There are no Medicaid penalties. However, Medicaid eligible providers who also treat Medicare patients will have a payment adjustment to Medicare reimbursements starting in 2015 if they do not successfully demonstrate meaningful use.

The HITECH Act includes a significant hardship exception, which, if applicable, could exempt certain physicians from payment adjustments. The exemption is subject to annual renewal, but in no case may an eligible provider be granted a hardship exemption for more than five years.

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