

Health Care Reform Advisory: Meaningful Use = Meaningless Dollars?

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Introduction

The recession has impacted the pockets of Americans and state governments alike. The record-setting unemployment rates that sent shockwaves around the country also caused a record-setting influx of enrollees into state Medicaid programs. Already facing huge budget shortfalls due to declining revenues, states have been forced to deal with the high demand for public programs. To that end, states are looking for mechanisms that will control Medicaid spending, yet improve medical quality and efficiency. The American Recovery and Reinvestment Act (ARRA) provided some much needed Medicaid fiscal assistance, including approximately \$19 billion for payments and incentives to providers under public programs to adopt and implement health information technology. Its provisions require providers to demonstrate “meaningful use” of this technology, but the benefits may in fact be equally meaningful for states and providers. This summary is focused on the Medicaid payments for which providers may be eligible; however, such providers have a choice of payments either through Medicaid or through Medicare (or both, for hospitals).

Background

ARRA’s Health Information Technology for Economic and Clinical Health Act (HITECH Act or the Act) provides state Medicaid programs with the option of receiving federal financial participation (FFP) for incentive payments to eligible providers that are meaningful users of electronic health record (EHR) technology. The purpose of such Medicaid payments would be to incentivize eligible providers to adopt, implement, upgrade, and meaningfully use such technology. On the other hand, Medicare payments are direct reimbursements to eligible providers for the purchase and acquisition of such technology. The Secretary of the Department of Health and Human Services (HHS), through the Centers for Medicare & Medicaid Services (CMS), has promulgated regulations to interpret the Act and implement these payments (Proposed Regulations). The intent of the Proposed Regulations is to align the processes for obtaining incentives under Medicaid and reimbursement under Medicare with common definitions, methodologies, and timelines.

Eligible Entities

Generally, to qualify for Medicare incentive payments under the Proposed Regulations, a provider must be an eligible professional or an eligible hospital that has adopted, implemented, or upgraded certified EHR technology and has demonstrated that it is a meaningful user of such technology. Medicaid eligible professionals include physicians, dentists, certified nurse-midwives, nurse practitioners, and physician assistants.¹ Eligible hospitals include acute care and children's hospitals. The Proposed Regulations also require that most eligible professionals not be hospital-based and either meet certain patient volume thresholds or practice predominantly in a federally qualified health center or rural health center while meeting certain patient volume thresholds. Eligible acute care hospitals must meet patient volume thresholds to receive Medicaid incentive payments. Therefore, the scope of eligible professionals is very narrow and targeted to those who truly serve the needy.

Furthermore, other state-designated entities that promote the adoption of certified EHR technology may be eligible for the Medicaid incentive payments if an eligible professional designates his/her payment to such an entity. The Proposed Regulations define "promoting" as "the enabling and oversight of the business, operational and legal issues involved in the adoption and implementation of EHR and/or exchange and use of electronic health information between participating providers, in a secure manner, including maintaining the physical organizational relationship integral to the adoption of certified EHR technology by eligible professionals."² The preamble to the Proposed Regulations specifically notes that health insurance exchanges would qualify as entities that may receive this designation of incentive payments.

Meaningful Use

As stated above, one step that is necessary to qualify for Medicaid incentive payments for EHR technology is the demonstration of meaningful use of such technology by eligible professionals and eligible hospitals. The Proposed Regulations base the demonstration of meaningful use on satisfying numerous meaningful use measures including, but not limited to:

- implementation by an eligible professional or eligible hospital of drug-drug, drug-allergy, drug-formulary checks
- at least 80% of all unique patients 13 years or older seen by the eligible professional or admitted to the eligible hospital have "smoking status" recorded
- insurance eligibility is checked electronically for at least 80% of all unique patients
- at least 80% of all claims are filed electronically.

Payments

Medicaid incentive payments to eligible professionals are capped by the Act to 85% of "net average allowable costs," which are, by statute, \$25,000 in the first year and \$10,000 in each of the five subsequent years.³ The maximum payment that most Medicaid eligible professionals

could receive. therefore, over the six-year period is 85% of \$75,000, or \$63,750 (see chart below).

Cap on Net Average Allowable Costs	85% Allowed for Eligible Professionals	Maximum Cumulative Incentive over Six-Year Period
\$25,000 in Year 1 for most professionals	\$21,250	\$63,750
\$10,000 in Years 2-6 for most professionals	\$8,500	

Medicaid incentive payments to eligible hospitals are based primarily on the methodology used to calculate Medicare payments under the Act, with some adjustments. These eligible hospital payments are made over a minimum of a three-year period and a maximum of a year-year period.

One distinction to note is that hospitals are eligible to receive both Medicaid and Medicare payments, whereas professionals are only eligible for one or the other, not both.

The Bottom Line

States (as well as providers) should be taking advantage of the billions in federal dollars available in the HITECH Act to push the adoption, implementation, and upgrading of health information technology, which will not only improve the quality and efficiency of medical care, but also will help improve their bottom lines.

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Endnotes

¹ An eligible physician assistant must practice in a federally qualified health center or rural health center led by a physician assistant.

² Electronic Health Record Incentive Program, 75 Fed. Reg. 1844 at 1933 (January 13, 2010) (to be codified at 42 C.F.R. pts. 412, 413, 422, and 495).

³ Pediatricians with less than 30% patient volume are only eligible for two-thirds of these amounts.

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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