

Health Care Reform Alert: Is Your Electronic Health Record Technology "Meaningful?"

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The National Coordinator for Health Information Technology issued a proposed rule on March 2 to help answer that question for the thousands of health care providers that will request Medicare/Medicaid payments for the meaningful use of certified electronic health record (EHR) technology. The rule proposes to establish two certification programs for which organizations can apply to be authorized to test and/or certify that particular EHR technology offers the “necessary technological capability, functionality, and security” to satisfy the meaningful use requirements.¹ This proposed rule goes hand-in-hand with the U.S. Department of Health and Human Services’ two previously published health information technology-related rules.²

Certification Programs

The first program, which features “authorized certification and testing bodies,”³ would be a temporary certification program to ensure that Complete EHRs⁴ and EHR Modules⁵ are tested and certified, so that certified EHR technology is available prior to the date when health care providers can begin demonstrating the meaningful use of such technology. The rule proposes that during the temporary certification program, the National Coordinator will perform many of the responsibilities that private entities would perform under the second program (discussed below). The temporary certification program would sunset as soon as the second program is established and one “authorized certification body”⁶ is approved by the National Coordinator.

The second program would be a permanent certification program (to replace the temporary certification program) for which organizations can apply to become the sole “approved-accreditor”⁷ or an “authorized certification body” to perform most, if not all, of the National Coordinator’s responsibilities under the temporary certification program. The rule establishes the proposed application requirements, application review and approval process, and expectations with respect to the conduct and competency of each applicant.

Rest Easy?

The mandatory adoption and implementation of health information technology by the health care industry is a relatively new concept for many providers and health care organizations. In addition, these providers and organizations are seeking federal funding for the purchase and use of such technology. To that end, there is a need for a mechanism by which providers and organizations can obtain the confidence and reassurance that the technology they are purchasing

and using will be in sync with the applicable state and federal laws and regulations. The proposed rule is intended to offer that confidence and reassurance that would allow providers and organizations to rest easy that they are adopting and implementing quality and compliant health information technology.

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Endnotes

¹ See U.S. Department of Health and Human Services (“HHS”) Health Information Technology, Certification Programs NPRM, <http://healthit.hhs.gov/portal/server.pt?open=512&mode=2&objID=1745>.

² Medicare and Medicaid Programs; Electronic Health Record Incentive Program, 75 Fed. Reg. 1843 (January 13, 2010) available at: <http://edocket.access.gpo.gov/2010/pdf/E9-31217.pdf>, and Health Information Technology: Initial Set of Standards, Implementation Specifications, and Certification Criteria for Electronic Health Record Technology, 75 Fed. Reg. 2013 (January 13, 2010) available at: <http://edocket.access.gpo.gov/2010/pdf/E9-31216.pdf>.

³ An organization or a consortium of organizations that has applied to and been authorized by the National Coordinator pursuant to this subpart to perform the testing and certification of Complete EHRs and/or EHR Modules under the temporary certification program. 45 CFR §170.402 (available at: http://www.federalregister.gov/OFRUpload/OFRData/2010-04991_PI.pdf).

⁴ Complete EHR means EHR technology that has been developed to meet all applicable certification criteria adopted by the Secretary of HHS. 45 CFR §170.102 (available at: http://www.federalregister.gov/OFRUpload/OFRData/2010-04991_PI.pdf).

⁵ EHR Module means any service, component, or combination thereof that can meet the requirements of at least one certification criterion adopted by the Secretary of HHS. 45 CFR §170.102 (available at: http://www.federalregister.gov/OFRUpload/OFRData/2010-04991_PI.pdf).

⁶ An organization or a consortium of organizations that has applied to and been authorized by the National Coordinator pursuant to this subpart to perform the certification of, at a minimum, Complete EHRs and/or EHR Modules using the applicable certification criteria adopted by the Secretary. 45 CFR §170.502 (available at: http://www.federalregister.gov/OFRUpload/OFRData/2010-04991_PI.pdf).

⁷ An accreditation organization that the National Coordinator has approved to accredit certification bodies under the permanent certification program. 45 CFR §170.502 (available at: http://www.federalregister.gov/OFRUpload/OFRData/2010-04991_PI.pdf).

For further information regarding this or any issue related to Health Care Reform, please contact one of the attorneys listed below or the Mintz Levin attorney who ordinarily handles your legal affairs.

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