

## CMS Proposes Change to 2014 “Meaningful Use” Rules

Authors:  
Bruce D. Armon  
Karilynn Bayus

### SUMMARY

In the May 23, 2014 issue of the Federal Register (79 FR 29732), the Centers for Medicare & Medicaid Services (“CMS”) published a proposed rule (the “Proposed Rule”) that would change the so-called meaningful use stage timeline, and modify the definition of certified electronic health records technology (“CEHRT”). The net effect of the Proposed Rule, if adopted as a final rule, will be to assist providers to qualify for incentive payments in 2014 and continue to advance the federal government’s electronic health records initiative.

The American Recovery and Reinvestment Act of 2009 authorized incentive payments to eligible professionals, hospitals, critical access hospitals (“CAHs”) and Medicare Advantage organizations to promote the adoption and meaningful use of CEHRT. “Meaningful use” is using CEHRT to improve quality, safety, efficiency and reduce health disparities; engage patients and family; improve care coordination, population and public health; and, maintain privacy and security of patient health information. CMS has established specific objectives and measures that providers must satisfy to qualify for an incentive payment. These objectives evolve over the course of three (3) stages. The effective date for each of the three (3) stages depends on the year the provider first attests to meaningful use.

The current regulatory definition of CEHRT requires, beginning in calendar year 2014 and federal government fiscal year ending in 2014, that EHR technology be certified to the 2014 Edition EHR certification criteria in order for a provider to qualify for an EHR incentive payment. In the Proposed Rule, CMS acknowledged that the amount of time available after its publication of the Stage 2 final rule in September 2012, was too short to allow vendors to make the appropriate coding changes to enable the EHR products to be certified to the 2014 Edition standards. The problem was compounded by the number of providers that need to install the 2014 Edition CEHRT so that they can successfully attest for 2014 and receive the incentive payment. In the preamble to the Proposed Rule, CMS states that by the end of February 2014, more than 350,0000 providers had received an EHR incentive payment for adopting, implementing, upgrading or successfully demonstrating meaningful use using the 2011 Edition CEHRT.

In light of the apparent technology issues and backlog of providers waiting for updates, CMS has proposed three (3) different options in the Proposed Rule for providers with respect to the 2014 reporting period only:

- **Using 2011 Edition CEHRT Only** – eligible providers, hospitals and CAHs that use only the 2011 Edition CEHRT in 2014 must meet the same meaningful use objectives and measures for Stage 1 as were applicable in 2013. Providers who choose this option must attest that they are unable to fully implement the 2014 Edition CEHRT because of issues related to delay in availability of the 2014 Edition CEHRT.

- **Using a Combination of 2011 and 2014 Edition CEHRT** – eligible providers, hospitals and CAHs that use a combination of the 2011 Edition CEHRT and the 2014 Edition CEHRT in reporting period 2014 may choose to satisfy the 2013 Stage 1 objectives and measures or the 2014 State 1 objectives and measures, or if they are scheduled to begin Stage 2 in 2014, they may choose to attain the Stage 2 objectives and associated measures. Providers who choose this option must attest that they are unable to fully implement the 2014 Edition CEHRT because of issues related to the delay in availability of the 2014 Edition CEHRT.
- **Using 2014 Edition CEHRT for 2014 Stage 1 Objectives and Measures in 2014 for Providers Scheduled to Begin Stage 2** – Providers scheduled to begin Stage 2 for the 2014 reporting period but unable to fully implement all of the functions of the 2014 Edition CEHRT due to delays in 2014 Edition CEHRT being available have the option of using 2014 Edition CEHRT to attest to 2014 Stage 1 objectives and measures for the 2014 reporting period. Providers who are scheduled to begin Stage 2 in 2014 who choose this option must attest that they are unable to fully implement the 2014 Edition CEHRT because of issues related to the delay in availability of the 2014 Edition CEHRT.

Under the Proposed Rule, these three (3) options would be in effect for the 2014 reporting year only.

In the Proposed Rule, CMS also proposed a one-year extension of Stage 2 for those eligible providers, hospitals and CAHs that first became meaningful users in 2011 or 2012 and who are currently required to begin Stage 3 on January 1, 2016 (for eligible providers) or October 1, 2015 (for eligible hospitals or CAHs).

As part of the Proposed Rule, CMS strongly recommends that eligible professionals, hospitals and CAHs that have not yet purchased EHR technology obtain the 2014 Edition CEHRT.

Further, “to avoid inadvertently incentivizing the purchase of an outdated product that cannot be used to demonstrate meaningful use in a subsequent year,” CMS suggests in the Proposed Rule that a provider must adopt, implement or upgrade to a 2014 Edition CEHRT in order to qualify for an incentive payment under Medicaid for 2014.

Comments with respect to the Proposed Rule must be submitted to CMS by July 21, 2014.

A relaxation of the CEHRT requirements in 2014 will assist providers of all sizes who are looking to upgrade their EHR technology to ensure they are purchasing the most advanced systems, and enable the federal government to continue to promote the benefits of EHR and the advantages of compliance with meaningful use.

Saul Ewing attorneys have substantial experience in advising clients on EHR and meaningful use technology and drafting agreements related to these issues. For more information on these matters, please contact Bruce Armon or Karilynn Bayus, or the attorney at the Firm with whom you are regularly in contact.

---

This Alert was written by Bruce D. Armon, a member of the firm's Health Practice and Managing Partner of the Philadelphia office, and Karilynn Bayus, a member of the firm's Health Practice. Bruce can be reached at 215.972.7985 or barmon@saul.com. Karilynn can be reached at 215.972.1892 or kbayus@saul.com. This publication has been prepared by the Health Practice for information purposes only.

The provision and receipt of the information in this publication (a) should not be considered legal advice, (b) does not create a lawyer-client relationship, and (c) should not be acted on without seeking professional counsel who have been informed of the specific facts. Under the rules of certain jurisdictions, this communication may constitute “Attorney Advertising.”

© 2014 Saul Ewing LLP, a Delaware Limited Liability Partnership.  
ALL RIGHTS RESERVED.