

# PUBLICATION

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## Important EHR Incentive Updates

January 7, 2011

Several end-of-year announcements have come out of the U.S. Department of Health and Human Services. Technical corrections to Centers for Medicare & Medicaid Services (CMS) regulations on electronic health record (EHR) incentive requirements have been released, dealing primarily with typographical errors and other corrections. Two other significant actions are described below.

### Revised FAQs

The Office of the National Coordinator's (ONC) FAQ 9-10-017-2, discussing the relationship between technology certification requirements and changes to meaningful use requirements in CMS's final rule, has been updated in response to concerns from provider groups. ONC states that eligibility to receive incentive payments consists of two steps: (1) the possession of certified EHR technology and (2) subsequently demonstrating its meaningful use. For the first step, the EHR in possession must be tested and certified to meet all applicable criteria. With regard to the second step, the provider must attest to having satisfied the combined 19 (for hospitals) or 20 (for eligible professionals) core and selected menu set objectives and associated measures – not all - necessary to demonstrate "meaningful use". Or put another way, the provider will still be able to receive an incentive payment even if unable to demonstrate meeting up to five of the menu set objectives for meaningful use.

### Registration

Hospitals and individual providers who expect to be eligible for EHR financial incentives under Medicare or Medicaid were able to begin registration January 3, 2011. The Medicare incentives program will be administered by CMS through its contractors and the Medicaid EHR incentive programs will be run by states. Registration is required if a hospital or eligible professional plans to participate in either the Medicare or the Medicaid program.

CMS is urging early registration, even if a provider does not yet have an EHR system in place. The process starts for providers with registration on CMS's new website. Providers who want to receive Medicaid incentive payments should also register on their own states' EHR incentive sites. The following states were expected to have their websites up on January 3, 2011: Alaska, Iowa, Kentucky, Louisiana, Michigan, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee and Texas. Remaining state websites should be up by the summer of 2011.

The process for attestation related to the meaningful use of certified health IT should become available in the spring on the same websites. According to CMS, provider attestations are expected to begin in April 2011 and the first incentive payments will be made in May 2011.

*Hospitals and Health Systems.* Eligible hospitals can participate in both the Medicare and Medicaid programs. With regard to Medicaid, they may only participate in one state's program. The last day for critical access and eligible hospitals to register and attest to receive federal FY2011 incentive payments will be November 30, 2011.

*Eligible Professionals.* Eligible professionals may participate in either the Medicare or the Medicaid program, but not both, and may only participate in one state's program. Some individual professionals may be eligible only for Medicaid incentives. The last day for eligible professionals to register and attest to receive a calendar year 2011 incentive payment will be February 29, 2012.

### Be Well Informed

The CMS site includes basic information and tools for determining hospital or other provider eligibility as well as guidance on potential incentive amounts available if all requirements of the programs are met. However, this is a complex area of law governing a program that is just being established. What may appear straightforward initially can become a significant challenge to understand and comply with in implementation. For example, there are a number of issues related to the certification of technology that must be thoroughly vetted in order to assure that the regulatory requirements are met. Similarly, there remain open issues about the payment calculations for hospitals with multiple sites. These may not be addressed fully through the website.

#### Action steps:

- Visit the CMS website to determine how close you are to meeting the HITECH requirements for fiscal year 2011
- Visit the CMS website to determine how close you are to meeting the HITECH requirements for fiscal year 2011
- If planning to apply for Medicaid incentives, determine which state registration process to complete and review the state program requirements

For additional information about HITECH EHR incentive program requirements or assistance with any other aspect of health IT adoption, Medicare or Medicaid, please contact your Baker Donelson attorney or policy advisor.