Electronic Health Record Incentive Program Stage 3 Meaningful Use Proposed Rule

Question and Answers

Background

On March 30, 2015, the Centers for Medicare and Medicaid Services (CMS) published a Proposed Rule implementing Stage 3 of the Medicare and Medicaid Electronic Health Record (EHR) Incentive Program, also known as the "meaningful use" program.[1] Stage 3, which is expected to be the final stage of the meaningful use program, aims to simplify program requirements, offer eligible professionals (EPs) and hospitals more flexibility, and support increased interoperability across health IT systems, with the goal of improving patient outcomes. Interested stakeholders must submit comments on CMS's Stage 3 Proposed Rule by 5 pm on May 29, 2015. In addition, the U.S. Department of Health and Human Services recently issued two other Proposed Rules that relate to EHR Incentive Program requirements:

- On March 30, the Office of the National Coordinator for Health Information Technology (ONC) issued a Proposed Rule outlining the requirements for the 2015 Edition Health IT Certification Criteria, which will apply to Stage 3.[2]

- On April 15, CMS issued a Proposed Rule that would make certain changes to meaningful use Stage 1 and Stage 2 requirements for 2015 through 2017, which are aimed at aligning requirements with the proposed approach for the Stage 3 proposal.[3]

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[1] Medicare and Medicaid Programs; Electronic Health Record Incentive Program—Stage 3, 80 Fed. Reg. 16,731 (proposed Mar. 30, 2015) (to be codified at 42 C.F.R. pt. 495), *available at* https://www.federalregister.gov/articles/2015/03/30/2015-06685/medicare-and-medicaid-programs-electronic-health-record-incentive-program-stage-3.

[2] 2015 Edition Health Information Technology (Health IT) Certification Criteria, 2015 Edition Base Electronic Health Record (EHR) Definition, and ONC Health IT Certification Program Modifications, 80 Fed. Reg. 16,804 (proposed Mar. 30, 2015) (to be codified at 45 C.F.R. pt. 170), *available at* https://www.federalregister.gov/articles/2015/03/30/2015-06612/2015-edition-health-information-technology-health-it-certification-criteria-2015-edition-base.

Q. How does the meaningful use program work and why does it matter to providers?

A. The meaningful use program offers financial incentives to providers (i.e., EPs and hospitals) for "meaningfully using" certified EHR technology.[4] Providers must attest to demonstrating meaningful use of their EHR system during specified reporting periods by meeting certain measurement benchmarks in order to qualify for the Medicare and Medicaid incentive payments. If a Medicare provider fails to achieve meaningful use thresholds, beginning this year, CMS will impose payment penalties unless the provider qualifies for a hardship exception. The meaningful use program has three stages, each of which includes escalating requirements for participation. The Proposed Rule would implement the third and final stage of the program.[5]

Stage 3 will require providers to perform increasingly complex tasks using their EHR systems. As such, it is important for providers to understand the proposed requirements and timetables in order to qualify for incentive payments and avoid Medicare payment penalties. In particular, providers may want to consider the following questions as they review the Proposed Rule and prepare for Stage 3:

- ☑ Does the provider's current EHR technology include the necessary capabilities, standards, and specifications to support the proposed Stage 3 requirements?
- ☑ Does the provider have a plan in place to continually train staff on how to effectively use EHR technology in accordance with the proposed Stage 3 objectives?
- ☑ Does the provider understand the proposed updates to the EHR reporting periods and how they would impact the transition to Stage 3?

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[3] Medicare and Medicaid Programs; Electronic Health Record Incentive Program—Modifications to Meaningful Use in 2015 Through 2017, 80 Fed. Reg. 20,345 (proposed Apr. 15, 2015) (to be codified at 42 C.F.R. pt.495), available at https://www.federalregister.gov/articles/2015/04/15/2015-08514/medicare-and-medicaid-programs-electronic-health-record-incentive-program-modifications-to#h-15.

[4] Health IT Regulations, Meaningful Use Regulations, http://www.healthit.gov/policy-researchers-implementers/meaningful-use-regulations (last visited Apr. 8, 2015).

[5] 80 Fed. Reg. at 16,733.

Q. What are the key changes the Stage 3 Proposed Rule would make to the meaningful use program?

A. In general, the Proposed Rule aims to ensure that patients can easily access their health information, encourages providers to coordinate patient care, and improves interoperability by requiring providers to collect data in a format that can be shared across healthcare organizations.[6] Among other proposals, the Proposed Rule would:

- Require all eligible Medicare and Medicaid providers to attest to the 2015 Edition Health IT Certification Criteria to demonstrate Stage 3 meaningful use by 2018, regardless of their prior participation in the meaningful use program. Meeting these criteria is optional in 2017, but becomes mandatory beginning in 2018, allowing providers an extra year to comply than under current regulations;[7]

- Establish a single reporting period for all providers in all stages based on the calendar year;[8]

- Reduce the number of meaningful use objectives from up to 25 objectives down to eight, and provide for greater flexibility for providers to meet those objectives; and

- Require EHRs to allow for sharing data with patients and increase patient-engagement benchmarks.

Q. What are the proposed Stage 3 meaningful use objectives?

A. To qualify for Medicare and Medicaid incentive payments, providers must demonstrate meaningful use of their EHRs by meeting certain objectives. The first two stages of meaningful use each outlined different criteria for different types of providers (i.e., EPs and hospitals). Stage 3 aligns the criteria for all providers. Each objective contains several measures, in some

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[6] *See* ONC, *Moving forward towards an interoperable learning health system: Improving flexibility, simplicity, interoperability and outcomes to achieve a better, smarter and healthier system*, HealthIt.gov (Mar. 2015), http://www.healthit.gov/sites/default/files/CMS-Stage-3-Meaningful-Use-proposed-rule%20_FactSheet.pdf.

[7] 80 Fed. Reg. at 16,767–68.

[8] *See id.* at 16738; 16,769–70.

cases allowing providers to select among different measures to meet the objective. The proposed objectives are:

1. **Protect Patient Health Information.** The Proposed Rule recommends stricter and narrower technical, physical, and administrative safeguards to protect patient medical information.[9]

2. **Electronic Prescribing.** Stage 3 would increase the electronic prescribing thresholds for hospitals and clinics. CMS proposes to require EPs to order more than 80% of prescriptions electronically, and to require hospitals to process 25% of hospital discharge medication orders electronically. CMS solicits comment from stakeholders on whether the agency should require electronic prescriptions for over-the-counter drugs in Stage 3.[10]

3. **Clinical Decision Support.** The clinical decision support objective aims to improve performance on high-priority medical conditions by integrating clinical decision support tools. CMS would require providers to implement five clinical decision support interventions to meet four or more clinical quality measures, such as drug-drug and drug-allergy interaction alerts.[11]

4. **Computerized Provider Order Entry.** Stage 2 requires computerized provider order entry (CPOE) for recording medication, laboratory, and radiology requests. Stage 3 of meaningful use would maintain and develop this requirement by requiring CPOE for over 80% medication orders, over 60% of laboratory orders, and over 60% of diagnostic imaging orders during the reporting period.[12]

5. **Patient Electronic Access to Health Information.** Stages 1 and 2 require several measures aimed at increasing patient access to health information. Stage 3 continues to advance this effort with an emphasis on improving timely access to

[9] *Id.* at 16,731, 16,745–47; 16,798.
[10] *Id.* at 16,747–48; 16,798.
[11] *Id.* at 16,749–50; 16,798.
[12] *Id.* at 16,750–52; 16,799.

health information and opening direct physician-patient communication channels for coordinating care.[13]

6. **Coordination of Care through Patient Engagement.** CMS would continue to encourage open communication between patients and providers by requiring providers to use EHR to engage patients with their care. Under Stage 2 of the program, providers must prove that 5% of their patients viewed, downloaded, or transmitted their records. Stage 3 increases this requirement to 25% of patients.[14]

7. **Health Information Exchange.** Stage 3 would encourage data-sharing to enhance coordination of care and reduce medical errors by requiring providers to provide for summary of care records when patients transition among healthcare providers and settings, to access summary of records when encountering a new patient, and to integrate those records into their EHR technology.[15]

8. **Public Health and Clinical Data Registry Reporting.** CMS aims to make data reporting more flexible and proposes a variety of options through which providers may submit electronic public health data through EHR systems.[16]

Q. ***What is the significance of the proposal to implement a single reporting period based on a calendar year?***

A. Currently, EPs report based on the calendar year, while eligible hospitals and critical access hospitals report based on the federal fiscal year. The Proposed Rule would change the reporting period so that *all* providers, including both EPs and eligible hospitals, would report under a full calendar year timeline, with limited exceptions. The Proposed Rule would also do away with the current 90-day reporting period for first-time reporters. Instead, it would impose the same calendar-year reporting period, meaning that providers attesting for the first time in 2018 would need to attest to meaningful use for the full 2017 calendar year.[17]

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[13] *Id.* at 16,752–55; 16,799.

[14] *Id.* at 16,755–58; 16,799.

[15] *Id.* at 16,758–62; 16,800.

[16] *Id.* at 16,762–63; 16,801–03.

[17] *See id.* at 16,769–70; 16,773.

CMS also proposes to change the reporting period for Stages 1 and 2 to the calendar year.[18] For 2015 only, both first-time reporters and returning participants would be allowed to attest to meaningful use for a designated 90-day period within the calendar year to allow participants to adjust to the new changes.[19] Beginning in 2016, however, only first-time reporters would be permitted to attest to a 90-day reporting period.[20] Returning participants would be required to attest to a full calendar year beginning in 2016.[21]

Q. Will there be any other changes to the Stage 1 and Stage 2 meaningful use requirements?

A. Yes. CMS's April 15 Proposed Rule would align Stage 1 and Stage 2 objectives and measures with the Stage 3 proposals discussed above. To gradually allow providers to implement changes to meet the proposed long-term requirements for Stage 3, the Proposed Rule would:

- Eliminate measures that are redundant, duplicative, or have "topped out" (i.e., have reached widespread adoption);[22] and
- Reduce the number of meaningful use objectives in preparation for Stage 3.[23]

Q. How much will it cost providers to implement a certified EHR?

A. Based on the Congressional Budget Office's estimate, CMS predicts that it would cost an EP roughly $54,000 to purchase and implement a certified EHR and $10,000 annually for ongoing maintenance.[24] CMS estimates that a hospital would need to spend $5 million to upgrade and $1 million for annual maintenance.[25]

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[18] 80 Fed. Reg. 20,346, 20,348.
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.* at 20,348–49.
[24] 80 Fed. Reg. 16,732, 16,791.
[25] *Id.* at 16,789.

Q. Will Stage 3 be the final stage of meaningful use?

A. According to the Proposed Rule, CMS plans for Stage 3 to be the final stage of the meaningful use framework. The agency did not, however, foreclose the possibility of issuing further rulemaking to address future changes to EHR technology.[26]

Q. How can an interested individual or organization submit comments on the Proposed Rule?

A. Comments to CMS's Proposed Rule on Stage 3 of meaningful use can be submitted by mail or electronically through http://www.regulations.gov/#!documentDetail;D=CMS-2015-0033-0002 (reference file code CMS-3310-P) and comments to ONC's Proposed Rule setting forth the 2015 Edition Health IT Certification Criteria can be submitted by mail or electronically through http://www.regulations.gov/#!documentDetail;D=HHS_FRDOC_0001-0572 (reference file code 0991-AB93). Comments for these Proposed Rules must be received no later than 5 pm on May 29, 2015.

Comments to the April 15 Proposed Rule related to Stage 1 and Stage 2 requirements can be submitted by mail or electronically through http://www.regulations.gov/#!documentDetail;D=CMS-2015-0045-0001 (reference file code CMS-3311-P). Comments to this Proposed Rule must be received no later than 5 pm on June 15, 2015.

[26] *Id.* at 16,733.