

## CMS PROPOSES REQUIREMENTS FOR THE ELECTRONIC HEALTH RECORDS (EHR) MEDICARE INCENTIVE PROGRAM

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The Centers for Medicare & Medicaid Services (CMS) today announced a proposed rule to implement the provisions of the American Recovery and Reinvestment Act of 2009 (Recovery Act) that provide incentive payments for the meaningful use of certified EHR technology. The Medicare EHR incentive program will provide incentive payments to eligible professionals (EP), eligible hospitals, and critical access hospitals (CAHs) that are meaningful users of certified EHRs. The Medicaid EHR incentive program will provide incentive payments to eligible professionals and hospitals for efforts to adopt, implement or upgrade certified EHR technology or for meaningful use in the first year and for meaningful use for up to another five years.

This fact sheet focuses on the Medicare EHR incentive program.

The Office of the National Coordinator for Health Information Technology (ONC) will be issuing a closely related interim final rule with comment period that specifies the Secretary's adoption of an initial set of standards, implementation specifications, and certification criteria for EHRs. ONC will also issue a separate notice of proposed rulemaking related to the certification of health information technology. Providers must use such certified EHRs to qualify as meaningful users in the incentive programs.

### **MEDICARE ELIGIBLE PROFESSIONALS (EPs)**

A Medicare EP is a doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor, who is legally authorized to practice under state law. A qualifying EP is one who demonstrates meaningful use for the HER reporting period.

Hospital-based EPs who furnish substantially all their services in a "hospital setting" are not eligible for incentive payments. CMS proposes that a hospital-based EP be defined as an EP who furnishes 90 percent or more of his/her allowed services in a hospital, including all hospital inpatient, outpatient, and emergency department settings.

A qualifying EP can receive EHR incentive payments for up to five years with payments beginning as early as 2011. In general, the maximum amount of total incentive payments that an EP can receive under the Medicare program is \$44,000.

- For the first year an EP applies for and receives an incentive payment, CMS proposes that an EHR Reporting Period is 90 days for any continuous period beginning and ending within the year. For every year after the first payment year, CMS proposes that the EHR reporting period is the entire year.
- A Payment Year equals a Calendar Year (CY). Incentive payments for meaningful EHR use end after 2016.
- A qualifying EP will receive an incentive payment equal to 75 percent of Medicare allowable charges for covered professional services furnished by the EP in a payment year, subject to maximum payments.

- In general, a qualifying EP can receive an annual incentive payment as high as \$18,000 if their first payment year is 2011 or 2012. Otherwise, the annual incentive payment limits in the first, second, third, fourth, and fifth years are \$15,000, \$12,000, \$8,000, \$4,000, and \$2,000 respectively. In general, the maximum amount of total incentive payments that an EP can receive under the Medicare program is \$44,000.
- An EP who predominantly furnishes services in a geographic Health Professional Shortage Area is eligible for a 10 percent increase in the maximum incentive payment amount. The maximum amount of total incentive payments that such an EP can receive under the Medicare program is \$48,400.
- For EPs who begin to be meaningful EHR users in 2014, their payment calculations will be made as if they began meaningful use in 2013. (That is, if an EP were to begin meaningful use in 2014, the EP would receive \$12,000 for that year, the second year's amount as if they had begun in 2013). 2014 is the last year for which an EP can begin receiving incentive payments for meaningful use. Incentive payments for meaningful HER use ends after 2016.
- Maximum Total Amount of EHR Incentive Payments for a Medicare EP is outlined in the table below:

Calendar Year	First CY in which the EP Receives an Incentive Payment				2015 and subsequent years
	2011	2012	2013	2014	
2011	\$18,000				
2012	\$12,000	\$18,000			
2013	\$8,000	\$12,000	\$15,000		
2014	\$4,000	\$8,000	\$12,000	\$12,000	
2015	\$2,000	\$4,000	\$8,000	\$8,000	\$0
2016		\$2,000	\$4,000	\$4,000	\$0
<b>TOTAL</b>	<b>\$44,000</b>	<b>\$44,000</b>	<b>\$39,000</b>	<b>\$24,000</b>	<b>\$0</b>

- EPs who meet the eligibility requirements for both the Medicare and Medicaid incentive programs may participate in only one program and must designate the program in which they would like to participate. CMS proposes that, after the initial designation, EPs be allowed to change their program selection only once during payment years 2012 through 2014.
- Payments under Medicare will be disbursed through Medicare Administrative Contractors (MAC) or carriers to the Tax Identification Number provided by the qualifying EP.
- Provided they meet certain conditions, EPs can reassign the entire amount of their incentive payment to one employer or entity.
- Incentive payments will be made to qualifying Medicare Advantage (MA) organizations for the adoption and meaningful use of EHR technology by their affiliated EPs.
- MA-Affiliated EPs are EPs who are employed or subcontracted by an MA organization and on average provide at least 20 hours of patient care services per week. For a subcontracted EP, at least 80 percent of his/her professional services are furnished to enrollees of the MA organization.
- EPs who are not meaningful EHR users will be subject to lower payment updates for their covered professional services beginning in 2015. MA organizations will also be subject to payment adjustments if their affiliated EPs are not meaningful users of EHR technology beginning in 2015.

## MEDICARE ELIGIBLE HOSPITALS

An eligible hospital for Medicare incentive payments is a “subsection (d) hospital” that is paid under the hospital inpatient prospective payment system. Hospitals must be located in one of the 50 states or the District of Columbia.

- Eligible hospitals may receive incentive payments for up to four years for fiscal year beginning October 2010, provided they meet the requirements for demonstrating meaningful use.
  - Eligible hospitals can qualify to receive payments from both the Medicare and Medicaid EHR incentive programs.
  - A qualifying hospital is an eligible hospital that demonstrates meaningful use for the EHR reporting period during a payment year. A Payment Year is a Federal Fiscal Year (FY).
  - CMS proposes that, for the first year an eligible hospital demonstrates meaningful EHR use, an EHR Reporting Period equals any 90 continuous days beginning and ending within the year. For every year after the first payment year, CMS proposes that the EHR reporting period is the entire year.
  - Eligible hospitals may qualify to receive incentive payments for up to four years beginning in FY 2011. FY 2015 is the last year for which an eligible hospital can begin receiving incentive payments for meaningful EHR use.
  - The incentive payment for each eligible hospital will be calculated based on
    1. an initial amount which is the sum of a \$2 million base amount and the product of a per discharge amount and the number of discharges;
    2. the Medicare share which is the proportion of Medicare fee-for-service and managed care inpatient bed-days to the product of total inpatient days and by the hospital’s total charges that are not attributed to charity care; and
- (3) a transition factor which phases down the incentive payments over the four year period.

### Incentive Payment Calculation for Eligible Hospitals:

- Incentive Payment Amount equals [Initial Amount] x [Medicare Share] x [Transition Factor]
- o **Initial Amount** equals \$2,000,000 + [\$200 per discharge for the 1,150<sup>th</sup> – 23,000<sup>th</sup> discharge]
- o Medicare Share equals  $\text{Medicare} / (\text{Total} * \text{Charges})$

**Medicare** equals [number of Inpatient Bed Days for Part A Beneficiaries] plus [number of Inpatient Bed Days for MA Beneficiaries]

**Total** equals [number of Total Inpatient Bed Days]

**Charges** equals [Total Charges minus Charges for Charity Care\*] divided by [Total Charges]

\*If data on charity care are not available, then the Secretary will use data on uncompensated care as a proxy. If the proxy data are also not available, then “Charges” will be equal to 1.

- **Transition Factor**

Consecutive Payment Year	Transition Factor
1	1
2	$\frac{3}{4}$
3	$\frac{1}{2}$
4	$\frac{1}{4}$

- For eligible hospitals that begin to be meaningful EHR users after 2013, their payment calculations will be made as if they began meaningful use in 2013. Their transition factor is modified accordingly. (For instance, if a hospital were to begin EHR meaningful use in 2014, the transition factor used for that year would be  $\frac{3}{4}$ , as if 2014 were the second payment year for a meaningful user starting in 2013 and so on for subsequent years).

*Transaction Factor for Medicare FFS Eligible Hospitals*

Fiscal Year	Fiscal Year that Eligible Hospital First Receives the Incentive Payment				
	2011	2012	2013	2014	2015
2011	1.00				
2012	0.75	1.00			
2013	0.50	0.75	1.00		
2014	0.25	0.50	0.75	0.75	
2015		0.25	0.50	0.50	0.50
2016			0.25	0.25	0.25

Incentive payments will be made to qualifying Medicare Advantage (MA) organizations for the adoption and meaningful use of EHR technology by their affiliated eligible hospitals.

- A MA-affiliated hospital is an eligible hospital that is under common corporate governance with the MA organization and serves individuals enrolled by the MA plan.
- The annual payment update for inpatient hospital services for eligible hospitals that are not meaningful EHR users will be reduced beginning in FY 2015. MA organizations will be subject to payment reductions if their affiliated hospitals are not meaningful EHR users beginning in FY 2015.

**CRITICAL ACCESS HOSPITALS (CAHs)**

- A qualifying CAH is a certified critical access hospital that **meets the definition of a meaningful EHR user for an eligible “subsection (d)” hospital.**
- CAHs can qualify to receive payments from the Medicare EHR incentive program.
- Qualifying CAHs may receive incentive payments for up to four payment years beginning with cost reporting periods that begin in FY 2011. The year with a cost reporting period that begins in FY 2015 is the last payment year for which a qualifying CAH can receive incentive payments as a meaningful EHR user.

- Incentive Payment Calculation for Qualifying CAHs
- Qualifying CAHs can receive incentive payments for the reasonable costs incurred for the purchase of depreciable assets like computers and associated hardware and software, necessary to administer certified EHR technology, excluding any depreciation and interest expenses associated with the acquisition.
- A qualifying CAH will receive an incentive payment amount equal to the product of its reasonable costs incurred for the purchase of certified EHR technology and its Medicare share percentage. The Medicare share percentage equals the lesser of (1) 100 percent; or (2) the sum of the Medicare share fraction for the CAH and 20 percentage points.
- Payment adjustments begin in FY 2015 for CAHs that are not meaningful EHR users.

CMS provides a 60-day comment period on the proposed rule. The proposed rule may be viewed at [http://www.cms.hhs.gov/Recovery/11\\_HealthIT.asp](http://www.cms.hhs.gov/Recovery/11_HealthIT.asp).

Publications related to this topic on website [www.practicesupport.com](http://www.practicesupport.com) include:

- [Electronic Health Records Transforming Your Medical Practice](#)
- [Evaluating Computer Systems, Upgrading and EMR](#)