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CMS and ONC Issue Regulations Defining "Meaningful Use" of EHR Technology

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On December 30, 2009, the U.S. Department of Health and Human Services (HHS) issued two sets of regulations that clarify how eligible health care providers can receive federal financial subsidies for their adoption and meaningful use of electronic health record (EHR) technology. The regulations outline the proposed provisions governing EHR incentive payment programs under the American Recovery and Reinvestment Act of 2009 (ARRA). Under the ARRA, eligible professionals, eligible hospitals, and critical access hospitals that participate in Medicare and Medicaid and that are meaningful users of certified EHR technology can receive incentive payments for their efforts to adopt, implement or upgrade certified EHR technology, or for meaningful use in the first year of their participation in the program and for demonstrating meaningful use during each of five subsequent years.

The first set of regulations, issued by the Center for Medicare & Medicaid Services (CMS), defines the central concept of "meaningful use" of EHR technology using a phased approach that encompasses criteria based on currently available technology capabilities and provider practice experience, and builds up to a more robust definition of meaningful use based on anticipated technology and capabilities development. The criteria for meaningful use for Stage 1, beginning in 2011, focus on electronically capturing health information in a coded format, using that information to track key clinical conditions, communicating that information for care coordination purposes, and initiating the reporting of clinical quality measures and public health information. CMS proposed 25 objectives/measures for eligible professionals and 23 objectives/measures for eligible hospitals that must be met to be deemed a meaningful EHR user. Stage 2 (beginning in 2013) goals expand on the Stage 1 criteria to encourage the use of health information technology for continuous quality improvement at the point of care and the exchange of information in the most structured format possible. Stage 3 (beginning 2015) goals focus on promoting improvements in quality, safety and efficiency, focusing on decision support for national high priority conditions, patient access to self management tools, access to comprehensive patient data and improving population health. Final regulations will be issued after a 60-day public comment period.

The second set of regulations, an Interim Final Rule issued by the National Coordinator for Health Information Technology (ONC) effective February 12, 2010, specifies an initial set of standards, implementation specifications, and certification criteria for EHR technology. The certification criteria establish the capabilities and related standards that certified EHR technology will need to include in order to, at a minimum, support the achievement

of the proposed meaningful use Stage 1. The Interim Final Rule calls for the industry to standardize the way in which EHR information is exchanged between organizations, and describes standard formats for clinical summaries and prescriptions, standard terms to describe clinical problems, procedures, laboratory tests, medications and allergies, and standards for the secure transportation of this information using the internet.

Eligible healthcare providers are advised to review these regulations to ensure that they meet the criteria to receive incentive payments for their adoption and meaningful use of EHR technology.

For more information, please contact Stephen T. Moore or your regular Hinshaw attorney.

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Stephen T. Moore

Partner

815-490-4903