HHS Issues Final Rule on Stage 2 of the Medicare and Medicaid EHR Incentive Programs

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On August 23, 2012, the Department of Health and Human Services (HHS) released for publication a final rule that specifies Stage 2 criteria for electronic health record (EHR) incentive payments under the Medicare and Medicaid EHR Incentive Programs (Stage 2 Final Rule). The Stage 2 Final Rule also changes the Stage 2 timeline, establishes clinical quality reporting measures (CQMs) to be reported, and revises some Stage 1 criteria. The Stage 2 Final Rule was published in the Federal Register on September 4, 2012, and can be found here: http://www.gpo.gov/fdsys/pkg/FR-2012-09-04/pdf/2012-21050.pdf. Most of its provisions are effective November 5, 2012. The Stage 2 criteria will begin in 2014, although some provisions of the regulation affect Stage 1 criteria in payment year 2013.

HHS is phasing in meaningful use criteria in stages, with each stage building on the previous stages. Users enter the program in Stage 1, which lasts two years, although HHS has extended it to three years for those providers who entered the program in 2011. HHS has summarized the three stages in the following way:

- **Stage 1** sets the basic functionalities EHRs must include, such as capturing data electronically and providing patients with electronic copies of health information.
- **Stage 2** increases health information exchange between providers and promotes patient engagement by giving patients secure online access to their health information.
- **Stage 3** will continue to expand meaningful use objectives to improve health care outcomes.

As expected, the Stage 2 Final Rule builds on the Stage 1 requirements, setting more stringent standards for providers to meet to demonstrate meaningful use. However, the Stage 2 Final Rule also builds in some flexibility related to timing, eligibility, and exclusions as CMS responds to concerns raised by providers regarding the incentive programs. A summary of the Stage 2 Final Rule’s key provisions are below.

**Changes to Stage 1 Criteria**

CMS has made some changes to the Stage 1 meaningful use criteria:
• Beginning in 2013, CMS has added an optional alternate reporting measure for use of Computerized Physician Order Entry (CPOE) for medication orders (the alternate measure will be required for providers in Stage 2).

• Beginning in 2013, CMS has added an additional exclusion to the objective for electronic prescribing where a provider is not within a 10 mile radius of a pharmacy that accepts electronic prescriptions.

• Beginning in 2013, CMS will remove the objective and measure relating to the capability to exchange key clinical information (but a substitute objective as part of Stage 2 requires a summary of care record following transition of care or referral).

• Beginning in 2013, CMS is removing the stand-alone objective requiring providers to attest that they plan to report on CQMs.

• CMS has changed the measure of the objective for recording and charting changes in vital signs, by raising the age limitation to patients ages 3 and over and broadening the available exclusions (optional for 2013 and required for 2014).

• Beginning with Stage 2 in 2014, CMS will no longer permit a provider to select a menu objective and claim an exclusion if the provider can meet other menu objectives.

• Beginning with Stage 2 in 2014, CMS is replacing several Stage 1 objectives of providing patients with electronic copies of, or access to, their health information with a Stage 2 objective to provide patients with the ability to view, download, or transmit their health information.

**Stage 2 Timeline Delay and 2014 Reporting Period**

In the Stage 1 Final Rule, CMS established that providers were required to progress to Stage 2 after two years in Stage 1. This timeline would have required Medicare providers who first demonstrated meaningful use in 2011 to meet Stage 2 criteria by 2013, and a number of providers expressed concern about the ability to meet Stage 2 criteria within this timeframe.

In the Stage 2 Final Rule, CMS has provided a new timeline that delays the onset of the Stage 2 criteria. The earliest that a provider would be required to meet the Stage 2 criteria is now 2014. In other words, CMS has extended Stage 1 for an additional year for users who first demonstrated meaningful use in 2011. The Stage 2 Final Rule does not, however, extend payment incentives beyond the periods specified in the Stage 1 Rule.

In addition, for 2014 only, providers are required to demonstrate meaningful use for only a three-month EHR reporting period, regardless of their stage of meaningful use. CMS has permitted this shorter reporting period so that providers who must upgrade to 2014 Certified EHR Technology have adequate time to implement the system. The recent Final Rule issued by the Office of the National Coordinator for Health Information Technology, which establishes the certification criteria for EHR Technology in 2014, can be found here: http://www.gpo.gov/fdsys/pkg/FR-2012-09-04/pdf/2012-20982.pdf.
Stage 2 Criteria

Like the Stage 1 criteria, Stage 2 consists of a “core” set of objectives, all of which must be met, and a “menu” set from which a minimum number must be selected. As expected, most of the Stage 1 menu objectives are core objectives in Stage 2. HHS has also modified and consolidated some of the Stage 1 objectives in the transition to Stage 2. For many of the Stage 2 objectives, the threshold that the provider must meet has been raised.

Stage 2 also has new objectives, some of which are core objectives, and some menu objectives. Overall, Stage 2 consists of 17 core objectives and 6 menu objectives for eligible professionals (EPs), and 16 core objectives and 6 menu objectives for eligible hospitals and critical access hospitals (CAHs). EPs and CAHs must meet all of the relevant core objectives and three menu objectives. The new Stage 2 objectives include:

Core Objectives:

• Provide patients the ability to view online, download, and transmit their health information (within four days for EPs and 36 hours after discharge for eligible hospitals/CAHs).
• Automatically track medication orders using an electronic medication administration record (eMAR) (for eligible hospitals/CAHs only).
• Use secure electronic messaging to communicate with patients (for EPs only).

Menu Objectives:

• Record electronic notes in patient records.
• Make imaging results and information accessible through Certified EHR Technology.
• Record patient family health history.
• Identify and report cancer cases to a State cancer registry where authorized (EPs only).
• Identify and report specific cases to a specialized registry, other than a cancer registry (EPs only).
• Generate and transmit permissible discharge prescriptions electronically (eRx) (new for eligible hospitals/CAHs only).
• Provide structured electronic lab results to ambulatory providers (for eligible hospitals/CAHs only).

The Stage 2 Final Rule emphasizes health information exchange between providers to improve coordination of care, and also emphasizes the use of health information technology by patients to further their own care. As an example, one new measure requires that at least 5 percent of patients actually view, download, or transmit their health information (which begs the question of whether a provider has any control over meeting this Stage 2 measure, because it is based on patient activity).
Reporting on CQMs

EPs and hospitals are required to report on CQMs to qualify for meaningful use payments. Beginning in 2014, all providers beyond their first year of demonstrating meaningful use (regardless of their stage) must report CQMs. EPs must report on 9 out of 64 CQMs, and eligible hospitals and CAHs must report on 16 out of 29 CQMs. All providers must select CQMs from at least 3 of 6 domains recommended by HHS’s National Quality Strategy:

- Patient and family engagement.
- Patient safety.
- Care coordination.
- Population and public health.
- Efficient use of health care resources.
- Clinical process/effectiveness.

EPs in the Medicare EHR Incentive Program can electronically report CQMs either individually, or as a group, through the following methods:

- Patient-level reporting through the Physician Quality Reporting System (PQRS) (reporting in this fashion meets both the EHR Incentive Program and PQRS reporting requirements).
- Aggregate reporting through a CMS-designated reporting method.

Eligible hospitals, including CAHs, in the Medicare EHR Incentive Program will also have the option of aggregate reporting through a CMS-designated reporting mechanism. Alternatively, they may report CQMs through an infrastructure similar to the 2012 Medicare EHR Incentive Program Electronic Reporting Pilot, which aligns with the Hospital Inpatient Quality Reporting Program. All providers participating only in a Medicaid EHR Incentive Program will submit CQM data directly to their State.

Medicaid Eligibility Expansion

The Stage 2 Final Rule expands the definition of what constitutes a Medicaid patient encounter, which is a required eligibility threshold for EPs that want to participate in the Medicaid EHR incentive program. The Stage 2 Final Rule also provides flexibility in the lookback period for determining an EP’s patient volume. In addition, approximately twelve additional children’s hospitals have been made eligible to participate in the EHR Incentive Program. These hospitals were previously unable to participate because they do not have a CMS certification number. The changes to eligibility for the Medicaid EHR Incentive Program are not retroactive, and will take effect beginning in 2013.

Medicare Payment Adjustments & Hardship Exceptions

Medicare payment adjustments for providers that fail to demonstrate meaningful use take effect in 2015. The Stage 2 Final Rule finalizes the process by which these payment adjustments are determined. Providers that are meaningful EHR users in
2013, or who demonstrate meaningful use for the first time in 2014 for at least three months, will avoid the payment adjustment in 2015. The Stage 2 Final Rule describes in detail the percentage payment adjustment imposed for providers who do not demonstrate meaningful use within the required timeframe.

The Stage 2 Final Rule also finalizes hardship exceptions to the payment adjustments. These exceptions include the following, only the first three of which are available to providers other than EPs:

- Lack of available Internet or IT infrastructure.
- Extreme and uncontrollable circumstances.
- New EPs (practicing less than two years) and new hospitals (operated less than one year).
- The EP practices at multiple locations, and does not control EHR technology at the locations where the EP sees most patients.
- The EP can demonstrate difficulty in meeting meaningful use on the basis of lack of face-to-face or telemedicine interaction with patients and lack of need for follow up with patients.
- The EP practices primarily radiology, pathology or anesthesiology.

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