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## CMS Issues Final Rule for “Meaningful Use” of Electronic Health Record Technology

Health care providers now have the opportunity to receive significant financial incentives for the adoption and “meaningful use” of certified electronic health record (“EHR”) technology. On July 28, 2010, after receiving more than 2,000 public comments, the Centers for Medicare & Medicaid Services (“CMS”) published its much-anticipated meaningful use final rule (the “Rule”). This Client Alert provides a general overview of the Rule’s requirements for achieving meaningful use of EHR technology. Because the Rule includes a highly detailed set of performance criteria, you are encouraged to contact one of the authors listed below for more information regarding your EHR preparation and implementation activities.

### WHAT IS MEANINGFUL USE?

To demonstrate meaningful use, physicians and hospitals must generally: (1) use certified EHR technology in a meaningful manner; (2) participate in the electronic exchange of health information to improve quality of care; and (3) submit information on specified quality measures. CMS will implement the meaningful use criteria in three stages, with Stage 1 beginning in 2011. CMS is to establish Stage 2 and Stage 3 criteria at a later date.

### THE STAGE 1 MEANINGFUL USE CRITERIA

The Stage 1 criteria focus on: (1) electronically capturing health information; (2) communicating such information for care coordination purposes; (3) implementing clinical decision support tools; and (4) reporting clinical quality measures. The Rule includes 25 discrete objectives for physicians, and 24 objectives for hospitals, aimed at achieving the following goals:

- Improving Quality, Safety, and Efficiency, and Reducing Health Disparities
- Engaging Patients and Families
- Improving Care Coordination
- Improving Population and Public Health
- Ensuring Privacy and Security of Personal Health Information

Examples of the Stage 1 objectives include utilizing computerized physician order entry and electronic prescribing, providing patients with electronic access to their health information, and exchanging key clinical information among health care providers. Under the Rule, the meaningful use objectives are divided into a “core” group of 15 required objectives (14 for hospitals) and a “menu set” of 10 objectives from which the provider may choose. Providers must meet *all* of the core objectives and 5 of the menu set objectives to demonstrate meaningful use and thus qualify for financial incentives.

### ELIGIBILITY AND MEANINGFUL USE INCENTIVES

#### *Eligible Professional Medicare Incentives*

Under the Rule, “eligible professionals” (“EPs”) that demonstrate meaningful use of EHR technology may receive a maximum of \$44,000 in Medicare incentive payments. For purposes of the Medicare incentive program, EPs include doctors of medicine or osteopathy, doctors of dental surgery or dental medicine, podiatrists, optometrists, and chiropractors.

#### *Eligible Professional Medicaid Incentives*

EPs may receive up to \$63,750 in Medicaid incentive payments for demonstrating meaningful use. Under the Medicaid incentive program, EPs include physicians, dentists, certified nurse midwives, nurse practitioners, and physician assistants practicing at federally qualified health centers or rural health clinics led by a physician assistant. In addition, Medicaid EPs must show at least a 30% Medicaid patient volume over any continuous 90-day period in the calendar year preceding the incentive payment year. EPs that qualify for both the Medicare and Medicaid

incentive programs may only participate in one program; however, the Rule allows EPs to make a one-time switch between incentive programs.

#### *Hospital-Based Eligible Professionals*

Hospital-based EPs are not eligible for Medicare or Medicaid incentive payments. EPs are considered “hospital-based” if 90% or more of their professional services are performed in the inpatient hospital or emergency room setting. Under the Medicaid incentive program, hospital-based EPs practicing predominantly in federally qualified health centers or rural health clinics are not subject to the hospital-based EP exclusion.

#### *Hospital Incentives*

Eligible hospitals may receive Medicare *and* Medicaid incentive payments for demonstrating meaningful use. Unlike physicians, hospitals that qualify for the Medicare and Medicaid incentive programs may participate in *both* programs. An eligible hospital’s incentive payment is calculated using a complex formula based on the hospital’s number of discharges, amount of charity care, and percentage of Medicare or Medicaid inpatient bed days. Under the Medicare incentive program, eligible hospitals include hospitals paid under the Medicare Inpatient Prospective Payment System and certain critical access hospitals. For purposes of the Medicaid incentive program, eligible hospitals include acute care hospitals (including critical access hospitals) with a Medicaid patient volume of at least 10%, and children’s hospitals.

### **PHYSICIAN AND HOSPITAL PENALTIES FOR FAILURE TO ACHIEVE MEANINGFUL USE**

Physicians that fail to demonstrate meaningful use by 2015 will face reductions in their Medicare reimbursement rates, receiving 99% of the Medicare Physician Fee Schedule rates in 2015, 98% in 2016, and 97% in 2017 and subsequent years, while hospitals will face reductions in their annual Medicare Inpatient Prospective Payment System market basket update.

### **PREPARATION FOR MEANINGFUL USE**

Preparations for achieving meaningful use should start now. Organizations should begin by conducting an assessment to determine what technology, staff, and other resources are needed to achieve meaningful use. We are prepared to provide your organization guidance on the requirements of the Rule, and to assist with implementation efforts, including negotiations related to the licensing of certified EHR technology.

For further information, please contact one of the Smith Anderson lawyers listed below or the Smith Anderson lawyer with whom you work.

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