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Final Meaningful Use Rule Allows Limited Flexibility; Overall Bar Still Set Too High

The Centers for Medicare and Medicaid Services (CMS) and the Office of the National Coordinator (ONC) for Health Information Technology released final regulations that define the “meaningful use” and certification requirements eligible hospitals and physicians must meet to draw down temporary electronic health record (EHR) incentive payments as early as this coming federal fiscal year, and avoid Medicare payment penalties in 2015.

CMS made some changes to ensure the final rule is more practical than the “all-or-nothing” approach put forward in the proposed rule.

However, the bar set by the final rule’s definition of meaningful use is still too high for most hospitals to qualify for the incentive payments in the program’s initial years. Further, CMS failed to provide equity in incentive payments to all hospitals. Multi-campus hospitals that share a single Medicare provider number will be disadvantaged financially.

NMHA supports the advocacy efforts of the American Hospital Association (AHA) for a more practical and equitable EHR incentive program.

NMHA will soon provide members a comprehensive summary of the final rule, message points, a slide deck, an interactive Medicare and Medicaid EHR incentive payment estimator, and a Medicare EHR payment penalty estimator.

Why Meaningful Use Matters

As authorized by the American Recovery and Reinvestment Act of 2009, only providers that are meaningful users of certified EHR systems will be eligible for temporary incentive payments and avoid Medicare payment penalties that begin in 2015 for eligible providers who fail to achieve meaningful use status. Under the law,

- Eligible hospitals that achieve meaningful use status can draw down both Medicare and Medicaid incentive payments for up to four years, beginning as early as federal fiscal year (FFY) 2011.
- Eligible physicians, including those working in hospital outpatient departments and clinics, must choose either Medicare **or** Medicaid incentive payments, but not both.

The definition of meaningful use and EHR systems certification requirements will determine whether your hospital and eligible physicians will draw down any federal stimulus monies under the EHR incentive program and whether your hospital and eligible physicians will avoid Medicare payment penalties.

Modifications to the Final Rule: Several Improvements Made

NMHA has supported AHA's advocacy that eligible hospitals and physicians must be allowed a practical degree of flexibility in the number of requirements and the manner in which those requirements must be met. Further, NMHA has supported the expanded eligibility of both hospitals and physicians to access the incentive program. Below are highlights of the modifications made in the final EHR meaningful use rule:

Flexibility in Achieving Meaningful Use Status: For hospitals, the **proposed rule** set forth 23 EHR functionality requirements and corresponding measurement thresholds for the functionality requirements, along with 35 quality measurement reporting requirements, all of which had to be achieved for a hospital to qualify as a meaningful user. That "all-or-nothing" approach was simply too much too soon.

Under the **final rule**, CMS adopted a modest degree of flexibility in the meaningful use criteria. CMS will require hospitals to meet a total of 19 EHR functionality requirements.

- Fourteen of the functionality requirements will be mandatory and are established by CMS as "core" requirements.
- CMS established a "menu" of **ten additional** functionality requirements, from which hospitals will be allowed to choose, with some limitations, **five functionalities**.
 - To make achieving these established thresholds more practical, CMS is lessening some of the measurement thresholds for the functionality requirements.
- In addition, CMS is **reducing** the quality reporting measurement requirements to **15 emergency department, stroke, and clinical quality measures**.

CMS expects that certifying bodies will test the ability of EHR technology to calculate the clinical quality measures put forward in the final meaningful use rule.

A complete list of the core EHR functionality requirements and corresponding thresholds, along with the menu requirements and corresponding thresholds both eligible hospitals and physicians must meet to achieve meaningful use status are attached. Also attached are the 15 clinical quality measures hospitals must report under the EHR incentive program to achieve meaningful use.

CMS listened to everyone's advocacy efforts and moved away from the "all-or-nothing" approach by adding a degree of flexibility in how many requirements must be met and the manner in which they must be met for eligible providers to achieve meaningful use status.

However, given the current low levels of adoption of many of the requirements, coupled with the generally incremental way in which hospitals adopt and add functionality to their EHRs, the American Hospital Association (AHA) remains concerned that the requirement may still be out of reach for many of America's hospitals and more analysis is needed to determine the overall impact on hospitals. *"Unfortunately, CMS continues to place some barriers in the way of achieving widespread IT adoption by our nation's hospitals and physicians,"* said AHA president and CEO Rick Umdenstock.

Critical Access Hospitals (CAHs) Now Eligible for Medicaid Incentives: Under the **proposed rule**, CMS determined that CAHs were ineligible for Medicaid incentive payments. NMHA supported AHA's efforts to advocate for fair treatment of CAHs and the **final rule** will allow eligible CAHs that meet the meaningful use and certification requirements to be eligible for both Medicare and Medicaid incentive payments. CAHs, like other acute care hospitals, must meet a 10% Medicaid volume threshold to be eligible for the Medicaid incentives. The Medicaid incentives for CAHs will be based on the Medicaid incentive payment formula for other acute care hospitals.

Medicaid Incentive Payments Automatic Once Medicare Requirements Are Met: The **proposed rule** would have allowed states to establish meaningful user requirements for eligible providers to draw down the Medicaid incentive payments above and beyond those established by CMS for Medicare purposes. We are pleased that in the **final rule**, if an eligible hospital is determined to have met the Medicare meaningful use requirements, a state cannot withhold the Medicaid incentives even if additional state requirements have been put in place.

Physician Eligibility for EHR Incentive Program Expanded: The **final rule** deems eligible for the incentive program physicians who provide the majority of their services in hospital outpatient departments and clinics. Securing this legislation to ensure adoption of EHR systems is incentivized in hospital outpatient department and clinics was vital in all advocacy efforts. The final rule clarifies the definition of a hospital-based physician (a physician ineligible to receive EHR incentives) as a physician that provides more than 90% of his or her services in places of service classified under two place of service codes 21 (Inpatient Hospital) or 23 (Emergency Room, Hospital).

CMS Fails to Provide Fairness to Multi-Campus Hospital Systems That Share a Medicare Provider Number

CMS failed to create equity in the incentive payment formula for hospitals that share a Medicare provider number. CMS' proposed and final rules determine incentive payments for eligible hospitals will be calculated based on the Medicare provider number, not on individual hospital campuses that must each have EHR systems in place. Under this policy, hospitals in a system that share a Medicare provider number are greatly financially disadvantaged.

AHA is concerned that individual hospitals in multi-campus settings continue to be excluded from the incentive payments, and that the rule requires hospitals to immediately use Computerized Provider Order Entry, *"which can be complicated, costly to implement, and takes time to do right,"* Umbdenstock said. AHA has aggressively pursued change on this important policy and will continue to do so.

CMS and ONC to Offer Briefing

CMS and ONC will offer training on the EHR incentive programs and certification on July 22 at 2 p.m. More information regarding the CMS/ONC briefing and the EHR incentive program can be found on the CMS Web site at <http://www.cms.gov/EHRIncentivePrograms/>.