

Health Care Reform Advisory: CMS Issues Proposed Rule on Meaningful Use of EHR Technology

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On December 30, 2009, the Centers for Medicare & Medicaid Services (CMS) issued a proposed rule (Proposed Rule) implementing incentive payments under the Medicare and Medicaid programs for the “meaningful use” of certified electronic health records (EHR) technology. Congress mandated the Medicare and Medicaid EHR incentive programs as part of the American Recovery and Reinvestment Act of 2009 to incentivize eligible health care providers (professionals, hospitals, and critical access hospitals) to adopt EHR technologies. Incentive payments for eligible hospitals may begin as early as October 2010, while payments to other eligible providers may begin in January 2011.

To qualify for Medicare or Medicaid incentive payments, eligible providers must demonstrate that they are meaningful users of certified EHR technology. Under the Proposed Rule, a “meaningful EHR user” is one that, during the specified reporting period, demonstrates meaningful use of certified EHR technology in a form and manner consistent with certain objectives and measures specified in the regulation. The proposed objectives and measures include use in a manner that improves quality, safety, and efficiency of health care delivery; reduces health care disparities; engages patients and families; improves care coordination; improves population and public health; and ensures adequate privacy and security protections for personal health information.

The Proposed Rule distinguishes between “meaningful use” by health care professionals and hospitals by establishing 25 objectives and measures applicable to professionals participating in Medicare fee-for-service and 23 objectives and measures applicable to hospitals and critical access hospitals. Additionally, the definitions would establish a minimum standard for eligible providers under the Medicaid EHR incentive program, and the Proposed Rule would permit states to request CMS approval to implement additional meaningful use measures.

CMS has proposed a phased approach to implementing the requirements for demonstrating meaningful use of EHR technology. The December 30, 2009 Proposed Rule specifies the Stage 1 criteria, and CMS will develop additional criteria for two additional stages that build upon the experiences from Stage 1 through future rulemaking.

In addition, the Office of the National Coordinator for Health Information Technology (ONC) simultaneously issued a separate interim final rule (Interim Final Rule) setting initial standards, implementation specifications, and certification criteria for EHR technology. Both the Proposed Rule and the Interim Final Rule are open for public comment.

Mintz Levin attorneys are currently reviewing the Proposed Rule and the Interim Final Rule and will publish an Advisory on this issue in the near future. Click [here](#) for a CMS link to the Proposed Rule and fact sheets related to EHR technology. Click [here](#) for a Health and Human Services link to the Interim Final Rule.

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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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