

# Health Law Bulletin

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## CMS Publishes Medicare and Medicaid EHR Incentive Program Final Rule

As part of the stimulus package known as the American Recovery and Reinvestment Act of 2009 (**ARRA**), Health Information Technology for Economic and Clinical Health Act (**HITECH**) established an incentive program for the adoption of electronic health record (**EHR**) technology, as a means to promote greater efficiency in the delivery of health care and improve the quality of care. In total, HITECH makes available more than \$27 billion to providers who qualify for incentive payments.

Under the EHR incentive program, a qualifying physician or other eligible professional (**EP**) who demonstrates “meaningful use” of certified EHR technology may be eligible for up to \$48,400 in Medicare incentive payments over five years, or up to \$63,750 in Medicaid incentive payments over six years. An eligible hospital or eligible critical access hospital (**CAH**) that demonstrates meaningful use may be eligible for an initial incentive payment of \$2,000,000, plus additional incentive payments (based upon the number of discharges and other factors) over a period of up to four years.

On July 28, 2010, the Centers for Medicare and Medicaid Services (**CMS**) published a final rule (the “**Final Rule**”), which established a “two-track” approach to the minimum requirements physicians, hospitals and other providers must meet to demonstrate “meaningful use” of certified EHR technology in order to qualify for incentive payments during the first two years of the program. Under the Final Rule, to demonstrate “meaningful use” of EHR technology, EPs, hospitals and CAHs will need to satisfy each of 15 (for EPs) or 14 (for hospitals and CAHs) “core” objectives. In addition, EPs, hospitals and CAHs will need to satisfy at least 5 of 10 (for EPs) or 5 of 9 (for hospitals and CAHs) so-called “menu” objectives, as set forth on the following pages:<sup>1</sup>

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<sup>1</sup> Table adapted from the program materials from a July 22, 2010 CMS training program, “EHR Incentive Programs and Meaningful Use Final Rule,” available at [https://www.cms.gov/EHRIncentivePrograms/Downloads/EHR\\_Incentive\\_Program\\_Agency\\_Training\\_v8-20.pdf](https://www.cms.gov/EHRIncentivePrograms/Downloads/EHR_Incentive_Program_Agency_Training_v8-20.pdf)

*EPs and eligible hospitals and CAHs must demonstrate satisfaction of each of the following “core set” objectives:*

### **Core Set Objectives – Eligible Professionals**

1. Computerized physician order entry (CPOE)
2. E-Prescribing (eRx)
3. Report ambulatory clinical quality measures to CMS/States
4. Implement one clinical decision support rule
5. Provide patients with an electronic copy of their health information, upon request
6. Provide clinical summaries for patients for each office visit
7. Drug-drug and drug-allergy interaction checks
8. Record demographics
9. Maintain an up-to-date problem list of current and active diagnoses
10. Maintain active medication list
11. Maintain active medication allergy list
12. Record and chart changes in vital signs
13. Record smoking status for patients 13 years or older
14. Capability to exchange key clinical information among providers of care and patient-authorized entities electronically
15. Protect electronic health information

### **Core Set Objectives – Eligible Hospitals and Critical Access Hospitals**

1. CPOE
2. Drug-drug and drug-allergy interaction checks
3. Record demographics
4. Implement one clinical decision support rule
5. Maintain an up-to-date problem list of current and active diagnoses
6. Maintain active medication list
7. Maintain active medication allergy list
8. Record and chart changes in vital signs
9. Record smoking status for patients 13 years or older
10. Report hospital clinical quality measures to CMS or States
11. Provide patients with an electronic copy of their health information, upon request
12. Provide patients with an electronic copy of their discharge instructions at time of discharge, upon request
13. Capability to exchange key clinical information among providers of care and patient-authorized entities electronically
14. Protect electronic health information

*EPs and eligible hospitals and CAHs must demonstrate satisfaction of at least five (5) of the following “menu set” objectives (but including at least one of the “public health objectives” denoted by an asterisk):*

### **Menu Set Objectives – Eligible Professionals**

1. Drug-formulary checks
2. Incorporate clinical lab test results as structured data
3. Generate lists of patients by specific conditions
4. Send reminders to patients per patient preference for preventive/follow-up care
5. Provide patients with timely electronic access to their health information
6. Use certified EHR technology to identify patient-specific education resources and provide to patient, if appropriate
7. Medication reconciliation
8. Summary of care record for each transition of care/referrals
9. Capability to submit electronic data to immunization registries/systems\*
10. Capability to provide electronic syndromic surveillance data to public health agencies\*

### **Menu Set Objectives – Eligible Hospitals and Critical Access Hospitals**

1. Record advanced directives for patients 65 years or older
2. Incorporate clinical lab test results as structured data
3. Generate lists of patients by specific conditions
4. Use certified EHR technology to identify patient-specific education resources and provide to patient, if appropriate
5. Medication reconciliation
6. Summary of care record for each transition of care/referrals
7. Capability to submit electronic data to immunization registries/systems\*
8. Capability to provide electronic submission of reportable lab results to public health agencies\*
9. Capability to provide electronic syndromic surveillance data to public health agencies\*

According to CMS, the approach established under the Final Rule will ensure that the most basic elements of meaningful EHR use will be met by all EPs and eligible hospitals and CAHs, but also provide flexibility in achieving and demonstrating meaningful use of certified EHR technology.

The Final Rule, which will become effective on September 26, 2010, is available at <http://edocket.access.gpo.gov/2010/pdf/2010-17207.pdf>.

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