

Medicare and Medicaid Reimbursement Rules for Incentive Payments to Physicians for Meaningful Use of Certified Electronic Health Record Technology

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INTRODUCTION

The Centers for Medicare & Medicaid Services (CMS) published a proposed rule (Proposed Rule)¹ on January 13, 2010, setting forth the methodology for the calculation of Medicare and Medicaid incentive payments to physicians and other eligible professionals that are “meaningful users” of certified electronic health record (EHR) technology (Certified EHR Technology). The incentives, established by the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”), are part of the federal government’s investment in health information technology to improve the quality and affordability of health care.

Following the HITECH Act, the incentives are structured to encourage early adoption of EHR technology. Thus, the incentives are higher in the earlier years, phase out after a specified number of years, and thereafter convert from enhanced reimbursement to reimbursement reductions.

This discussion summarizes the methodology for calculation and payment of EHR incentives under Medicare Part B, which is the fee-for-service Medicare program (Medicare FFS) and state Medicaid programs. For each program, the objective is to assist a physician, other eligible professional or an organization that bills under a reassignment from the professional to assess whether it is eligible for incentive payments and the portion of the expense associated with adoption of an EHR that may be covered with incentive payments.

MEDICARE FFS EHR INCENTIVES

If an eligible physician participating in Medicare FFS demonstrates meaningful use of certified EHR Technology in accordance with requirements established by CMS in the Proposed Rule and the Office of the National Coordinator of Health Information Technology (ONC) in a coordinated administrative rulemaking,² the physician (Meaningful EHR User) may earn incentive payments, in the form of enhanced reimbursement, under Medicare FFS.³ The incentive payments are an additional 75 percent of the Medicare allowable charge under the Medicare Physician Fee Schedule (MPFS) for covered professional services, for up to five years beginning as early as calendar year (CY) 2011, subject to an annual cap.⁴ The annual cap may be higher under certain circumstances for physicians who practice in a Medicare health professional shortage area.

¹ Medicare and Medicaid Programs; Electronic Health Record Incentive Program; Proposed Rule, 75 Fed. Reg. 1843 (proposed January 13, 2010) (to be codified at 42 C.F.R. pts. 412, et al.).

² Health Information Technology: Initial Set of Standards, Implementation Specifications, and Certification Criteria for Electronic Health Record Technology; Interim Final Rule, 75 Fed. Reg. 2013 (Jan. 13, 2010) (to be codified at 45 C.F.R. pt. 170).

³ HITECH Act, §§ 4101 and 4102 (to be codified as 42 U.S.C. § 1395w-4 and 1395ww).

⁴ HITECH Act, § 4101 (to be codified at 42 U.S.C. § 1395w-4(o)(1)(A)(i)).

Medicare Eligible Professionals

The Proposed Rule defines an eligible professional for the Medicare FFS EHR incentives as doctors in five specialty areas: (1) medicine or osteopathy; (2) dental surgery or dental medicine; (3) podiatric medicine; (4) optometry; and (5) chiropractics. These doctors must be legally authorized to practice under applicable state law.⁵ Under the HITECH Act, hospital-based physicians (and other professionals) who furnish “substantially all” of their services in a hospital inpatient or outpatient setting are not eligible for incentives.⁶ In the Proposed Rule, CMS interpreted the HITECH Act to define hospital-based professionals as eligible professionals who provide 90 percent or more of their covered professional services in an inpatient and/or outpatient hospital setting based on the reporting of place of service (POS) codes 21 (Inpatient Hospital), 22 (Outpatient Hospital) and 23 (Emergency Department) on the eligible professional’s claims for Medicare reimbursement.⁷ However, in response to significant controversy over the proposed definition, Congress passed and the President signed into law the “Continuing Extension Act of 2010” to amend the HITECH Act’s definition of hospital-based professionals to only include professionals who furnish substantially all of their services in a hospital inpatient or emergency department setting.⁸ The change will permit physicians who provide ambulatory services in clinics that are hospital-based outpatient department locations for Medicare hospital reimbursement purposes to receive Medicare FFS incentives (and the Medicaid incentives discussed below). Such hospital-based clinics typically utilize ambulatory EHR technology that has different modules (e.g., appointment scheduling) from the hospital’s inpatient EHR and requires an additional investment by the hospital.

Maximum Annual Incentive Payments

The Proposed Rule caps annual Medicare FFS incentive payments to eligible professionals. If the first year the eligible professional satisfies the meaningful use requirements is 2011 or 2012, then the eligible professional can earn up to a total of \$44,000 over the five-year incentive period, including an \$18,000 maximum annual incentive payment in the first year. The maximum annual incentive payments are summarized in the table below, which is Table 22 of the Proposed Rule.⁹

TABLE 22—MAXIMUM TOTAL AMOUNT OF EHR INCENTIVE PAYMENTS FOR A MEDICARE EP WHO DOES NOT PREDOMINANTLY FURNISH SERVICES IN AN HPSA

Calendar year	First CY in which the EP receives an incentive payment				
	2011	2012	2013	2014	2015 – subsequent years
2011	\$18,000	-----	-----	-----	-----
2012	\$12,000	\$18,000	-----	-----	-----
2013	\$8,000	\$12,000	\$15,000	-----	-----
2014	\$4,000	\$8,000	\$12,000	\$12,000	-----
2015	\$2,000	\$4,000	\$8,000	\$8,000	\$0
2016	-----	\$2,000	\$4,000	\$4,000	\$0

⁵ *Id.*, at 1996 (to be codified at 42 C.F.R. § 495.100).

⁶ HITECH Act, § 4101 (to be codified at 42 U.S.C. § 1395w-4(o)(1)(C)(ii)).

⁷ 75 Fed. Reg. at 1993 (to be codified at 42 C.F.R. § 495.4).

⁸ Continuing Extension Act of 2010, Pub. L. 111-157 (April 15, 2010).

⁹ 75 Fed. Reg. at 1908.

Eligible professionals who furnish more than 50 percent of Medicare covered professional services (based on quantity of services rather than allowed charges) in a geographic area designated as a health professional shortage area by the Department of Health and Human Services are subject to a 10 percent higher cap.

Form and Timing of Payments to Qualifying Eligible Professionals

The Proposed Rule calls for Part B Medicare administrative contractors (f/k/a carriers) (MACs) to make a single, lump sum, annual incentive payment to an eligible professional as soon as the MAC determines that the eligible professional has demonstrated meaningful use for the applicable reporting period and earned the maximum annual incentive payment. The reporting period for an eligible professional is any 90-day period in the first calendar year of meaningful use or the calendar year for the subsequent four years.

For example, if a MAC has determined that an eligible professional has demonstrated meaningful use in 2011 and has \$24,000 of allowable charges for covered professional services that year, the MAC would pay the eligible professional the \$18,000 maximum annual incentive amount. The MAC will make the payment to the eligible professional or a single employer or other entity which is a valid reassignee under the Medicare reassignment rules.¹⁰

CMS does not permit an eligible professional to allocate the incentive payments among valid reassignees (such as multiple part-time employers or contracting parties). Thus, physician groups, hospitals and other facilities that engage physicians on a part-time basis should review current and template employment and professional service agreements and consider amending them to specify that the group or facility is entitled to receive the incentive payment rather than other part-time employers or contractors.

Program Election and Coordination

Physicians who meet the eligibility requirements for both the Medicare and Medicaid incentive programs must elect to receive payments from only one program or the other, but they may change their program election once from 2012 to 2014.

Payment Adjustments Beginning CY 2015

Beginning in 2015, the MPFS amount payable to eligible professionals who do not satisfy the then-current meaningful use requirements will be reduced by one, two and three percent in years 2015, 2016, and 2017 and each subsequent calendar year, respectively, unless CMS exempts an eligible professional due to a significant hardship.¹¹ The HITECH Act also authorizes CMS to further reduce the reimbursement rate beginning in 2018 if the proportion of eligible professionals who are Meaningful EHR Users is less than 75 percent.¹²

CMS also indicated that it would make specific proposals for further reductions prior to 2015. CMS did not propose a definition of significant hardship, but stated that one example would be an eligible professional who practices in a rural area without sufficient Internet access.¹³ CMS also

¹⁰ *Id.*, at 1910.

¹¹ 75 Fed. Reg. at 1996 (to be codified at 42 C.F.R. §495.102(d)).

¹² HITECH § 4101(b) (to be codified at 42 U.S.C. § 1395w-4(a)(7)(A)(iii)).

¹³ 75 Fed Reg. at 1911.

solicits comments on the possible circumstances for which CMS should allow an eligible professional to qualify for the significant hardship exception.¹⁴

MEDICAID EHR INCENTIVE PAYMENTS

Under the HITECH Act,¹⁵ state Medicaid programs, at their option, may receive payments from the federal government known as federal financial participation (FFP) for 100 percent of their expenditures for EHR incentive payments to Medicaid eligible professionals and eligible hospitals. Unlike the Medicare FFS incentives, the Medicaid incentive program allows eligible providers to receive an incentive payment even before they have begun to meaningfully use Certified EHR Technology, if they are engaged in efforts to adopt, implement, or upgrade to Certified EHR Technology. The Proposed Rule includes regulations to implement these provisions.

Qualified Medicaid Eligible Professionals

The following types of Medicaid-participating professionals are eligible for Medicaid incentives: physicians, dentists, certified nurse-midwives, nurse practitioners, and physician assistants practicing in federally qualified health centers (FQHCs) or rural health clinics (RHCs) that are led by a physician assistant. Hospital-based professionals are not eligible for incentives unless the professional practices predominately in a FQHC or RHC.¹⁶

To qualify for an EHR incentive payment, a Medicaid eligible professional must meet one of the following patient volume thresholds: (1) have a minimum 30 percent patient volume attributable to individuals receiving Medicaid; (2) have a minimum 20 percent Patient Volume (as defined below) attributable to individuals receiving Medicaid, and be a pediatrician; or (3) practice predominantly in a FQHC or RHC and have a minimum 30 percent Patient Volume attributable to Needy Individuals (as defined herein).¹⁷

Needy Individuals are persons who received medical assistance from Medicaid or the Children's Health Insurance Program, were furnished uncompensated care by the eligible professional, or were furnished services either at no cost or reduced cost based on a sliding scale determined by the individuals' ability to pay.¹⁸

CMS proposes to define patient volume (Patient Volume) as the fraction where:¹⁹

- the numerator is the total number of Medicaid (including Medicaid managed care) patients or Needy Individuals treated in any representative 90-day period in the most recent CY preceding the reporting, and
- the denominator is all patient encounters in the same 90-day period.

Medicaid eligible professionals would be required to annually re-attest to meeting the Patient Volume thresholds to continue to qualify for Medicaid incentive payments.²⁰ A State may propose an alternative Patient Volume measure to CMS for approval.²¹

¹⁴ HITECH § 4101(b) (to be codified at 42 U.S.C. § 1395w-4(a)(7)(B)); 75 Fed. Reg. at 1911.

¹⁵ HITECH § 4201(a)(1) (to be codified at 42 C.F.R. § 1396b(a)(3)).

¹⁶ 75 Fed. Reg. at 2001 (to be codified at 42 C.F.R. § 495.304(d)).

¹⁷ *Id.*, at 2001 (to be codified at 42 C.F.R. § 495.304(c)).

¹⁸ *Id.*, at 2001 (to be codified at 42 C.F.R. § 495.302).

¹⁹ *Id.*

Incentive Payment Calculation for Eligible Professionals

Under the Proposed Rule, Medicaid incentive payments to qualified Medicaid eligible professionals are equal to 85 percent of Net Average Allowable Costs (as defined below) for Certified EHR Technology (and support services for the technology), subject to statutory caps of \$21,250 (i.e., 85 percent of \$25,000) in the first payment year and \$8,500 (i.e., 85 percent of \$10,000) in the five subsequent years.²² The maximum aggregate incentive payment for the six-year period is \$63,750, provided that the first payment year is no later than 2016. The payment years are calendar years.

“Average Allowable Costs” is defined as \$54,000 for the first Medicaid incentive payment year and \$20,610 for the five subsequent years based on data from various studies.²³ To determine Net Average Allowable Costs, Average Allowable Costs must be reduced by any payment to the Medicaid eligible professional that is from a source (other than a state or local government) and directly attributable to payment for Certified EHR Technology or support services.

Since CMS proposes that the Average Allowable Cost for the first year is \$54,000, an eligible professional could receive as much as \$29,000 in funding from sources (other than state or local government) in that year and still receive the maximum \$21,250 Medicaid incentive payment.²⁴

In addition, pediatricians who have a minimum of 20 percent of their patient encounters paid by Medicaid, but fall short of the 30 percent Patient Volume threshold, may receive two-thirds of the incentives otherwise available, which equals a maximum first year incentive of \$14,167 and up to \$5,667 in the five subsequent years, for a total maximum six-year payment of \$42,500.²⁵

Eligible professionals, assigning Medicaid reimbursement to multiple employers or other assignees, must select one assignee’s tax identification number to receive Medicaid incentive disbursements.²⁶ Employers and facilities engaging such physicians should consider revising their contracts with the physicians to specify which assignee is entitled to the incentive payments.

Program Election and Coordination

Eligible professionals who meet the eligibility requirements for both the Medicare and Medicaid incentive programs must elect to receive payments from one program or the other, but may change their program election once from 2012 to 2014.²⁷ In addition, a Medicaid eligible professional may receive an incentive payment from only one state Medicaid program in a payment year.²⁸

SUMMARY AND CONCLUSION

Since incentives will begin to flow to eligible professionals as early as CY 2011, providers with EHRs should evaluate their ability to satisfy the requirements for “meaningful use” and the impact

²⁰ *Id.*, at 2002 (to be codified at 42 C.F.R. § 495.306(a)).

²¹ *Id.*, at 2002 (to be codified at 42 C.F.R. § 495.306(b)).

²² *Id.*, at 2002 (to be codified at 42 C.F.R. § 495.310(a)).

²³ *Id.*, at 1933-1934.

²⁴ *Id.*, at 1934.

²⁵ *Id.*, at 2002 (to be codified at 42 C.F.R. § 495.310(b)).

²⁶ *Id.*, at 2006 (to be codified at 42 C.F.R. § 495.332(c)(9)(i)).

²⁷ *Id.*, at 2002 (to be codified at 42 C.F.R. § 495.310(c)).

²⁸ *Id.*, at 2002 (to be codified at 42 C.F.R. § 495.310(e)).

of incentive payments on their health information technology budgets. Likewise, providers that are considering an investment in an EHR technology should reevaluate their project budgets in light of the demands of meaningful use and assess the extent to which they can fund part of the budget through incentive payments or efficiency gains and other cost savings.