

# THE ECONOMICS OF MEDICAL PRACTICE UNDER HIPAA/HITECH

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# AGENDA

1. Meaningful Use Incentives
2. HIPAA Enforcement and Compliance

# MEANINGFUL USE INCENTIVES FOR ELIGIBLE PROFESSIONALS

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## MEANINGFUL USE INCENTIVES

- Medicare Electronic Health Record (EHR) Incentive Program provides for incentive payments to Medicare Eligible Professionals who are meaningful users of certified EHR technology
- Medicaid Electronic Health Record (EHR) Incentive Program provides incentive payments for Medicaid Eligible Professionals who adopt, implement, upgrade, or meaningfully use certified EHR technology in their first year of participation in the program, and successfully demonstrate meaningful use in subsequent years

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## ELIGIBLE PROFESSIONALS

- Medicare Eligible Professional is defined as
  - Doctor of medicine or osteopathy
  - Doctor of oral surgery or dental medicine
  - Doctor of podiatric medicine
  - Doctor of optometry
  - Chiropractor
- Medicaid Eligible Professional is defined as
  - Physicians
  - Dentists
  - Certified nurse-midwives
  - Nurse practitioners
  - Physician assistants practicing in a Federally Qualified Health Center (FQHC) or a Rural Health Center (RHC) led by a physician assistant

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## ELIGIBLE PROFESSIONALS

- Hospital-based Eligible Professionals are generally not eligible to participate in either of the EHR Incentive Programs
  - Hospital-based means 90% or more of time in hospital inpatient or emergency department
  - Exception for Medicaid Eligible Professionals practicing predominately in an FQHC or RHC
- Eligible Professionals may not receive EHR incentive payments from both the Medicare and Medicaid programs in the same year
  - In the event an Eligible Professional qualifies for EHR incentive payments from both the Medicare and Medicaid programs, the Eligible Professional must elect to receive payments from only one program
  - Prior to 2016, could switch between the two programs once
  - Eligible Professional who selects Medicaid must only receive incentive payments from one state in any payment year

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# MEDICARE INCENTIVE PROGRAM

- Under the Medicare Incentive Program, the EHR incentive payment amount, subject to an annual limit, is equal to 75% of an Eligible Professional's Medicare physician fee schedule allowed charges
  - For Eligible Professionals who provide 50% of their services in an HPSA, a 10% bonus on payments
- Eligible Professional must have started participating in the Medicare Incentive Program no later than 2014 to receive payments
- Payments will terminate in 2016
- In addition to incentives, starting in 2015 and moving forward, if an Eligible Professional fails to satisfy Meaningful Use criteria, she/he will be subject to a payment adjustment– a reduction in the physician fee schedule payments
  - In 2016, only receive 98% of Medicare physician fee schedule covered amount
  - In 2017, and beyond only receive 97%
  - If it is determined that for 2018 and subsequent years, that less than 75% of Eligible Professionals are meaningful users, then payment adjustment will change by 1% each year until the payment adjustment reaches 95%

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# MEDICARE INCENTIVE PROGRAM

- Meaningful Use Objectives
- Objective 1
  - Objective: Protect electronic health information through the implementation of appropriate technical capabilities
  - Measure: Conduct or review a security risk analysis
- Objective 2
  - Objective: Use clinical decision support to improve performance on high-priority health conditions
  - Measure: Implement five clinical decision support interventions related to 4 or more clinical quality measures or high priority health conditions
  - Measure: Enable and implement drug-drug and drug-allergy interaction checks



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# MEDICARE INCENTIVE PROGRAM

- Objective 3
  - Objective: Use computerized provider order entry (“CPOE”) for medication, laboratory, and radiology orders
  - Measure: More than 60% of medication orders are recorded using CPOE
  - Measure: More than 30% of laboratory orders are recorded using CPOE
  - Measure: More than 30% of radiology orders are recorded using CPOE
- Objective 4
  - Objective: Electronic prescribing
  - Measure: More than 50% of prescriptions written are queried for a drug formulary and transmitted electronically

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# MEDICARE INCENTIVE PROGRAM

- Objective 5
  - Objective: Eligible professional who transitions or refers patient to another setting of care or provider of care provides a summary care record
  - Measure: Eligible Professional that transitions or refers their patient to another setting of care or provider of care must use CEHRT to create a summary of care record and electronically transmit such summary to a receiving provider for more than 10% of transitions of care and referrals
- Objective 6
  - Objective: Use clinically relevant information from CEHRT to identify patient-specific education resources and provide those resources to the patient
  - Measure: Patient-specific education resources identified by CEHRT are provided to patients for more than 10% of all unique patients with office visits

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# MEDICARE INCENTIVE PROGRAM

- Objective 7
  - Objective: Eligible Professional who receives a patient from another setting of care or provider of care or believes an encounter is relevant performs medication reconciliation
  - Measure: Eligible Professional performs medication reconciliation for more than 50% of transitions of care to the Eligible Professional
- Objective 8
  - Objective: Provide patients the ability to view online, download, and transmit their health information within 4 business days of the information being available to the Eligible Professional
  - Measure: More than 50% of all unique patients are provided timely access to view online, download, and transmit their health information
  - Measure: At least one patient views, downloads or transmits his or her health information

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# MEDICARE INCENTIVE PROGRAM

- Objective 9
  - Objective: Use secure electronic messaging to communicate with patients
  - Measure: The capability for patients to send and receive a secure electronic message was fully enabled
- Objective 10
  - Objective: Eligible professional is in active engagement with a public health agency to submit electronic public health data
  - Measure: Immunization Registry Reporting - The Eligible Professional is in active engagement with a public health agency to submit immunization data
  - Measure: Syndromic Surveillance Reporting - The Eligible Professional is in active engagement with a public health agency to submit syndromic surveillance data
  - Measure: Specialized Registry Reporting - The Eligible Professional is in active engagement to submit data to a specialized registry

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## MEDICARE INCENTIVE PROGRAM

- Certain exclusions apply to each objective and measure
  - Allowing providers who were previously scheduled to be in a Stage 1 reporting period for 2015 to use a lower threshold for certain measures
  - Allowing providers to exclude for Stage 2 measures in 2015 for which there is no Stage 1 equivalent
  - Allowing providers to exclude Modified Stage 2 measures in 2015 where a previous menu measure is now a requirement

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## MEDICAID INCENTIVE PROGRAM

- To participate in the Medicaid EHR Incentive Program, an Eligible Professional must
  - Meet a 30% Medicaid patient volume threshold
    - Divide the Eligible Professional's encounters with Medicaid-enrolled patients by total number of service encounters
    - Pediatricians only need to have at least 20% Medicaid patient volume but at a reduced incentive amount
  - Practice predominantly in a FQHC or RHC where 30% of the patient volume is derived from needy individuals

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## MEDICAID INCENTIVE PROGRAM

- 2016 is the last year to begin participating in the Medicaid EHR Incentive Program
- Eligible Professionals may receive Medicaid EHR incentive payments for up to 6 years
  - 2021 is the final year for Medicaid EHR incentive payments
- Medicaid incentive payments for each year commencing in 2016 through 2021 are \$8,500

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## RECENT DEVELOPMENTS

- Hardship exception just signed into law
  - Blanket hardship exemption from 2015 meaningful use penalties, which would have been assessed in 2017
  - Eligible Professionals will have until March 15 to apply
- Senate bill 1347 would grant incentives to Eligible Professionals practicing in ambulatory surgery centers
  - Until such time as EHR technology is certified specifically for use in the ambulatory surgical centers, patient encounters that occur in such a center would not be used when calculating whether an Eligible Professional meets Meaningful Use requirements



# HIPPA ENFORCEMENT AND COMPLIANCE

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## HIPAA AUDITS

- Phase 2 of HIPAA audits of covered entities and business associates will begin in early 2016
- Third-party vendor will conduct the audits
  - Includes covered entities and business associates
    - OCR has identified business associates as one of top enforcement priorities
    - Business associates are now subject to the same penalties as covered entities which range from \$100 - \$1.5 million per violation in a calendar year
  - Estimated that 200 desk audits and 24 on-site audits will be completed by the end of 2016
  - Prior audit protocol has been updated and is available at:  
<http://www.hhs.gov/hipaa/for-professionals/compliance-enforcement/audit/protocol-current/index.html>

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# PREPARING FOR HIPAA AUDITS

- Covered entities and business associates should perform security risk assessments
- Review HIPAA polices
  - Privacy practices
  - Training
  - Technical and physical security safeguards
- Compile and have copies ready of:
  - Previous audit reports
  - Risk assessments
  - Business associate agreements
- Include legal counsel early on in preparation
  - Audit response plan
  - Corrective action for vulnerabilities identified during risk assessment

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# PREPARING FOR HIPAA AUDITS

- HIPAA policies and procedures
  - Phase 2 audits are desk audits
    - Paperwork is submitted to the OCR but no interviews are conducted
  - Review existing policies related to
    - Security
    - Breach notification
    - Use, maintenance and disclosure of protected health information (PHI)
  - Training of workforce on each

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# PREPARING FOR HIPAA AUDITS

- Business associates
  - Phase 2 will examine the compliance measures of each selected covered entity's business associates
  - Prepare list of all business associates
    - Legal counsel
    - Accountants
    - Consultants

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# PREPARING FOR HIPAA AUDITS

- Breach notification
  - Phase 2 audits will be more stringent than prior audits
  - Breach response process and protocols
  - Mitigation procedures
  - Business associate breach response

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# HIPAA BREACH NOTIFICATION

- Costs associate with HIPAA breach are astronomical
  - Investigation
  - Notification: Online, mailing, telephone
    - Patients
    - OCR
    - Media
  - Mitigation/credit monitoring/remediation
  - Penalties
  - Legal fees/defense costs
    - Civil litigation
    - State attorneys general actions
  - Loss of business/goodwill
  - Estimate is up to \$200/patient
  - Average cost per patient record is estimated \$359
- Cyber Liability/breach insurance

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# HIPAA BREACH NOTIFICATION

- Minimizing costs associated with HIPAA breaches
  - Perform a risk assessment
  - Review and update policies and procedures
  - Encryption at rest and in transmission
  - Adequate insurance is in place to cover breach events and related liability
  - Address business associate relationships appropriately



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## QUESTIONS?



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# THANK YOU

Legal Disclaimer: This document is not intended to give legal advice. It is comprised of general information. Employers facing specific issues should seek the assistance of an attorney.

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