

PUBLICATION

Proposed Rule Responds to Meaningful Use Timeline Concerns

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Providers participating in the Medicare and Medicaid Electronic Health Record (EHR) Incentive Programs may have more breathing room to implement the criteria for meaningfully using certified EHR technology (CEHRT) for the 2014 reporting year.

A rule proposed May 23 by the Centers for Medicare and Medicaid Services (CMS) and the Office of the National Coordinator for Health Information Technology (ONC) responds to widespread concern that there simply is not enough time to comply with the 2014 meaningful use requirements. The rule states that CMS and ONC seek to accommodate providers who have hit roadblocks where high demand has made the complex technology unavailable or there is not sufficient time to deploy it throughout large hospital systems.

Meaningful Use Timeline

The first crop of eligible professionals (EPs), eligible hospitals and critical access hospitals (CAHs) participating in the EHR Incentive Program moves into Stage 2 of meaningful use in the 2014 reporting year. CMS issued the Stage 2 final rule in September 2012, which detailed requirements for implementing 2014 Edition CEHRT and reporting clinical quality measures (CQMs) in reporting year 2014.

However, many providers and EHR vendors protested that there was not enough time between the publication of the Stage 2 final rule and the deadline for 2014 attestation to make the necessary changes that would allow EHR products in use to be certified to the 2014 Edition EHR certification criteria.

In response, CMS and ONC have now proposed EPs, eligible hospitals and CAHs that cannot fully implement 2014 Edition CEHRT for the 2014 reporting year because of delays in availability be allowed to continue using 2011 Edition CEHRT or a combination of 2011 Edition and 2014 Edition CEHRT for the 2014 EHR reporting period.

CMS and ONC propose to offer three alternative timeline options if providers attest that they cannot fully implement 2014 Edition CEHRT because of availability issues:

1. **Use 2011 Edition CEHRT Only:** Providers who choose this option must meet the meaningful use objectives and associated measures for Stage 1 that were applicable for the 2013 payment year, regardless of their current stage of meaningful use.
2. **Use a Combination of 2011 Edition CEHRT and 2014 Edition CEHRT:** Providers who choose this option must meet the 2013 or 2014 Stage 1 objectives and measures, or, if they are scheduled to begin Stage 2 in 2014, they have the option of meeting the Stage 2 objectives and measures.
3. **Use 2014 Edition CEHRT:** Providers who are scheduled to begin Stage 2 in 2014 may choose to meet the 2014 Stage 1 objectives and measures.

CMS and ONC have also formalized their intention, first announced in December 2013, to delay the start of Stage 3 of meaningful use by one year to 2017. The agencies reason that they want to utilize data from the implementation of Stage 2 in developing the Stage 3 rules, justifying a year's delay to include data from providers who will not meet the Stage 2 objectives and measures until 2015.

The proposed changes to the timeline for meaningful use will not affect providers who participate in the EHR Incentive Program for the first time in 2013 or later.

Participants in the Medicaid EHR Incentive Program who are adopting, implementing or upgrading CEHRT in 2014 must adopt, implement or upgrade to 2014 Edition CEHRT. CMS has chosen not to allow the first-time adoption, implementation or upgrading of 2011 CEHRT because it does not want to incentivize the purchase of outdated technology. While the proposed rule does not require Medicare providers who are participating in the EHR Incentive Program for the first time in 2014 to use 2014 Edition CEHRT, it strongly encourages such providers to do so since they will be required to use 2014 Edition CEHRT in 2015.

CEHRT Definition

The proposed rule effectively changes the definition of CEHRT, altering the timeline for implementing new technology in order to provide flexibility in the Medicare and Medicaid EHR Incentive Programs. To correspond with this change, the rule also proposes to change the fiscal year and calendar year deadlines, making the first day of fiscal year 2015 (for eligible hospitals and CAHs) and calendar year 2015 (for EPs) the new required start dates for exclusive use of 2014 Edition certified Complete EHRs and EHR Modules to meet the CEHRT definition.

CQM Reporting

Finally, the proposed rule allows providers in the Medicare EHR Incentive Program to report on clinical quality measures (CQMs), as required of all providers in the Stage 2 final rule, using different methods depending on the edition of CEHRT that they are using. The proposed rule alters what set of CQM reporting policies and requirements apply as well as the reporting period. The CQM reporting method for Medicaid EHR Incentive Program participating providers remains in each state's discretion, subject to prior approval by CMS.

CMS will accept comments on the proposed rule until July, 21 2014.

If you have any questions, please contact the Baker Donelson attorney with whom you regularly work, or any of the attorneys in the Firm's Health Law group.