

Health Law Alert: CMS Releases Proposed Rule on Stage 2 Meaningful Use Requirements

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Nearly one year ago, the Centers for Medicare and Medicaid (CMS) opened the attestation period for eligible providers and hospitals to meet the electronic health record (EHR) meaningful use standards, a requirement to qualify for incentive payments from CMS. Obtaining these incentives meant that providers needed to meet the Stage 1 meaningful use criteria, with the idea being that more rigorous standards to remain a meaningful EHR user would be required at later dates as the second and third stages of meaningful use criteria were issued. CMS has now released a proposed rule on the Stage 2 requirements. The proposed Stage 2 rule represents an incremental advance from Stage 1. The proposed rule also offers an extended timeline to use the more familiar Stage 1 criteria for those participants who have already successfully demonstrated meaningful use.

The Stages of Meaningful Use

In 2009, when Congress passed the Health Information Technology for Economic and Clinical Health (HITECH) Act, it set aside nearly \$30 billion for direct incentives for providers that demonstrate meaningful use of certified EHR technology by achieving objectives set by CMS. These incentive payments would be paid to providers and hospitals in a phased approach - beginning with the available technology capabilities and building up to a more robust definition of meaningful use as technology and capabilities evolved. Stage 1 sought to incentivize providers to begin the transition of paper medical records to the electronic format. Eligible EHR users who qualified for the first stage of the Medicare EHR incentive program have already received payments. As of February 2012, a total of \$3.1 billion in incentives have been paid to nearly 2,000 hospitals and more than 41,000 physicians. Those providers who have not yet participated may have been waiting for EHR systems to become more affordable and to see how CMS expands the Stage 1 requirements in Stage 2.

Introducing: Stage 2

The proposed Stage 2 criteria represent a logical extension of the Phase 1 requirements. The proposed regulations outline the projected standards to qualify for an incentive payment, as well as introduce changes to the meaningful use criteria, payment adjustments and program timeline. Notable provisions include:

- **Objective and measure changes**

- The Stage 1 rule identified core and menu objectives that providers and hospitals must meet, or qualify for an exclusion from, in order to qualify for the incentive payment. Nearly all of the Stage 1 meaningful use core and menu objectives would be retained for Stage 2. The main difference to Stage 2 criteria would be that multiple Stage 1 objectives would be combined into more unified Stage 2 objectives. CMS has proposed that eligible providers must meet or qualify for an exclusion to 17 core objectives and 3 of 5 menu objectives and eligible hospitals and critical access hospitals (CAHs) must meet or qualify for an exclusion to 16 core objectives and 2 of 4 menu objectives.

- **Changes to Stage 1 criteria**

- Criteria, such as, changes to the age limitations for vital signs and participants' requirements to provide patients with their EHR have been modified to enhance quality measures and promote EHR use. For example, the objective to "Provide patients with an electronic copy of their health information" would be removed and replaced by an "electronic/online access" core objective. Likewise, the Stage 1 core objective of "exchange of key clinical information" would be replaced with a "transitions of care" core objective that requires the electronic exchange of summary of care documents in Stage 2. Changes to Stage 1 of meaningful use would take effect for 2013, but most would be optional until 2014.

- **Increased use of Computerized Provider Order Entry (CPOE)**

- Stage 2 proposes that the majority of prescriptions and laboratory or radiology orders entered by any licensed health care professional be done in an electronic format. By capturing these orders in a patient's EHR, CMS states that it would improve quality of care and safety by showing the clinical decision support at the point of

order. Stage 1 criteria did not indicate when a CPOE should occur, but Stage 2 identifies that an electronic notation should be made the first time the order becomes part of the patient's medical record and before any action can be taken on the order.

- **Clinical Quality Measures (CQMs)**

- Stage 2 directly ties reporting clinical quality measures to the meaningful use incentive payments. CMS has laid out a host of quality measures that may become requirements for reporting through the EHR. The quality measures would be retained from the Stage 1 quality reporting programs. For eligible professionals, this includes the Physician Quality Reporting System (PQRS), CMS Shared Savings Program, and National Council for Quality Assurance (NCQA) for medical home accreditation, as well as those proposed under Children's Health Insurance Program Reauthorization Act (CHIPRA) and under ACA Section 2701. For eligible hospitals and CAHs, the set of CQMs beginning in 2014 would align with the Hospital Inpatient Quality Reporting (HIQR) and the Joint Commission's hospital quality measures. Eligible providers would be required to report 12 CQMs, and eligible hospitals and critical access hospitals would be required to report a total of 24 CQMs. CMS is soliciting comments on the appropriate mechanism for hospitals and providers to report their CQMs electronically.

- **Payment Adjustments and Exceptions**

- While much of the focus on the EHR incentive program to date has understandably been qualifying for the full amount of available incentives, it is important to remember that there is a "stick" in the carrot and stick approach to incentivizing meaningful use. Specifically, the statute requires Medicare payment "adjustments" (i.e., reductions in reimbursement) to take effect in 2015. CMS proposes that any Medicare eligible provider or hospital that demonstrates meaningful use in 2013 would avoid payment adjustment in 2015. Also, any Medicare provider that first demonstrates meaningful use in 2014 would avoid the penalty if they meet the attestation requirement by July 3, 2014, (eligible hospitals) or October 3, 2014 (eligible providers). CMS has proposed narrow exceptions to these payment adjustments and will consider additional exceptions during the comment period. The proposed exceptions involve issues related to the availability of internet access or barriers to obtaining information technology infrastructure and a time-limited exception for newly practicing eligible professionals.

- **Extended Timelines**

- Under the Stage 1 final rule, providers who attested to meeting the Stage 1 criteria in 2011 were required to begin using Stage 2 criteria in 2013. CMS plans on extending these timelines, however. The proposed rule allows for a one year extension of Stage 1 of meaningful use criteria for providers who successfully demonstrated meaningful use for 2011. This delay would allow providers to continue attesting to compliance with the meaningful use criteria in Stage 1 through 2013 with compliance to Stage 2 standards beginning in 2014.

Mark Your Calendar

The proposed Stage 2 criteria are open for public comment until May 7, 2012, with Stage 2 beginning on October 1, 2013, for hospitals, and January 1, 2014, for physicians. Additionally, CMS anticipates updating Stage 3 criteria with another proposed rule by early 2014. Comments to CMS are the best way to let the agency know about challenges faced by providers under the agency's proposed regulations.

If you have questions about the EHR incentive program or the Phase 2 regulations, please contact Jesse Berg at jesse.berg@gpmlaw.com or 612.632.3374.

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