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“Meaningful Use” EHR Incentives Promising – BUT Beware

Currently, there are many changes being introduced to the practice of medicine, especially the integration of technology at the practice level. There are many promises tied to this technology, most recently by federal legislation, authorizing incentive payments through the Medicare and Medicaid programs to physicians who can successfully prove that their certified EHR system is being used in a meaningful manner. This is referred to as “meaningful use.” This is a term defined by the Centers for Medicare and Medicaid Services (CMS) and describes the use of health information technology (HIT) that furthers the goals of information exchange among health care professionals.

There are three components of meaningful use under Medicare and Medicaid (see below). In addition, CMS will define the remaining components of meaningful use in a final rule due to be released in spring 2010. Under sections 1848(o)(1)(A)(i) and 1886(n)(1) of the Public Health Service Act, as added by sections 4101(a) and 4102(a) of the HITECH Act, respectively:

- An eligible professional must be a meaningful user for the relevant EHR reporting period in order to qualify for the incentive payment for a payment year. (Note that both programs will pay over a multiple-year period – *Medicare* over five years, *Medicaid* over six years. Non-hospital-based physicians and physicians who work in Federal Qualified Health Centers and rural health clinics can apply for either program but NOT both.)
- Sections 1848(o)(2)(A) and 1886(n)(3)(A) of the Act provide that eligible professionals shall be considered meaningful EHR users for an EHR reporting period for a payment year if they meet the following three requirements:
 1. Demonstrate use of certified EHR technology in a meaningful manner (this includes electronic prescribing);
 2. Demonstrate to the satisfaction of the Secretary of the Department of Health and Human Services that 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, in

- accordance with all laws and standards applicable to the exchange of information; and
3. Use their certified EHR technology to submit to the Secretary, in a form and manner specified by the Secretary, information on clinical quality measures specified by the Secretary.

The HITECH Act requires that to receive a *Medicaid* incentive payment in the initial year of payment, eligible professionals may demonstrate that they have engaged in efforts to “adopt, implement, or upgrade certified EHR technology.”

Payments (other than for the Medicaid initial payment) will not be made for a reporting period if an eligible professional fails to demonstrate meaningful use.

Proposed meaningful use criteria were released by CMS in December 2009, and opportunities for public comment were extended and closed as of March 15, 2010. The final rule, to be published this spring, may include changes as a result of the public comments.

The prospect of receiving funding from these programs is exciting, to say the least. However, physicians should know that in order to qualify for the incentives, certain conditions must be met under either program:

- Under *Medicare*, the incentive is based on Medicare billing amount prior to the initial year of payment for meeting meaningful use. Payment is based on 75% of the amount billed to Medicare prior to the meaningful-use verification year, but there is a cap of \$44,000 – for the entire five-year period.
- *Medicaid*, on the other hand, looks at volume of Medicaid patients and is also capped – at \$63,750 for the six-year period. All non-hospital-based physicians must meet the criteria of having a minimum of 30% Medicaid patients. Pediatricians who do not meet the 30% criteria must have a minimum of 20% Medicaid patients in their then-current patient roster but will only receive two-thirds of the incentive payment. The patient group includes those with Fee-for-Service Medicaid, Managed Care Medicaid plans, and Family Health Plus. If a roster percentage lowers in the reporting year, physicians will have a one-time opportunity to switch over to the *Medicare* program. Different criteria exist for those physicians from Federal Qualified Health Centers and rural health clinics.

MSSNY has been informed that there are some EHR vendors who are promising physicians that they can guarantee that their products will

meet meaningful use. Some have also promised to give free software to physicians in return for their incentive checks. MSSNY urges you to consult your attorneys for legal advice before entering into any deal or contract with a vendor. You should take care to include stipulations that protect you in the event the vendor can not deliver on promises of meaningful use guarantees because these criteria will change over time. Under the meaningful-use criteria, the vendors have a great deal of responsibility to have their product certified, but the financial burden will still remain with the physicians

In addition, all EHR software on the market today, even if already CCHIT (Certified Commission for Health Information Technology)-certified, will be required to be certified by the Office of the National Coordinator for Health Information Technology (ONCHIT) before incentives will be paid.

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