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Incentives for Eligible Professionals and Hospitals

The American Recovery and Reinvestment Act of 2009 (the "Act") includes among its provisions incentives for the adoption and use of electronic health records ("EHR") technology by Medicare and Medicaid professionals and hospitals. Medicare offers incentive payments for a period of up to five (5) years. Medicare will begin penalizing professional and hospitals by reducing payments to professionals and hospitals who fail to adopt EHR technology by 2015. Medicaid professionals and hospitals are also eligible for incentive payments under the Act, with first-year payments available until 2016, and subsequent payments available no later than 2021. Below is a detailed analysis of these provisions.

Medicare Incentives - Eligible Professionals

Under the Act, eligible professionals may apply to receive Medicare incentive payments between the years 2011 and 2016, as further described below. In addition, the Act calls for a reduction in payments to eligible professionals if they do not adopt certified EHR technology by 2015. EHR technology includes an electronic record of health-related information on an individual that includes patient demographic and clinical health information and has the capacity to provide clinical decision support, support physician order entry, capture and query information relevant to health care quality, and exchange electronic health information with, and integrate such information from, other sources. EHR technology is "certified" when it meets standards and implementation specifications for health information technology as adopted by the Secretary of Health and Human Services ("Secretary").

Who Can Receive Incentive Payments

Eligible professionals may apply to the Secretary beginning in 2011, but no later than 2014, to receive incentive payments. An eligible professional includes (i) a doctor of medicine or osteopathy, (ii) a doctor of dental surgery or of dental medicine, (iii) a doctor of podiatric medicine, (iv) a doctor of optometry, and (v) a chiropractor.

Eligible professionals who (i) are employed by a qualified Medicare Advantage ("MA") organization (which is an MA organization organized as a health maintenance organization), or (ii) are employed by or are partners of an entity that furnishes at least eighty percent (80%) of the entity's patient care services to enrollees of the MA organization through a contract with the MA organization, and (iii) furnish at least seventy-five

percent (75%) of professional services to enrollees of the MA organization and furnish on average at least twenty (20) hours per week of patient care services, may also receive incentive payments under the Act.

In general, hospital-based eligible professionals (such as a pathologist, anesthesiologist, or emergency physician, who furnishes substantially all covered professional services during the reporting period for a payment year in a hospital setting, whether inpatient or outpatient, through the use of the facilities and equipment, including qualified electronic health records, at the hospital) will not be eligible for incentive payments through this Section of the Act.

Purposes of Incentive Payments

Incentive payments will be given to eligible professionals for the meaningful use of certified EHR technology until year 2016. An eligible professional is considered a meaningful EHR user if he or she (i) demonstrates use of certified EHR technology in a meaningful way, including use of electronic prescribing, (ii) demonstrates that the use of certified EHR technology is connected in a manner that provides for the electronic exchange of health information to improve the quality of health care, such as promoting care coordination, and (iii) submits information on clinical quality measures and such other measures as selected by the Secretary.

The Secretary will provide assistance to eligible professionals located in rural or other medically underserved areas to successfully choose, implement and use certified EHR technology. To the extent practical, the Secretary will provide such assistance through entities that have expertise in the choice, implementation, and use of such certified EHR technology.

What Are the Steps for Receiving Incentive Payments

Meaningful use of the certified EHR technology will be demonstrated by means specified by the Secretary. Meaningful use will be based upon the clinical quality measures and other requirements determined by the Secretary. In the case of an eligible professional furnishing covered professional services in a group practice, the Secretary may provide for the use of alternative means for meeting the "meaningful use" requirements. The Secretary may also require more stringent measures of "meaningful use" to seek to improve the use of electronic health records.

The Secretary will post a list of eligible professionals who are meaningful EHR users on the Internet website of the Centers for Medicare and Medicaid Services along with business addresses and business phone numbers. There will no administrative or judicial review of the determination of any incentive payment or the payment adjustment described below, including determination of status as a meaningful EHR user.

How Much Will My Incentive Payment Be

In addition to the amounts otherwise paid to the eligible professional under the Social Security Act, they will be paid an amount equal to seventy-five percent (75%) of the Secretary's estimate of the allowed charges of the eligible professional for all such covered professional services furnished by the eligible professional during such year. These payments will be made from the Federal Supplementary Medical Insurance Trust Fund. The incentive payments available to eligible professionals will vary depending upon the year in which the eligible professional applies for the incentive payment. The amounts available to an eligible professional for any payment year will not exceed the amounts specified in the chart below:

Payment by Year	Application Year				
	2011	2012	2013	2014	2015
1 st Year	\$18,000	\$18,000	\$15,000	\$12,000	\$0
2 nd Year	\$12,000	\$12,000	\$12,000	\$12,000	\$0
3 rd Year	\$8,000	\$8,000	\$8,000	\$8,000	\$0
4 th Year	\$4,000	\$4,000	\$4,000	\$0	\$0
5 th Year	\$2,000	\$2,000	\$0	\$0	\$0

Eligible professionals who predominantly furnish services in a rural area that is designated by the Secretary to be a health professional shortage area will receive a ten percent (10%) increase in the payment amount that would otherwise apply.

The Secretary will be responsible for (a) determining if the incentive payments will be paid in a single consolidated payment or as installments, (b) coordinating applications and payments to ensure that there is no duplication of payments made to an eligible professional furnishing covered professional services to more than one practice, and (c) avoiding duplicative requirements from Federal and State Governments to demonstrate meaningful use of certified EHR technology in relation to Medicaid.

What Happens If I Do Not Adopt Certified EHR Technology

If an eligible professional has not become a meaningful user of certified EHR technology by 2015, that eligible professional's fee schedule amount for covered professional services during that and subsequent payment years will be equal to an applicable percent of the fee schedule amount that would otherwise apply to those covered professional services, as shown in the chart, below:

Year	2015	2016	2017	2018 +
Applicable %	99%	98%	97%	97% > X > 95%

In year 2018 and subsequent years, if less than seventy-five percent (75%) of eligible professionals are meaningful EHR users, the Secretary may

decrease the applicable percent by one (1) percentage point from the applicable percent in the preceding year, but in no event can the percentage amount be less than ninety-five percent (95%).

Hardship Exception

There is an exception for those who would experience significant hardship by being required to adopt the certified EHR technology. The Secretary, may on a case-by-case basis, determine if eligible professionals are exempt from the payment reductions for failure to adopt certified EHR technology, subject to an annual review, if the requirement for being a meaningful EHR user would result in significant hardship. Such an example would be an eligible professional who practices in a rural area without sufficient internet access. However, in no case may an eligible professional be granted such exemption for more than five years.

Medicare Incentives – Eligible Hospitals

Eligible hospitals will receive incentive payments for being EHR users starting in 2011 until 2015. Section 4102 also provides for the reduction in Medicare and Medicaid payments in the event the eligible hospital does not implement and use EHR after 2015.

Who Can Receive Incentive Payments

A hospital is eligible for incentive payments if it is either a subsection (d) hospital or a critical access hospital and uses EHR technology. A subsection (d) hospital does not include: (i) rehabilitation hospitals, (ii) hospitals where the patients are predominantly under age eighteen (18), (iii) hospitals having average inpatient stays of greater than twenty-five (25) days or (iv) hospitals involved extensively in the treatment of or research on cancer.

Purposes of Incentive Payments

If a hospital qualifies as an eligible hospital as set forth above, the hospital can receive incentive payments if it uses EHR technology. A hospital is considered to be using EHR technology if it (i) actually uses the EHR technology during the twelve (12) month period specified by the Secretary, (ii) the EHR technology is connected in a manner to provide for the electronic exchange of health information to improve the quality of health care, such as promoting care coordination, and (iii) the hospital uses the EHR to submit information on clinical quality measures and other measures selected by the Secretary and published in Federal Register subject to public comment.

What Are the Steps for Receiving Incentive Payments

The hospital will need to demonstrate its use of EHR through means specified by the Secretary including (i) attestation, (ii) submission of

claims with appropriate coding, (iii) survey response, (iv) submission of information on clinical quality measures and other measures selected by the Secretary, and (iv) other means specified by the Secretary.

If the hospital is a critical access hospital, the payment shall be made through a prompt interim payment after submission and review of such information (as specified by the Secretary) necessary to make the payment.

How Much Will My Incentive Payment Be

For Subsection (d) Hospitals

The incentive payments for each year are based on a calculation equal to \$2,000,000 plus the Discharge Amount (as defined below) multiplied by the Medicare Share (as defined below) and multiplied by the Transition Factor (as defined below).

The "Discharge Amount" is equal to \$200 for each discharge the hospital has between 1,150 and 23,000 in a twelve (12) month period selected by the Secretary.

The "Medicare Share" is equal to Medicare Bed Days divided by Total Bed Days multiplied by the Charity Factor. "Medicare Bed Days" is equal to the estimated number of Part A inpatient bed days plus the estimated number of Part C inpatient bed days during the twelve (12) month period. "Total Bed Days" is equal to the estimated total number of inpatient bed days during the twelve month period. The "Charity Factor" is equal to the hospital's estimated total charges less charges attributable to charity care, divided by the hospital's estimated total charges.

The Transition Factor is equal to:

Payment Year	Transition Factor
First Year	1
Second Year	$\frac{3}{4}$
Third Year	$\frac{1}{2}$
Fourth Year	$\frac{1}{4}$
Fifth+	0

For Critical Access Hospitals

Critical Access Hospitals will receive their incentive via the ability to expense the cost of an EHR, for cost reporting purposes, in a single year. When a Critical Access Hospital becomes a meaningful user, this provision removes any requirement to depreciate the cost for cost reporting purposes. The portion of the EHR cost that may be expensed is calculated utilizing the Medicare Share calculation for Subsection (d) Hospitals as described above plus an additional 20%, provided the total cannot exceed 100%. For Critical Access Hospitals that have incurred EHR expenses

prior to becoming a meaningful user, the provision permits amounts that have not been depreciated to be expensed using the above formula.

Limitations on Incentive Payments

If an eligible hospital has a first payment year of 2013, the eligible hospital can receive incentive payments for four (4) years). If the first year that an eligible hospital requests payment is after 2015, such hospital shall not receive any incentive payments. If the eligible hospital is a critical access hospital, the total amount of payments for all payment years cannot exceed \$1,500,000. The Secretary will be responsible for determining if the incentive payments will be paid in a single consolidated payment or as installments.

If a hospital does not become a meaningful user of a certified EHR technology on or after 2015, the hospital may be subject to reductions in its annual market basket adjustment. This reduction is phased in over three (3) years beginning in 2015 with a twenty-five percent (25%) reduction in 2015, a fifty percent (50%) reduction in 2016, and a seventy-five percent (25%) reduction in 2017. For Critical Access Hospitals that do not become meaningful users of certified EHR technology on or after 2015, the percentage of cost for which it will be reimbursed will be reduced from one hundred one percent (101%) to one hundred and sixty-six hundredths percent (100.66%) in 2015, one hundred and thirty-three hundredths percent (100.33%) percent in 2016, and one hundred percent (100%) in 2017.

Medicaid Incentives – Eligible Professionals and Hospitals

Who Can Receive Incentive Payments

Eligible professionals may receive Medicaid incentive payments up to eighty-five percent (85%) of the net allowable cost for certified EHR technology. For these Medicaid incentive payments, the term "eligible professional" includes physicians, dentists, certified nurse midwives, nurse practitioners, and physician assistants ("PAs") in PA-led rural health clinics ("RHCs") or Federally qualified health centers ("FQHCs"). These professionals must waive their right to payment under sections of the Act related to Medicare professional incentives and MA organizations.

This group of eligible professionals is further subdivided, and includes: (i) an eligible professional who is not hospital-based and who has at least thirty percent (30%) of the professional's volume attributable to Medicaid patients; (ii) a pediatrician who is not hospital-based who has at least twenty percent (20%) of the professional's volume attributable to Medicaid patients; and (iii) FQHCs and RHCs which have at least thirty percent (30%) of their volume attributable to needy individuals. Needy individuals include those who: (i) receive Medicaid assistance; (ii) receive State Children's Health Insurance Program ("SCHIP") assistance; (iii) are provided uncompensated care; and (iv) for whom professionals charge

based on a sliding scale based on patient's ability to pay. For the purposes of this incentive payment, Uncompensated care must be an appropriate proxy for charity care as determined by the Secretary. This figure may require downward adjustment to eliminate bad debt data.

The second group eligible for Medicaid incentive payments comprises children's hospitals and acute care hospitals (not included in the first group) that have at least ten percent (10%) of their volume attributable to Medicaid patients.

How Much Will My Incentive Payment Be

For Professionals

The incentive payments for eligible (non-hospital-based) professionals is based on the difference between average allowable costs and any payments an eligible professional received from sources other than federal, state, and local governments. Average allowable costs are the average first-year costs for purchase and initial implementation or upgrade of EHR technology, and a subsequent year of payment related to the operation, maintenance and use of EHR technology. These average costs are determined by studies conducted by the Secretary or submitted to the Secretary by the States. The *net* allowable cost subtracts from the average allowable cost any payment made from other sources for certified EHR technology or support services. Professionals in this group must pay the remaining fifteen percent (15%) of net allowable costs.

For Hospitals

Medicaid incentive payments for eligible hospital professionals may not exceed the maximum amounts permitted under the following formulas:

- The product of the overall hospital EHR amount and the Medicaid Share. The EHR amount is based on a calculation similar to that for Subsection (d) Hospitals (see above). In that calculation, the Medicare Share is deemed to be one (1) for the first four (4) payment years. The Discharge Amount for purposes of this calculation assumes that discharges increase at the average annual rate of growth of the most recent three years for which discharge data is available. The Medicaid Share is determined in the same way as the Medicare Share except that the inpatient bed days in the numerator are those attributable to Medicaid patients (including those individuals in Medicaid managed care plans).
- Fifty percent (50%) of the product of EHR amount and the Medicaid Share in any single year.
- Ninety percent (90%) of the product of EHR amount and

the Medicaid Share in any two years.

Limitations on Medicaid Incentive Payments

For eligible professionals, first year costs (which must occur prior to 2016) may not exceed \$25,000, and subsequent costs may not exceed \$10,000 per year. Payments must also be made over no longer than five years or after 2021. These limits are two-thirds of the dollar amounts otherwise specified for the pediatricians who are eligible professionals.

Payments for eligible hospitals may not be paid for any year beginning after 2016 (unless the eligible hospital has been provided payment under the formula described above for the previous year, and payments may not extend over a period of more than six (6) years.

No Duplication

The Secretary will ensure coordination with regard to providers under Medicare professional and MA organization provisions to ensure that no duplication occurs with regard to incentive payments.

Federal Financial Participation

States may also receive an incentive in the form of Federal financial participation under SCHIP if it can demonstrate that it is using SCHIP funds for the purpose of administering payment related to this subsection, including tracking meaningful use of EHRs for Medicaid providers, overseeing the incentive program by tracking meaningful use attestations and reporting mechanisms, and pursuing initiatives to encourage the adopted of certified EHR technology.

If you have any questions concerning the Incentives for Eligible Professionals and Hospitals please contact your regular Hall Render Attorney or:

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