

Frequently Asked Questions: CMS' Proposed Rule on Meaningful Use of HIT

On January 13, 2010, the Centers for Medicare & Medicaid Services (CMS) published a proposed rule entitled, "Medicare and Medicaid Programs; Electronic Health Record Incentive Program". The National Council recently hosted a [webinar](#) to outline the major components of the proposed rule and is in the process of compiling comments to submit to CMS. The following Frequently Asked Questions is a compilation of questions posed during the webinar and those that have been submitted to National Council staff since the release of the proposed rule. This document is meant to be read in conjunction with the information reviewed during the [webinar](#). If you have questions or comments you'd like to share with the National Council, please [send](#) to Chuck Ingoglia, Vice President, Public Policy.

Q: Where can I view the proposed rule?

A: The Meaningful Use Proposed rule can be found [online](#). The proposed rule contains instructions on how to submit comments to CMS.

Q: What is the relation between the incentive payments discussed in the proposed rule and federal grant monies that are being made available to States and other entities?

A: The HITECH Act established an array of grant programs, totaling an estimated \$2 billion, to provide technical assistance, planning and other support to States, regional bodies and other entities to facilitate the adoption and sustained utilization of HIT (You can learn more about these grant programs by reviewing the National Council's [fact sheet](#) "HIT Provisions in the ARRA"). In addition, the HITECH Act created a nationwide incentive program directed to Medicaid and Medicare providers to encourage the meaningful use of certified EHRs. This second component of the HITECH Act is the focus of the proposed rule.

Q: The HITECH Act authorized the creation of a Medicare and a Medicaid incentive programs. Can eligible professionals enroll in both?

A: The proposed rule requires that eligible professionals select either the Medicare or Medicaid incentive programs – no individual provider may participate in both (see slide 7). It is anticipated that eligible professionals within CBHOs will be more likely to select the Medicaid incentive program as the maximum cumulative incentive for the Medicaid program is greater than that of the Medicare program (\$63K vs. \$44K) described in the proposed rule.

Q: How are the eligibility criteria for Medicaid HIT incentive payments structured?

A: The HITECH Act established the goal of supporting the "meaningful use of certified EHR" technology through incentive payments for the adoption, utilization, and/or upgrade of such technology by health care entities and eligible professionals. While CBHOs are not explicitly included in the HITECH Act as an eligible health care entity, certain types of providers working within CBHOs could potentially be eligible (e.g. physicians, nurse practitioners) to receive incentive payments if they meet the Medicaid patient volume

threshold (see slide 9) and are willing to meet the other standards for “meaningful use” as outlined in the proposed rule (see slide 6).

Q: Are Community Behavioral Health Organizations (CBHOs) currently eligible to receive Medicaid incentive payments under the proposed rule?

A: CBHOs are currently not eligible to receive incentive payments as entities; however, certain providers, who meet the criteria for eligible professionals (EPs), are eligible to receive incentive payments as individuals and may reassign their payment to their employer/CBHO.

Q: How much Medicaid funding is available for this initiative?

A: In addition to other funds available, The HITECH Act appropriated \$40 million for each of fiscal years 2009-2015 and \$20 million for fiscal year 2016 for the implementation of the Medicaid incentives program. While the Congress was considering the American Recovery & Reinvestment Act (within which the HITECH Act was included), the Congressional Budget Office estimated that both the Medicare and Medicaid incentive payments would cost \$17 billion through 2019.

Q: As a CBHO, we employ a number of psychiatrists and nurse practitioners. Is the CBHO considered the Eligible Provider and entitled to the incentive, or is each employed staff considered an eligible provider and thus an incentive is available for each?

A: In this situation, employed staff who meet the criteria established in the proposed rule would be considered the EP, would be eligible to receive incentive payments, and would be required to reassign the payments to your CBHO.

Q: If EPs are expected to record demographic data such as Race and Ethnicity, how are these terms defined?

A: The proposed rule notes that Race and Ethnicity codes should follow current federal standards published by the Office of Management and Budget. These standards may be accessed [online](#).

Q: What oversight processes will be put in place to ensure federal monies allocated to the States for incentive payments are directed to EPs and not used for other State needs?

A: In order to receive federal match for Medicaid incentive payments (see slide 41), state Medicaid agencies would attest that States would make incentive payments directly without any deduction or rebate. Additionally, the Medicaid agency must attest that the entire incentive payment has been forwarded to the EP and that no EP is required to return any portion of the incentive payment to the State Medicaid Agency. CMS Regional Offices are responsible for providing financial oversight for state incentive programs (pg. 1947). Additionally, the federal government would monitor State Agency compliance through systems performance reviews, on-site reviews, and audits of the APD process (pg. 1948).

Q: What if my CBHO has contract and/or part time physicians or nurse practitioners? Would they be eligible to receive Medicaid incentive payments and re-assign to the CBHO?

A: If a provider meets all other criteria for an EP, is willing to reassign their incentive payment to the CBHO and has at least 50% of their patient encounters at the CBHO where he/she uses certified EHR technology, these providers should be eligible for Medicaid incentive payments under the proposed rule.

Q: How often will EPs be paid through the Medicaid incentive program?

A: The proposed rule proposes that States would disburse payments to EPs in alignment with the calendar year on a rolling basis following the end of the EHR reporting period for the payment year (pg. 2003 and slide 22 for reporting period).

Q: Why are EPs forced to select either the Medicare or Medicaid incentive program?

A: This is a statutory requirement outlined in the HITECH Act and was put in place in order to avoid duplication of payments. An EP may change his/her HER incentive payment program election once before 2015.

Q: Several of the objectives that must be met by EPs in order to receive incentive payments in 2011 require reporting of "structured data" (e.g. maintain active medication lists, demographic information). How is "structured data" defined in the proposed rule?

A: The proposed rule defines "structured data" as follows: "data that have specified data type and response categories within a record or file" (pg. 1856).

Q: How may an EP receive incentive payments for a client who is dually-eligible for Medicare and Medicaid?

A: The proposed rule states that the federal government intends to engage in new efforts to promote Medicare health information exchange with States as well as look for other new ways to meet the care management objectives of this population through HIT. As such, the proposed rule requests comments on how best to serve this population while avoiding duplication of payments (see pg. 1902).

Q: What if a provider is employed at multiple entities? If he/she meets all criteria for an EP, could he/she assign payments to multiple entities?

A: The proposed rule states that each EP may only reassign the entire amount of the incentive payment to one employer or entity (pg. 1996).

Q: Given that the Medicaid incentive payments must first go to the States, what if my State is not ready to administer their incentive program in 2011 but providers are? Similarly, what if certified EHR technology isn't available in 2011?

A: Our initial understanding of the proposed rule indicates that there isn't guidance on either of these subjects. These are topics that must be addressed in comments to CMS.

Q: How does an EP assign payments to his/her employer?

A: The method for how an EP assigns payments to his/her employer must be established by the States. According to the proposed rule, States must establish a mechanism available to all EPs that allows them to designate annual payments and includes information about how the State will ensure that the assignment is voluntary and that no more than 5% of the annual payment is retained by the entity for costs not related to the certified EHR technology (see pg. 2003).

Q: If the Medicaid funding at one's State is through a waiver and not a FFS system - are the incentives still available? If so, how is it anticipated to work?

A: This isn't explicitly addressed in the proposed rule. However, the proposed rule allows flexibility for States to establish a Medicaid incentive program that fits with each State's pre-existing Medicaid program. As such, our initial understanding of the proposed rule indicates that this is an issue that must be addressed on the

State level. Nevertheless, this is a topic that can be discussed in comments to CMS.

Q: MY CBHO has a collaborative relationship with a nearby FQHC. The medical professionals we share are actually employed by the FQHC but my CBHO provides funding to support their salaries. In this situation, could these medical professionals assign their incentive payments to the CBHO?

A: The proposed rule doesn't explicitly address this situation. If medical professionals meet the criteria for EPs and has at least 50% of their patient encounters at the CBHO where he/she uses certified EHR technology, our initial understanding of the proposed rule indicates that they should be able to assign their incentive payment to the CBHO. In this situation, it is important to note that the EPs can only assign their payment to one entity (your CBHO).