



Health Information Technology (HIT) Incentives in the American Recovery and Reinvestment Act of 2009 – FAQ – 3/22/09

Are there bonus payments for EHR use in the American Recovery and Reinvestment Act of 2009?

Actually, there are several programs in the Act (also known as the HITECH Act). The Medicare-administered program will work best for most practices. There is a separate Medicaid program available for practices that qualify (see the details below). You can only receive payments from one program. So, it is worth taking some time to compare programs before choosing.

Special note for physicians working for certain Medicare Advantage organizations: Under specific conditions, physicians affiliated with Medicare Advantage organizations that are organized as Health Maintenance Organizations (“HMOs”) will not be paid directly. Instead, the payment incentives for meaningful EHR use go directly to the Medicare Advantage organizations – not to the practices.

How does the Medicare incentive program work?

In order to receive the bonus payments, you must demonstrate “meaningful use” of a “certified system.” While there are many rumors circulating about what these two terms will ultimately mean, there are no firm rules that define them yet. The Act requires that the Office of the National Coordinator of HIT (ONC) provide clarification in the form of final rules by the end of this year (2009). The generally-accepted view is that system requirements will include then-current (2011 or later) CCHIT certification requirements plus additional requirements to be specified later this year.

How will I demonstrate meaningful use?

The following paragraph comes directly from the Act.

A meaningful user of EHR is defined as one who: (1) demonstrates to the satisfaction of the Secretary that the professional is using certified EHR technology in a meaningful manner, which includes the use of electronic prescribing; (2) demonstrates that the technology is connected in a manner that provides for the electronic exchange of health information to improve the quality of health care; and (3) uses the EHR to submit certain performance measures to the Secretary (but only if the Secretary has the capacity to receive the information electronically).

One can imagine all sorts of mechanisms that could be used to demonstrate meaningful use; however, none has yet been specified by ONC. While a number of organizations that are involved in HIT are preparing their own recommendations on how this should be managed, the decision is up to ONC, and will follow a normal notice and request-for-comment process.

It is important to note that the Secretary does have the flexibility to define additional criteria needed to demonstrate “meaningful use” beyond the three criteria outlined above. It is also



possible for the Secretary to change the criteria that meets the definition of meaningful use over time. Thus, it is possible that practices will have to meet more stringent criteria as time progresses.

Are there any limitations on how long I have to be using the system before I qualify for bonus?

This is not known at this time. ONC has indicated that the reporting requirements of this program will resemble the requirements of the current PQRI program. The PQRI program requires a full year of reporting before the reporting is assessed and payments are issued. There have been many complaints about this delay, and ONC is being urged to include a faster turn-around time.

How will I know if a particular EHR system is a qualifying system?

The following two paragraphs come directly from the Act.

The term ‘qualified electronic health record’ means an electronic record of health-related information on an individual that—(A) includes patient demographic and clinical health information, such as medical history and problem lists; and“(B) has the capacity—

(i) to provide clinical decision support;

(ii) to support physician order entry;

(iii) to capture and query information relevant to health care quality; and

(iv) to exchange electronic health information with, and integrate such information from other sources.

A qualifying system is certified under certification programs of, or recognized by, the National Coordinator for Health Information Technology — in consultation with the Director of the National Institute of Standards and Technology (“NIST”) — as meeting standards recommended by the Health Information Technology Standards Committee and adopted by HHS.

Note that the Act makes no specific mention of the Certification Commission for Healthcare Information Technology (CCHIT) or the existing certification process. However, the Act does permit the Secretary to use existing work in setting standards, including standards for certification. Therefore, it is possible, and some would say likely, that the existing process will continue without interruption or significant change. Most observers expect that the certification requirements that systems must meet to qualify for this program will include new functions that are not currently required by CCHIT.

CCHIT’s normal process is to begin work in July to establish certification requirements that are used for testing beginning the following July. If ONC publishes new requirements in December, it is unclear how CCHIT will be able to accommodate them in its 2010 testing program, which begins in July 2010. ONC is under pressure from a broad range of interest groups who are urging it to add additional requirements. As with CCHIT certification, as requirements for



functionalities built into systems are expanded, fewer EHR vendors are able to meet the challenge of incorporating these requirements in a rapid timeframe. While vendors remain committed to meeting the requirements required by both CCHIT and ONC some vendors may not be able to qualify as a certified product.

The bottom line is that there is still considerable uncertainty about exactly how “meaningful use” will be defined and what criteria EHRs will need to meet in order to be “certified,” and thus qualify for the bonus payments. Additionally, as the Act allows HHS to modify and add to the criteria over time it is likely that the criteria will become more stringent for 2012 and on.

How much are the bonus payments from Medicare?

If a practice documents meaningful use of a certified EHR system at the start of 2011:

2011 - \$18,000
2012 - \$12,000
2013 - \$8,000
2014 - \$4,000
2015 - \$2,000
Total - \$44,000

If a practice documents meaningful use of a certified EHR system at the start of 2012:

2012 - \$18,000
2013 - \$12,000
2014 - \$8,000
2015 - \$4,000
2016 - \$2,000
Total - \$44,000

If a practice documents meaningful use of a certified EHR system at the start of 2013:

2013 - \$15,000
2014 - \$12,000
2015 - \$8,000
2016 - \$4,000
Total - \$39,000

If a practice documents meaningful use of a certified EHR system at the start of 2014:

2014 - \$12,000
2015 - \$8,000



2016 - \$4,000

Total - \$24,000

If a practice documents meaningful use of a certified EHR system at the start of 2015:

2015 - \$0

By what date must I be using a qualifying system in order to qualify for the maximum bonus?

You must be able to demonstrate meaningful use of a certified system by the start of 2012.

How does the Medicaid program work?

In order to qualify for this program, doctors must have a patient volume at least 30 percent attributable to Medicaid patients or, if they practice predominantly in a federally qualified health center or rural health clinic, they have patient volume at least 30 percent attributable to Medicaid patients and other needy individuals as defined by Medicaid rules.

The Federal government will reimburse state spending up to the following limits: (1) 85 percent of \$25,000, or \$21,250, for the purchase and initial implementation of EHR technology, which must occur by 2016, and (2) 85 percent of \$10,000, or \$8,500, per year up to five years for operation and maintenance of the technology, with no payments made after 2021. Thus, the maximum aggregate Federal payments per provider (\$21,250 + \$8,500/year for five years) are \$63,750. As noted, the Federal contribution is based on 85 percent of the costs; the statute requires that the covered providers be responsible for payment of the remaining 15 percent of the costs.

If I qualify for the Medicaid program, how do I choose which program to use?

Your best course is to run the calculations for the Medicaid option based on your estimates for system purchase and operation costs. Also, you will need to review your state's specific regulations regarding this program.

What if I already have an EHR system?

There is no guarantee that any system available today will be capable of meeting the expected certification criteria in a timely and effective way. However, you should discuss your plans to participate in the Medicare or Medicaid program with your EHR vendor and ask if the vendor plans to comply with the certification criteria once announced.

What if I purchase an EHR system this year?

Given the long selection and implementation process, you would be well advised to start the process of familiarizing yourself with the EHR systems that are currently in the marketplace. To help you with this process, ACP developed the EHR Partners Program



(http://www.acponline.org/running_practice/technology/ehr/partner_program/) which provides detailed reviews and a comparison tool on several currently CCHIT certified products.

There is currently no guarantee that any system available today will be capable of meeting the expected certification criteria in a timely and effective way, as the criteria have yet to be defined. Still, a good starting point is to look at systems that currently have a recent CCHIT certification. If you decide to purchase an EHR system you should consider including contractual language requiring the EHR vendor to guarantee that it will maintain CCHIT certification and meet any new functionality criteria specified by ONC by 2012, and outline what specific remedies you expect if they do not meet this guarantee.

What happens if I choose not to implement an EHR system?

If the physician is not a meaningful EHR user, the amount the physician would otherwise receive under the Medicare fee schedule will be reduced to the following levels:

- 99 percent for 2015 (or 98 percent for physicians who are subject to penalty under the e-prescribing provisions for 2014); 98 percent for 2016; and 97 percent for 2017 and each subsequent year. See http://www.acponline.org/running_practice/technology/eprescribing/ for information on e-prescribing.
- For 2019 and each subsequent year, if the Secretary finds that the proportion of eligible professionals who are meaningful EHR users is less than 75 percent, the applicable fee schedule amount is further adjusted downward by 1 percentage point each year, down to a maximum of 95 percent.

The Act also gives the Secretary the ability, on an annual and case-by-case basis, to exempt a physician from the penalty for up to five years, if HHS determines that being a meaningful EHR user would result in a significant hardship (e.g., if an eligible professional practices in a rural area without sufficient Internet access).

It is important to note that implementing an EHR system takes a substantial amount of time. If you choose to start implementing a system close to the penalty deadline, it is likely that you will not meet the requirements for meaningful use in time to avoid these penalties. It is also likely that there will be a delay in when you can actually install and begin using your EHR system due to the volume of purchases expected by the vendors.

Is there any purchase assistance available?

The Act also includes grants to the states to help practices implement EHR systems. There is no information yet available about how states will choose to spend these funds. ACP will collect and post information on ACP Online (<http://www.acponline.org>) as it becomes available.

Are there less expensive options?

One alternative to the traditional (client server EHR system) is a web-based service. You will see vendors use terms such as ASP (Application Service Provider) or SaaS (Software as a Service). With this approach you pay a monthly subscription fee to use the EHR system rather than paying



up-front for hardware, software, and installation at your facility. In this type of application the vendor typically takes on the responsibility of updating and maintaining the system, which may be beneficial if large numbers of updates are necessary to meet the ONC requirements.

The Act also calls on ONC to offer its own low-cost certified EMR system, unless the Secretary determines that the market does not require this option. Nothing more is known about this requirement, however it is generally believed that such a product would be based on the VistA system that was developed by the Veterans Administration.

Is there any other help available?

The legislation requires the Office of the National Coordinator for Health Information Technology, in consultation with NIST and other agencies with experience in IT services, to establish an HIT extension program to assist providers in adopting and using HIT.

ACP has collected a range of useful resources on EHR systems and other technologies. More information regarding these stimulus Act programs will be posted here as details become available. http://www.acponline.org/running_practice/technology/