

What surgeons should know about...

Meaningful use of electronic health records

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As part of the federal stimulus package, Congress enacted the Health Information Technology for Economic and Clinical Health (HITECH) Act, which includes a number of provisions designed to encourage the adoption and use of health information technology (HIT) tools. Specifically, the HITECH Act provides incentive payments to eligible professionals (EPs) and eligible hospitals that participate in Medicare and/or Medicaid programs, and that adopt, and meaningfully use, certified electronic health records (EHRs).

In this article, information is provided regarding what an EP must do to show “meaningful use” of an EHR, how an EHR becomes “certified,” who is eligible for the incentive payments, the incentive payment amounts, the timeline for showing meaningful use, and what surgeons can do now to prepare to meet these requirements.

What is meaningful use of electronic health records?

The Centers for Medicare & Medicaid Services (CMS) is expected to release the definition of meaningful use—including the specific criteria that EPs must meet—in a final rule by early summer. This rule will enumerate specific parameters in the form of measures for showing meaningful use of certified EHR technology. Although the specific measures have not been finalized by the CMS rule at this time, the HITECH Act requires that meaningful use must encompass, at a minimum, the following requirements:

- Use of certified EHR technology in a meaningful manner
- Use of certified EHR technology in a manner that provides for electronic exchange of health information to improve quality of care
- Use of certified EHR technology to submit information on clinical quality measures to the

Secretary for the Department of Health and Human Services

The HITECH Act states that the program must start in 2011, but does not indicate specific requirements that will begin in 2011, or how those mandates may change over time. The CMS rule will finalize the meaningful use criteria for 2011, and future CMS rules will describe how the requirements will change in subsequent years.

What is a certified EHR?

The EHR incentive payments will be available only to those EPs and eligible hospitals that meaningfully use certified EHRs. The Office of the National Coordinator for Health Information Technology (ONC) also plans to release two final rules early this summer, along with the CMS meaningful-use criteria final rule. The first ONC rule will establish the initial standards, implementation specifications, and certification criteria that EHR technology will need to include in order to, at a minimum, support meaningful use. The second ONC rule will set forth the actual process and procedure by which those systems will be certified, including the identification of certifying organizations. These two ONC rules will provide the framework and the process for determining whether an EHR is certified for meaningful use in an ambulatory setting.

Who is eligible for the HIT incentive payments?

Most surgeons will fall under CMS’ definition of an EP, and thus will qualify for the Medicare incentive payments. Hospital-based physicians—defined as those who provide at least 90 percent of their professional services in an institutional setting as determined from Medicare claim point-of-service codes—are ineligible for the Medicare

incentive payments. Based on CMS' definition, the vast majority of surgeons would not be considered hospital-based and, therefore, would be eligible for the HIT incentive payments.

To qualify for the Medicaid incentive payments, an EP must attest that at least 30 percent of all patient encounters in a continuous 90-day period in the most recent calendar year were with Medicaid patients.

What is the incentive payment amount, and when would penalties for noncompliance kick in?

The American Recovery and Reinvestment Act of 2009 makes an estimated \$19 billion in incentive payments available to EPs under Medicare/Medicaid programs over a specified five-year period. These payments are intended to encourage physicians to adopt and use certified EHRs in a meaningful way.

Medicare incentive payments

Physicians (non-hospital based) are eligible for Medicare incentive payments based on an amount

equal to 75 percent of the allowed Medicare Part B charges, up to a maximum of \$18,000 for early adopters whose first payment year is 2011 or 2012. Incentive payments would be reduced in subsequent payment years, eventually phasing out in 2016. Physicians who do not adopt an EHR system before 2015 will face a reduction in their Medicare fee schedule starting at 1 percent in 2015, but there are exceptions for significant hardship cases. EPs could receive a maximum of \$44,000 in Medicare incentive payments. Physicians in rural health professional shortage areas who use EHRs could be eligible to receive a 10 percent increase on Medicare incentive payments.

The table on this page shows the expected incentives and potential reductions from 2011 to 2016.

Medicaid incentive payments

EPs (non-hospital based) who annually meet a patient volume threshold of 30 percent Medicaid patients are eligible for the Medicaid incentive, which is a maximum of \$63,750 in a six-year period.

When should I start demonstrating meaningful use of my EHR to qualify for the incentive payments?

For EPs, each "payment year" is the same as a "calendar year." For years 2012 and onward, meaningful use must be demonstrated for the entire payment year. For example, to demonstrate meaningful use for the 2012 payment year and receive the 2012 incentive payment, EPs must demonstrate meaningful use from January 1, 2012, to December 31, 2012.

For 2011 only, the first year of the program, the rules are slightly different. For 2011, EPs must demonstrate 90 days of continuous meaningful use by the end of the 2011 fiscal year, which is October 1. That means, in order to receive the first \$18,000 piece of the EHR

Maximum total amount of EHR incentive payments

Calendar year*	First calendar year in which the EP receives an incentive payment				
	2011	2012	2013	2014	2015 and on
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; -1 percent of Medicare fee schedule (penalty)
2016		2,000	4,000	4,000	\$0; -2 percent of Medicare fee schedule (penalty)
Total	\$44,000	\$44,000	\$39,000	\$24,000	\$0

*Note: A calendar year equals a payment year.

incentive payment, EPs must demonstrate that they met meaningful use requirements daily for 90 days, starting no later than July 1, 2011, and ending on October 1, 2011.

What can surgeons who do not already have an EHR do to prepare to achieve meaningful use?

EPs shopping for an EHR should look for a vendor who will guarantee that its product will achieve meaningful use as defined by CMS in the final rule. Although the final rule has not yet been released, it is important that a potential EHR vendor include such a guarantee as a written contractual obligation. In addition, the contract should include a clearly defined punishment clause or penalty in the event the EHR fails to support meaningful use as defined by CMS. The penalty could include some, or all, of the incentive payment that the EP would have received for that year if the EHR had the capacity to support meaningful use.

It is also important to ask whether the EP will be required to pay extra to update the EHR to meet the meaningful use definition once it is finalized. In addition, EPs should research vendors and consider how financially healthy the companies are. There is a greater chance that new, small vendors with limited resources may go bankrupt in a year or two, leaving the EHR unsupported as rules are updated and finalized. If using a small vendor, it is recommended that the EP obtain a contingency plan in writing in the event that the vendor goes out of business or is bought out by another company.

What can surgeons who already have an EHR do to prepare to achieve meaningful use?

EPs who already use an EHR should review the vendor contract. The College recommends asking a lawyer for a line-by-line analysis of the EHR vendor's contract to determine how obligated the vendor is to support the EHR as certification standards change and as CMS rules are deleted, revised, or finalized. In addition, EPs should discuss whether the vendor is required to provide meaningful use upgrades

for free, or if additional modules will cost more.

It is also important to ask the vendor how it plans to keep current with the changing meaningful use rules, including how the EHR will be updated, how much of a work flow disruption the upgrades will create, and how long the upgrades will take to implement. Ω

For more information on the meaningful use incentive and for the most recent updates, go to http://www.cms.hhs.gov/Recovery/11_HealthIT.asp#TopOfPage.