



# Health Law Alert: CMS Issues EHR Meaningful Use Stage 2 Final Rule

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In March, we reported that the Centers for Medicare & Medicaid Services (CMS) had issued a proposed rule on Stage 2 meaningful use requirements for the Medicare and Medicaid Electronic Health Record (EHR) Incentive Program. Under the EHR program, which was mandated by the Health Information Technology for Economic and Clinical Health (HITECH) Act of 2009, \$30 billion of direct incentive payments were set aside for eligible providers (EPs), eligible hospitals, and critical access hospitals (CAHs) that meet the EHR meaningful use standards. According to the latest statistics, 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.

CMS has now released a final rule specifying Stage 2 criteria beginning in 2014 as well as introducing changes to the program timeline and detail on Medicare payment adjustments. CMS has also published a "Tip sheet" summarizing the final rule.

## **TIMING**

In Stage 1, which sought to incentivize providers to begin the transition of paper medical records to the electronic format, CMS established a timeline that required providers to progress to Stage 2 criteria after two program years under Stage 1 criteria. Thus, early demonstrators (those providers that attested to Stage 1 meaningful use compliance in 2011), would have been required to meet the Stage 2 criteria in 2013. The Stage 2 final rule adjusts the timeline so that a provider who attested to Stage 1 of meaningful use in 2011 will not need to attest to Stage 2 until 2014. All other providers still need to meet two years of meaningful use under Stage 1 criteria before advancing to the Stage 2 criteria in their third year. For 2014 only, all providers, regardless of their stage of meaningful use, are subject to only a three-month EHR reporting period. Providers are otherwise subject to a 90-day EHR reporting period for their first year of participation and a full year EHR reporting period thereafter.

## **STAGE 2 FINAL MEANINGFUL USE OBJECTIVES (CORE & MENU) AND MEASURES**

The Stage 1 rule identified core and menu objectives that providers and hospitals must meet, or qualify for an exclusion from, in order to demonstrate meaningful use and thus qualify for the incentive payment. Stage 2 retains the Stage 1 core and menu structure for meaningful use objectives and incorporates most of the objectives proposed in March. To demonstrate meaningful use under Stage 2 criteria:



- EPs must meet 20 measures (17 core and 3 of 6 menu).
- Eligible hospitals must meet 19 measures (16 core and 3 of 6 menu).

### **New Core Objectives**

CMS finalized two new core objectives:

- Use secure electronic messaging to communicate with patients on relevant health information (for EPs only).
- Automatically track medications from order to administration using assistive technologies in conjunction with an electronic medication administration record (for eligible hospitals and CAHs only).

CMS also replaced the previous Stage 1 core objectives (required of EPs, eligible hospitals and CAHs) to provide electronic copies of health information or discharge instructions and provide timely access to health information with objectives that allow patients to access their health information online. The modified objective under Stage 2 requires the following:

- Provide patients the ability to view online, download and transmit their health information within 4 business days of the information being available to the EP (for EPs only) or within 36 hours after discharge from the hospital (for eligible hospitals and CAHs).

### **New Menu Objectives**

CMS also finalized new Stage 2 menu objectives for EPs, eligible hospitals, and CAHs:

- Record electronic notes in patient records.
- Imaging results accessible through Certified EHR Technology.
- Record patient family health history.
- Identify and report cancer cases to a State cancer registry (for EPs only).
- Identify and report specific cases to a specialized registry (other than a cancer registry) (for EPs only).
- Generate and transmit permissible discharge prescriptions electronically (eRx) (new for eligible hospitals and CAHs only).
- Provide structured electronic lab results to ambulatory providers (for eligible hospitals and CAHs only).

### **New Measures**

The Stage 2 final rule also contains new measures for objectives that require patients to use health information technology in order for providers to achieve meaningful use:

- Under the modified Stage 2 core objectives to provide patients the ability to view online, download and transmit their health information, more than 5 percent of patients (reduced from 10 percent) seen by the EP or admitted to an inpatient or emergency department of an eligible hospital or CAH must be able to view, download, or transmit to a third party their health information.



- Under the new Stage 2 core objective to use secure electronic messaging to communicate with patients on relevant health information, a secure message must be sent using the electronic messaging function of Certified EHR Technology by more than 5 percent of unique patients seen by an EP during the EHR reporting period.

### **Batch Reporting**

CMS finalized the ability to use a batch reporting process for meaningful use, which will allow groups to submit attestation information for all individual EPs in one file.

### **Clinical Quality Measures (CQMs)**

Under the Stage 2 final rule, EPs are required to report on 9 out of 64 total CQMs and eligible hospitals and CAHs to report on 16 out of 29 total CQMs. In addition, all providers must select CQMs from at least 3 of the 6 key healthcare policy domains from the HHS National Quality Strategy:

- Patient and Family Engagement
- Patient Safety
- Care Coordination
- Population and Public Health
- Efficient Use of Healthcare Resources
- Clinical Processes/Effectiveness

Beginning in 2014, all Medicare-eligible providers beyond their first year of demonstrating meaningful use must electronically report their CQM data to CMS.

### **MEDICARE PAYMENT ADJUSTMENTS**

Medicare payment "adjustments" (i.e., reductions) are required by statute to take effect in 2015. In the final rule, CMS maintained its proposal that any Medicare EP or hospital that demonstrates meaningful use in 2013 will avoid payment adjustment in 2015. Also, any Medicare provider that first demonstrates meaningful use in 2014 will now avoid the penalty if they meet the attestation requirement by July 3, 2014 for eligible hospitals or Oct. 3, 2014 for EPs.

Although CMS originally proposed three "hardship" exceptions to these payment adjustments, it finalized four (for EPs). The original three exceptions CMS proposed include exceptions based on poor geographic infrastructure (e.g., lack of broadband in the practice area), newly practicing EPs who would not otherwise be able to avoid payment adjustments and unforeseen circumstances, such as natural disasters. The new exception is by specialty/provider type concentrated among three specialties: anesthesiology, radiology and pathology. This fourth exception requires the EP to demonstrate that he/she lacks interaction with patients, lacks follow up with patients or lacks control over the availability of Certified EHR Technology at their practice (and practices at more than one location). Infrastructure, unforeseen circumstances, and new



CAHs/eligible hospitals are also exception categories for eligible hospitals and CAHs.

If you have any questions about the EHR incentive program or the Stage 2 final rule, please contact Jeremy Johnson at [jeremy.johnson@lathropgpm.com](mailto:jeremy.johnson@lathropgpm.com) - 612.632.3035 or Jesse Berg at [jesse.berg@lathropgpm.com](mailto:jesse.berg@lathropgpm.com) - 612.632.3374.

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