HHS to Delay Stage 2 Meaningful Use Requirements

By Jennifer Breuer, Jeffrey Ganiban and Sara Shanti

Last week, the U.S. Department of Health and Human Services (HHS) announced plans to offer health care providers additional time to meet Stage 2 meaningful use objectives for Medicare and Medicaid Electronic Medical Record (EMR) Incentive Programs. In a continued effort to incentivize providers to implement health care information technology (IT), Secretary Kathleen Sebelius stated that HHS intends to delay Stage 2, allowing providers to adopt health IT in 2011 without meeting the new requirements until 2014. Under the current timetable, providers attesting Stage 1 standards in 2011 must attest Stage 2 standards in 2013.

The extension of Stage 2 implementation will affect only those providers who attest to Stage 1 in 2011. HHS’ announcement did not include any extension of Stage 2 for those providers who begin participation in 2012. Therefore, providers attesting to Stage 1 meaningful use in 2012 will begin Stage 2 in 2014 as planned. Nor did the announcement postpone the date upon which Medicare penalties go into effect for those providers not using a certified EHR. Beginning in 2015, Medicare eligible providers who fail to successfully demonstrate meaningful use will receive a downward adjustment to their Medicare reimbursement. The adjustment starts at a one percent (1 percent) reduction and increases each year meaningful use is not successfully demonstrated, with a maximum reduction of five percent (5 percent).

The Programs’ financial incentives and penalties are provided for under the Health Information Technology for Economic and Clinical Health (HITECH) Act of 2009, enacted as part of the American Recovery and Reinvestment Act of 2009. The Programs provide payments to qualified health care professionals and hospitals who achieve meaningful use of certified EHR technology in line with HHS’ health and efficiency goals. Meaningful use requirements are set forth in three stages; however, final rules for Stage 2 and Stage 3 requirements remain pending. EHR incentive payments for “Eligible Professionals” under the Medicare EHR Incentive Program can total as much as $44,000 over five years or $63,750 for “Eligible Professionals” who qualify under the Medicaid EHR Incentive Program. Based on the Program Payment Schedule, it is in providers’ financial interest to attest Stage 1 as early as possible for maximum payment.
Last week’s announcement indicates HHS’ intent to delay the Stage 2 meaningful use through its Notice of Proposed Rulemaking (NPRM). The NPRM is scheduled to be published in February 2012, and the anticipated release of the Final Rule for Stage 2 is June 2012. HHS has acknowledged that the current timetable would require EHR vendors to design, develop and release new functionality, and for eligible hospitals to upgrade, implement and begin using the new functionality by the beginning of the reporting year in October 2012 (FY 2013). A delay in Stage 2 will allow vendors sufficient time to develop EHR technologies that comply with the Stage 2 certification requirements. HHS believes such a delay will also give providers time to certify and implement the necessary software to meet the challenges of Stage 2.

If the Final Rule is promulgated as proposed in the NPRM, eligible providers who attest to Stage 1 meaningful use in 2011, will not be required to meet Stage 2 meaningful use standards in 2013, but will have until 2014 to meet the those thresholds and receive incentive payments. Moreover, providers who adopted health IT in 2011 will receive three years of incentive payment for demonstrating Stage 1 meaningful use. In effect, these doctors and hospitals would receive the majority of the maximum incentive payout while meeting only Stage 1 standards.

To receive an incentive payment, providers must attest that they have demonstrated meaningful use of certified EHR technology during the EHR reporting period. The reporting period for the first year is any 90 continuous days during the reporting year. After the first year of reporting, the period for eligible hospitals and critical access hospitals (CAHs) is the entire federal fiscal year (FY). Eligible hospitals and CAHs that adopt and successfully demonstrate meaningful use of certified EHR technology can begin receiving incentive payments for any year from 2011 through FY 2015. Providers that do not meet the Stage 1 meaningful use criteria in 2011 should plan to attest Stage 1 in 2012 to receive incentive payments.

HHS stated that the proposed delay in Stage 2 is meant to make it easier to adopt health IT, which can improve access and coordination of care and reduce costs. “When doctors and hospitals use health IT, patients get better care and we save money,” Secretary Sebelius stated, adding “we’re making great progress, but we can’t wait to do more.” Accordingly, the Centers for Disease Control and Prevention (CDC) released data, showing the percentage of physicians who have adopted EHRs has doubled since 2008. In giving providers until 2014 to implement Stage 2 meaningful use requirements, HHS hopes to encourage more professionals and facilities to implement EHRs and benefit from the Incentive Programs as well as the health IT.
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