



**MLN Connects™**

**National Provider Call Transcript**



**Centers for Medicare & Medicaid Services  
CMS 2014 Certified EHR Technology Flexibility Rule  
MLN Connects National Provider Call  
Moderator: Diane Maupai  
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**Operator:** At this time I would like to welcome everyone to today's MLN Connects National Provider Call. All lines will remain in a listen-only mode until the question-and-answer session. This call is being recorded and transcribed. If anyone has any objections, you may disconnect at this time. I will now turn the call over to Diane Maupai. Thank you, you may begin.

## Announcements and Introduction

Diane Maupai: Thank you. Hello everyone, and thanks for joining us today. This is Diane Maupai from the Provider Communications Group here at CMS in Baltimore. I'll be serving as your moderator today. Welcome to this MLN Connects Call about the CMS 2014 Certified EHR Technology Flexibility Rule — that's a mouthful.

Today's National Provider Call is part of the Medicare Learning Network. During this call CMS experts will be discussing that rule that went into effect at the beginning of this month, October the 1<sup>st</sup>. And before we get started I have a few announcements.

You should have received a link to the slide presentation for today's call in previous registration emails. If you've not already done so, please view and download the presentation from the following URL, [www.cms.gov/npc](http://www.cms.gov/npc). Again, that URL is [www.cms.gov/npc](http://www.cms.gov/npc). At the left side of the web page select National Provider Calls and Events, then select the October 30<sup>th</sup> call from the list. And second, this call is being recorded and transcribed. An audio recording and written transcript will be posted to the [MLN Connects Call](#) website. An announcement will be placed in the [MNL Connects Provider eNews](#) when these are available.

So at this time let's start with the cover slide, and I will introduce our CMS experts for today. From the Office of E-Health Standards and Services we have Vidya Sellappan, who's a Health Insurance Specialist and we also have Beth Myers, who is the Policy and Outreach Lead for CMS eHealth Initiatives. So with that, I will turn the call over to Vidya, who is going to be doing a presentation today and Beth will be joining us a little bit later for the question-and-answer session of our call.

## Presentation

Vidya Sellappan: Thank you Diane and thanks to all of you for joining. I'm going to start on slide 3. I'm just going to — this is just a disclaimer, and I'm not going to read it out to you. But essentially, I just wanted to let you know that this presentation provides — is only intended to be a general summary of the CEHRT — the 2014 CEHRT Flexibility Rule. It's not intended to take the place of either the written law or regulation. So we encourage you, if you have in-depth questions or need a resource, to visit the regulation, the 2014 CEHRT Flexibility Rule, to get definitive answers to many of your questions.

So, slide 4 is just the agenda, the things that we're going to be going over today is an overview of the CMS 2014 CEHRT Flexibility Rule. We'll go over the Attestation System and the [CHPL](#) website on ONC's website. We'll go over payment adjustments and hardship exceptions, particularly as it pertains to demonstrating meaningful use in 2014. We'll touch on reporting. We will touch on some of the Frequently Asked Questions around the CEHRT Flexibility Rule. And then I'll just direct you to some resources that we have available to answer many of your questions.

### **The CMS 2014 CEHRT Flexibility Rule**

So now we'll move on to slide 6. So the CMS 2014 CEHRT Flexibility Rule was published on August 29<sup>th</sup>. It was published on display on September 4<sup>th</sup>. The rule itself became effective on October 1<sup>st</sup> and it did three things. The main thing that everybody is very familiar with is that it allows providers to meet meaningful use with EHR certified to either 2011 or the 2014 Edition criteria, or a combination of both of these editions CEHRT to meet meaningful use in an EHR reporting period in 2014.

In addition, the rule includes some language that indicates that the 2014 Edition Certified EHR Technology must be used for a reporting period in 2015. So while there's some flexibility that we're offering for the 2014 EHR reporting period, for 2015 every provider will be required to use a 2014 Edition Certified EHR Technology. The rule also extends — it finalizes the CMS and ONC recommendation that Stage 2 be extended through 2016. So the earliest anyone can participate in Stage 3 of meaningful use will now be 2017.

So slide 7. The CEHRT flexibility is only available to providers who are unable to fully implement 2014 Edition Certified EHR Technology for their reporting period in 2014 due to delays in 2014 Edition CEHRT availability. So when I say delays, specifically, vendor — delays caused by some of the vendor issues that we've seen and heard about in the industry.

One thing I do also want to point out — first-year Medicaid participants who are participating in adopt, implement, upgrade, or AIU, are — do not qualify for CEHRT flexibility. If you are a first-year Medicaid participant and you are doing AIU, you have to use 2014 Edition CEHRT to qualify for incentive payments.

So slide 8 and 9 go over some of the flexibility options. The flexibility options are determined by the stage of meaningful use that a provider is scheduled to meet in 2014, as well as the Edition of Certified EHR Technology that they will be using. So if you are a provider that is scheduled in 2014 to meet Stage 1, if you are using a 2011 Certified EHR Technology, you will report on 2013 definition of Stage 1 objectives along with 2013 CQMs. If you are scheduled to do Stage 1 and you have a combination of 2011 and 2014 Edition Certified EHR Technology, you will have two choices. You can either report on 2013 definition of Stage 1 objectives and 2013 CQMs or 2014 definition of Stage 1 objectives and 2014 CQMs. And if you are planning to use a 2014 Certified EHR

Technology, you would be scheduled to use — you would be using a — you would be reporting on the 2014 definition of Stage 1 objectives and the 2014 CQMs.

Moving on to slide 9. For those providers that are scheduled in 2014 to report on Stage 2 meaningful use objectives, there are a few other flexibility options you have depending on the edition of Certified EHR Technology that you'll be using. If you're scheduled to do Stage 2 of meaningful use and you're using a 2011 Edition CEHRT, you will be reporting on the 2013 definition of Stage 1 objectives and 2013 CQMs.

Now, if you're using a combination of 2011 and 2014 Edition CEHRT, you have one of three options:

- You can do 2013 definition of Stage 1 objectives and 2013 CQMs,
- You can do 2014 definition of Stage 1 objectives and 2014 CQMs, or
- You can choose to do 2014 definition of Stage 2 objectives and 2014 CQMs.

Now if you are reporting — if you're scheduled to do Stage 2 and you have a 2014 Certified EHR Technology, but you also qualify for the flexibility for not being able to fully implement the entire Certified EHR Technology, you have a choice of reporting on the 2014 Stage 2 objectives and 2014 CQMs as planned, or you can, if you qualify for flexibility, can report on the 2014 definition of stage 1 objectives and 2014 CQMs.

### **The Attestation System and CHPL**

So next I'm going to move on to Attestation System and CHPL. So I'm on slide 11. CMS — the CMS Attestation System is updated and ready to go to accept providers who are attesting and using flexibility options as part of the 2014 CEHRT Flexibility Rule. In order to get your certification ID, providers will go to the website for the Office of the National Coordinator for Health IT, or the ONC website that provides CHPL information, or CHPL, and receive a CMS EHR Certification ID to successfully use the certification options.

We encourage hospitals to attest as soon as possible to be eligible for a 2014 incentive payment and to avoid the 2016 payment adjustments. For those of you who are familiar with the dates, to attest to 2014 for a hospital, the deadline is November 30<sup>th</sup>, so that's just a little over a month away. Providers can attest at any time after their reporting period ends and up to 2 months until after the fiscal year if they are a hospital or calendar year if they are an eligible professional.

On slide 12, this is just a screenshot of the [CHPL site](#) on ONC's website. I will direct you to the center of that screenshot. You will notice there are three buttons. The one on the left says 2011 Edition. If you are using the 2011 Edition Certified EHR Technology, you will click on that button and enter some information about your EHR vendor technology, as well as your stage of meaningful use and you will — the system will return a unique certification ID that you can use in the CMS registration and attestation system.

On the right-hand side you'll see it says 2014 Edition. So if you're using a 2014 Edition CEHRT, you will plug in your information there and it will spit out a unique CEHRT certification ID for you to use while you attest. And in the center there is a button for a combination of 2011 and 2014 Edition CEHRT. So you will enter the information about all of the Certified EHR Technology that you are using as a combination and it will give you the unique certification ID that you can use for attestation.

### **Payment Adjustments and Hardship Exceptions**

So next I want to talk to you about payment adjustments and hardship exceptions. So if for attesting in 2014, there are a couple of reasons why 2014 is a very important year — 2014 is the last year for our provider to attest and earn an incentive payment, which is why we really want to make sure that everyone has the information they need and has the flexibility that enables them to attest in 2014.

Now, payment adjustments are set by the HITECH Act, so the only way that you can avoid a payment adjustment is if you attest to meaningful use or if you apply and are granted a hardship exception. There is no way around that because the HITECH Act is the law.

To avoid — for providers who are beyond their first-year of meaningful use, so 2014 is not their first year participating in the EHR Incentive Program, to avoid a 2016 payment adjustment, EPs and hospitals need to attest to meaningful use for EHR reporting period in 2014 by the deadlines, which are November 30<sup>th</sup>, 2014, for eligible hospitals and February 28<sup>th</sup>, 2015, for eligible professionals. If providers are unable to meet meaningful use by these deadlines but want — would like to avoid a payment adjustment should they qualify, they can apply for a hardship exception by April 1<sup>st</sup>, 2015, for hospitals and July 1<sup>st</sup>, 2015, for eligible professionals. So this is for those providers who are beyond their first year of meaningful use.

Now for providers who are participating in the EHR Incentive Program for the very first time in 2014, participating — demonstrating meaningful use or applying for a hardship exception for the EHR reporting period in 2014 would enable them to avoid a payment adjustment in both 2015 and 2016.

Next slide, I'm going to slide 15. So the flexibility options that we offered went into effect on October 1<sup>st</sup> of 2014, which means that legally we could not update our systems to accommodate the flexibility until after that date. Now the flexibility options are available on our registration and attestation sites now, but for providers who were participating — who are participating in the EHR Incentive Program for the first time in 2014, if you have been following the regulations and our guidance, you know that to avoid a payment adjustment, the deadlines for first-year participants are July 1<sup>st</sup>, 2014, for hospitals and October 1<sup>st</sup>, 2014, for eligible professionals. So providers needed to

attest by these deadlines if they are first-year participants to avoid the payment adjustment.

We know that new providers can't use the flexibility options in time, but we also know that many providers, new providers, have experienced vendor issues that came up after the original hardship exception deadlines, which were on — for hospitals were April 1<sup>st</sup>, 2014, and for eligible professionals on July 1<sup>st</sup>, 2014. We know that since then there are some vendor issues that precluded providers from being able to attest to meaningful use by that EH and EP deadline. So CMS has reopened a submission period for hardship exceptions to avoid a payment adjustment for the 2015 year for these new providers. The applications are available on our website and they are due on November 30<sup>th</sup>, 2014, 11:59 eastern standard time.

I do want to reiterate that this reopened submission period is only available for providers that, number one, have been unable to fully implement 2014 Edition Certified EHR Technology due to vendor delays in 2014 Edition CEHRT availability. And then, these — in number two, for providers, who were unable to attest by the July 1<sup>st</sup>, 2014, deadline for hospitals and October 1<sup>st</sup>, 2014, deadline for eligible professionals.

Next slide is — Slides 16 and 17. I'm just going to go over the deadlines because I know that there are plenty of deadlines that I've been shooting out. April 1<sup>st</sup>, 2014, is the — was the Medicare hospital 2015 hardship exception deadline. On July 1<sup>st</sup>, 2014, we had the Medicare EP 2015 hardship exception deadline. In addition, this was the deadline for first-year Medicare hospitals to attest to avoid a payment adjustment.

October 1<sup>st</sup>, 2014, which just — which was earlier this month, was the deadline for our first-year eligible professionals to attest to avoid a 2015 payment adjustment. Now that was in the past. Coming up, November 30<sup>th</sup>, 2014, is the Medicare hospital attestation deadline for the 2014 Incentive Payments and to avoid a 2016 payment adjustment. It is also the deadline for the reopened hardship exception application deadline for both EPs and hospitals that I just talked to you about.

On slide 17, February 28<sup>th</sup>, 2015, is the Medicare eligible professional attestation deadline for 2014 Incentive Payment and to avoid a 2016 payment adjustment. And then that — once that's over, to avoid a payment adjustment in 2016, the deadline for hospitals is on April 1<sup>st</sup>, 2015, and the deadline for eligible professionals is July 1<sup>st</sup>, 2015.

Now before I move forward, I'm going to turn it back over to Diane for polling.

## **Keypad Polling**

Diane Maupai: Thank you Vidya. We're going to pause for a few minutes to complete keypad polling so that CMS has an accurate count of the number participants on the line

today. Please note that there will be a few moments of silence while we tabulate the results. Salema, we're ready to start polling.

**Operator:** CMS appreciates that you minimize the Government's teleconference expense by listening to these calls together using one phone line. At this time please use your telephone keypad and enter the number of participants that are currently listening in. If you are the only person in the room, enter 1. If there are between two and eight of you listening in, enter the corresponding number. If there are nine or more of you in the room, enter 9.

Once again, if you are the only person in the room, enter 1. If there are between two and eight of you listening in, enter the corresponding number. If there are nine or more of you in the room, enter 9. Please hold while we complete the polling. Please continue to hold while we complete the polling. Please continue to hold while we complete the polling. I'd now like to turn the call back over to Diane Maupai.

## Presentation continued

Diane Maupai: Thank you. And I'm going to in turn it over to Vidya, who is going to pick up with the reporting section.

## Reporting

Vidya Sellappan: Thank you Diane. So for those of you on the call, I am on slide 19. Some of the questions that we get in the form of comments, I just wanted to include one of them. We do get questions about whether in using flexibility, whether providers can mix and match objectives and measures.

And the answer is an unequivocal No. Our systems weren't designed that way. If you're using — if you are reporting on 2013 definition of Stage 1 objectives, you are going to be required to report all of the objectives from that objective set. You won't be able to report from any of the 2014 Stage 1 objectives. You won't be reporting from the 2014 Stage 2 objectives, just the 2013 definition of Stage 1 objectives.

In addition, if you are reporting on 2013 definition of Stage 1 objectives, you will be reporting on 2013 CQMs. We don't have the flexibility to allow you to use 2013 objectives and 2014 CQMs. Similarly, if you're doing 2014 definition of either Stage 1 or Stage 2 definition objectives, you won't be able to use 2013 CQMs.

## Frequently Asked Questions

So next I want to talk to you about some of the Frequently Asked Questions that we have been receiving that, hopefully, will provide some clarity to you as you're trying to decide how to use the flexibility options in this rule.

I'm on slide 21. The first question: What does fully implement due to delays in 2014 Certified EHR Technology mean?

And the answer to that is, the delay must be attributable to the issues related to software development, certification, implementation, testing, or the release of the product by the EHR vendor, which then affected the provider's ability to have 2014 Edition CEHRT available to them.

Now things that do not count are financial issues. So if the cost — if the reason why 2014 Edition CEHRT wasn't fully implemented was due to cost, that does not count toward vendor availability. In addition, difficulty meeting measures — we're going to talk a little bit about the summary of care objective in a later slide. But if a provider is simply not able to meet the threshold for a particular objective measure, that is not reason enough to be able to use this flexibility if it had nothing to do with a vendor issue or availability of 2014 Edition Certified EHR Technology.

Staffing issues do not count. Staffing issues are, we believe, are part of normal day-to-day business operations that would not qualify for the flexibility being offered here. And then provider delays, we talk about vendor delay, but if the delay in — or the inability to fully implement a 2014 Edition CEHRT is due to the provider not — you know, upgrading or implementing the Certified EHR Technology on time, that will not count towards this flexibility.

So the main thing to remember is that in order to qualify for the flexibility in this rule, the delay in fully implementing the Certified EHR Technology must be due to issues and delays by the EHR vendor.

Next, slide 22. Can providers mix and match measures and objectives from different years and stages?

And I mentioned this when I talked about the reporting. If you're doing 2013 meaningful use objectives, you've got to do 2013 CQMs, and if you're doing 2014 meaningful use objectives, you've got to do 2014 CQMs. In addition, if you're doing one set of meaningful use objectives, you can't switch between the others. So if you're doing 2013 definition of Stage 1, they can't do 2014 Edition of Stage 1 or 2014 Edition of Stage 2.

Next, slide 23. When do providers have to attest to the 2014 certification flexibility options?

So the flexibility options are available and ready in our attestation system. Eligible professionals have until February 28<sup>th</sup> of 2015, which is 2 months after the last day of the calendar year, which is December 31<sup>st</sup>, to attest to demonstrating meaningful use in

2014. The last day for hospitals and critical access hospitals to attest to meaningful use is the — for the fiscal year of 2014 is November 30<sup>th</sup>, 2014, which is in just over a month.

Providers in their first year can attest to any 90-day reporting period, any day — 90 days of the 2014 calendar year to participate. And those in their second year and beyond choose a 3-month quarter in 2014.

Next, I'm moving on to slide 24. Is there additional guidance for how providers should use the combination flexibility option?

Now in using the combination flexibility option, you've either — there are three particular, three particular scenarios that would enable you to do this. If you are a provider who started out in your EHR reporting period using a 2011 Edition CEHRT and then somewhere in the middle of your EHR reporting period upgraded to a 2014 Edition CEHRT, that would qualify for using a combination, the combination flexibility option. In addition there are providers who have a modular Certified EHR Technology where some of the modules are 2011 Edition and some of the modules are 2014 Edition, and that would qualify for the combination flexibility option. And then the third way is for providers who practice at multiple settings, where at some settings they've got a 2011 Edition CEHRT and some settings they've got a 2014 Edition CEHRT, and that would qualify them for being able to use the combination flexibility option.

Next, on slide 25, if providers practice in multiple locations with different Certified EHR Technology editions, how can they take advantage of the flexibility options?

So EPs who practice in multiple locations may attest using the options outlined in this final rule. If an EP uses different editions of CEHRT at multiple locations, he or she may choose to use the alternate CEHRT option that is best applied for his or her patient encounters across all locations during the EHR reporting period.

One thing that I do want to point out, if more than 50 percent of your patient encounters are at location — a location or locations that have a 2014 Edition Certified EHR Technology fully implemented, then you don't qualify for flexibility. If 51 percent or more of your patient encounters, which is essentially the majority of your patient encounters, are at locations where 2014 Edition CEHRT is fully implemented, you don't qualify for the flexibility and you can attest using the 2014 Edition CERHT on those patient encounters.

And to clarify, you would exclude anybody else if you're doing it this way in which your majority of your patients are at a location or locations of 2014 Edition CEHRT, you would just report using the 2014 Edition Certified EHR Technology and you could exclude all other patient encounters where 2014 Edition CEHRT is not available.

Next, slide 26. What if a provider has 2014 Edition CEHRT but is not able to do the second measure of the summary of care objective due to the lack of recipients with 2014 Edition Certified EHR Technology?

Now this is a limited exception that CMS is providing. This is around the Stage 2 summary of care objective. For those of you who are familiar with the Stage 2 objectives, the summary of care objective consists of three measures, and the second measure requires that for every transitional referral from one provider to another that the referring provider sends — electronically transmits rather, a summary of care document to another recipient of the transition or referral. And what that means is that the provider sending the summary of care document needs to have 2014 Edition CEHRT fully implemented in order to be able to electronically transmit this document. But then it also requires that the recipient, or the trading partner, also have their 2014 Edition Certified EHR Technology fully implemented so they can accept this electronic summary of care document.

We do understand that there are regions in the country where some providers only transition and refer their patients to providers who have experienced difficulties in implementing 2014 Edition Certified EHR Technology. So under this circumstance, a referring provider may attest to the 2014 Stage 1 objectives and measures for the EHR reporting period in 2014, should they not be able to meet this objective because all of their — majority of their recipients of their transitions and referrals cannot accept the electronic summary of care documents.

Main thing to remember here, if the referring — if the referring provider is using this flexibility option, they must retain documentation that clearly demonstrates that they were unable to meet the 10 percent threshold for that second measure to provide an electronic summary of care documents for transition or referral because their recipients could not fully implement 2014 Edition Certified EHR Technology due to vendor delay.

So next, I'm moving on to slide 27. What will the audit process include for providers who have not fully implemented 2014 Edition Certified EHR Technology?

So the audit guidelines are pretty much the same for this flexibility as it is for all of our meaningful use audits. CMS will follow standard guidelines used for CMS programs, audit provisions, and — including auditing providers based on random selection process, as well as based on key identifiers, such as prior audit failure and known incidence of fraud. Providers will not be targeted by provider type, location, stage of meaningful use, or participation year. And providers will not be targeted based on whether they chose to use flexibility — the flexibility option or not.

The main thing that I can tell you about audits, and most of you know, we — CMS uses the contractor to conduct these audits. So CMS doesn't handle the audits directly. But the main thing is to — as far as the flexibility rule, is to maintain documentation that

clearly demonstrates that you were unable to fully implement 2014 Edition Certified EHR Technology due to vendor delays.

## Resources

So next I'm going to move on to slide 29. And this just lists some of the resources we have on our website to help you figure out this certification flexibility rule. The [CEHRT Interactive Decision Tool](#) provides — is a tool that you can, that will prompt you to answer a few questions about your stage of meaningful use, as well as the edition of CEHRT that you're using, and will display the corresponding 2014 flexibility options that are available to you.

The [2014 CEHRT Flexibility Chart](#) provides a visual overview of all of the participation options. And then the [2014 CEHRT Rule Quick Guide](#) provides details about each of the flexibility options available. All of these resources are available on our website under the [Educational Resources](#) page.

And slide 30 lists out some other EHR resources. Our website is [cms.gov/EHRIncentivePrograms](http://cms.gov/EHRIncentivePrograms). For those of you who have specific questions about your particular attestation, particularly if you've already submitted your attestation, the best place to get your questions answered are — is to visit the information center and the toll free number is available right there. And then, this presentation didn't cover any details about CQMs, but if you've got questions about Clinical Quality Measures, this website listed here is the best place to start. And with that I'm going to turn it back over to Diane.

## Question-and-Answer Session

Diane Maupai: All right, thank you very much Vidya. Our experts are now ready to take your questions. But before we begin I'd like to remind you that the call is being recorded and transcribed. Before asking your question, please state your name and the name of your organization. In an effort to get to as many of your questions as possible, please limit your questions to just one. If you'd like to ask a followup question or have more than one question, you may press star 1 to get back in the queue and we'll address additional questions as time permits.

All right Salema, we're ready to take our first question.

**Operator:** To ask a question press star followed by the number 1 on your touchtone phone. To remove yourself from the queue, please press the pound key. Remember to pick up your handset before asking your question to assure clarity. Please note your line will remain open during the time you are asking your question so anything that you say or any background noise will be heard in the conference. Please hold till we compile the Q&A roster.

The first question comes from the line of Sonya Smith.

Sonya Smith: Hello, can you hear me?

Diane Maupai: Yes we can.

Sonya Smith: OK, my question is, we do our attesting through the Medicaid for our state, Florida Medicaid. Is there somewhere that we have to go — and maybe that's what this one website was you were talking about — that you have to go and document that you're using the flexibility rule and that you're going to use a 2011 or do you just simply do it?

Elizabeth Myers: Hi, this is Elizabeth Myers from CMS. We've heard this question before, and we're not sure where the rumor started. There is not someplace that you have to go to say that you're going to apply or to register your name separately. You do your standard, normal registration through the CMS registration attestation system like you would any other year. You just make sure that all of your information is updated if you've already registered in the past. And then in order to attest, if you're attesting for Medicare, you come in through the registration and attestation system, the same system that we've used for the program all along. You would put your certification ID number in there, which is literally just your product number that you get from the products list on ONC's website. And if you don't know how to do that, we have instructions on that on our website, too, and that will just walk you through the system, just as it would any other year, any other time.

If you're attesting from Medicaid you would go to your state's individual system. I know that some states have group systems, some states have their own individual system. So you want to check with your state to determine what that system is if you haven't done it before. If you have, it's the same system you've used before. I believe most states intend to have all of their changes in place that they need to be able to walk people through this early in 2015. So those attestations will be able to be accepted at that point. But there is not some separate application site or notification site or signup that anyone has to do to notify us independently that they would be choosing the flexibility options. We'll be able to tell that just by your normal attestation in the system.

Sonya Smith: OK. So the CHPL website, that's just strictly to go and look up the number ...

Elizabeth Myers: Yes, that's correct.

Sonya Smith: That's not somewhere that you go to ...

Elizabeth Myers: The CHPL is the Certified Health Information Technology Product List. So that's — CHPL is the nickname for it. That is the site where you put in your products

and it generates a certification ID number and that's — that's really all that it does. That ID number just tells us which products you use, it doesn't require you to apply, you don't have to certify anything on there. It's literally, you put in your products and then it generates a number and you use that number when you attest.

Sonya Smith: But wouldn't it be the same number that we attested to 2011 before or did they change the numbers?

Elizabeth Myers: No, no. Each time you go in, if it's a different product, you still need to put that product into the CHPL and generate a new number. There is a great — there is a guide on this, on ONC's website, on [hit.healthit.gov](http://hit.healthit.gov). [The correct URL is [www.healthit.gov](http://www.healthit.gov)]

Diane Maupai: OK, thank you Beth.

Sonya Smith: Thank you.

**Operator:** Your next question comes from the line of Heidi Harting.

Heidi Harting: Yes, hi. Thank you. My question is, situations where providers are working at multiple locations in many cases are acquisitions and moving to a group that does have a 2014 Certified system, but unfortunately they weren't able to join before the 1<sup>st</sup> of October. They're not able to get a full quarter on — and they're in Stage 2, not able to get a full quarter on a 2014 system, but have been using it up until then, say till October 15<sup>th</sup>, I'll make up, you know, a 2011 Certified system. How would they be able to attest? Hello?

Elizabeth Myers: So this is Elizabeth Myers from CMS. Sorry, we had you on mute for just a second to make sure that we're clear on what — the scenario you're talking about. So you have an eligible professional, whether they have participated in the past or not is a partial nuance, but I think generally speaking what it sounds like you're asking is, if they move to a location that does have 2014 Edition CEHRT fully implemented, but the time period that we're looking at doesn't allow them to have a full EHR Reporting Period with that location in place.

So there's two things that can be done in that case, because the full EHR Reporting Period is also part of the definition of flexible options. So first off, they could, if they still have 50 percent of their encounters over that full EHR Reporting Period at the location with 2014 Edition Certified EHR Technology in place, they can, and preferably should, continue on their normal path and use just the patient encounters from that time period and that 2014 Edition Certified EHR Technology for their EHR Reporting Period.

If that timeframe overlap means that 50 percent of their patient encounters — that they don't get fully to 50 percent of their patient encounters, then they would still have to

look at the full EHR Reporting Period. In that case they would be eligible for the flexibility for over the course of the full EHR Reporting Period and they would have to look at the patient encounters from the prior location and determine whether or not they could meet one of the flexibility options for meeting meaningful use during that timeframe. So the nuance really is, and we'd have to literally look into the math of their patient encounters, but I won't get that deep into it. But the full EHR Reporting Period, if the 2014 Edition CEHRT is not in place for the whole time, that's the way you would approach making that decision.

First, you would look and see if 50 percent of the patient encounters, looking at all patient encounters of a full time period, if 50 percent of them still occur at a location equipped with 2014 Edition CEHRT, you would simply exclude the patients where that was not the case and use the patient encounters that it was the case to attest to meaningful use as previously scheduled. If that math works out to not be above 50 percent, then you would look at the flexibility option.

Diane Maupai: Thank you Beth.

Heidi Harting: OK. And flexibility option though would only be, you know, I mean they knew they were getting acquired, they didn't invest in their old system because they're going to be leaving it very shortly. Would that still qualify them to be able to use it?

Elizabeth Myers: So I can't tell you if it qualifies or not without looking at the patient encounters because that's really what the determination is. The flexibility options would be that if they did not have 2014 Edition CEHRT fully implemented at that prior location, all of the rules still apply. Just because you move locations, the location is linked to the provider, not vice versa. So if the previous location was not able to upgrade to 2014 Edition CEHRT, or — and this actually applies across the board for any providers at multiple locations, if one of the locations is still on 2011, that justification that the reasoning behind that or the reason that the provider would seek the flexibility option has to be related to the overall industrywide delays in 2014 Edition Certified EHR Technology. It cannot be, "I was in charge of this office, I decided I wasn't doing this office, I decided not to bother to invest or I saw the flex option, so I decided to push off, changing my upgrade schedule, or I couldn't afford it."

Anything that isn't related to an actual — the software itself, either the development, the certification, the testing, or the implementation of the software itself, does not qualify for the flexibility option. So if it's by choice or by negligence or whatever other permutation, the rules still apply even if there's multiple locations for each of the individual location. But then otherwise, again, the place to start in making that decision is to determine whether or not the provider's patient encounters are above 50 percent at a location equipped with 2014 Edition CEHRT, because if that's the case, they can limit the patient population to just that population and they should attest as previously scheduled without exercising the flexibility option.

Diane Maupai: Thank you Beth. We'll move on to our next caller please.

**Operator:** Your next question comes from the line of Chantal Worzala.

Chantal Worzala: Hi, this is Chantal Worzala with the American Hospital Association. Thanks for putting on this provider call. I know it's a tough topic and people need to hear it more than once. I wanted to go back to slide 21 in your slide deck and just make sure that we all have the same understanding.

That slide reads, "The delay must be attributable to issues related to software development, certification, implementation, testing, or release of the product by the EHR vendor which affected 2014 availability." However, in the rules the sentence continues to say, "2014 CEHRT availability, which then results in the inability for a provider to fully implement 2014 Edition Certified EHR Technology."

So, I'd just like you to clarify that it's not just the software, it's also what the provider would then need to do with the software in order to fully implement. So, for example, in the rule things like getting patches — software patches, finding that the software doesn't work as intended, being concerned that there may be safety issues associated with using the software as it — was initially installed, those are all things that result in a provider not being able to fully implement.

The reason I say that is because I'm a little bit concerned about this bullet, Provider Delays. I appreciate the notion that a delay in actually scheduling an upgrade or signing a contract is one thing, but delaying implementation of software that is sort of buggy or you believe may be unsafe or is not working correctly, I believe, are all within the spirit of the rule of actions taken by a provider that are consistent with the ability to exercise the flexibility option.

Elizabeth Myers: Hi Chantal, this is Beth. Thank you. This is actually one of those scenarios where it's hard to write everything into a slide. But you're absolutely right. And for anyone who wants bonus points or just to understand generally what the rule is about and what the questions are more clearly, almost everything that we talk about here is actually written down in the rule. And as Chantal mentioned, this explanation here about this chain, right? There's a sort of chain of the series of events that have occurred that have resulted in this overall delay in the full implementation of 2014 Edition Certified EHR Technology. And there are lots and lots of different moving points, including the ability to fully implement safely, regarding patient's safety, and having the proper workflows in place in a provider setting.

All of these things are linked to the function of the software, and that's really what the point is here that we're talking about, you can use flexibility if you are unable to demonstrate meaningful use because of the function of the software not working,

because of the chain of events that has caused these delays in it being able to fully function, including that you may have patches on the software because the software was rushed through development, and there's continuing upgrades, and it's still not working right. These types of things — we recognize that there's a lot of different nuances for how it can happen. So that's why there is sort of this relatively large bucket that talks about the inability to fully implement because of delays in 2014 Edition CEHRT.

I assure you that reading that section of the rule, I know that rules are pretty scary to read sometimes for people who don't engage with regulations and laws in their very legal setting all that often, but in this particular case we did try to make sure that we addressed every single question and comment that came in. So if you have a chance to read the comments and responses section of the rule itself, I think you'll find that it's really helpful. And it does say exactly what Chantal just outlined.

We are working on continuing to develop more and more resources but also say the same things in the same words. But it might be an interesting learning experience for you all to try and check that out. You could get some Brownie points from our perspective for those who do. But I know that that's not fully accessible to everyone.

So just to reiterate, what we're talking about is that when we separate a line here, so we tried very hard in the rule to define what does not count because it's much easier to define what does not count than for us to accidentally limit what counts as an inability to fully implement Certified EHR Technology because it's going to change. It could change based on what number you are in the installation line from your system developer. It could change based on your developer worked from a certain program that was looking towards a certain type of practice and you're a little bit different. So one of your functions just plain doesn't work, and if there had been more time to get it going, that would have been able to be fixed in time.

It could be that the size of your practice impacts — that half of your systems got upgraded but the other half haven't yet because it just takes time. If you have 500 providers and 30 different systems in place, it's going to take a while to get through that.

So in order to not accidentally limit someone we didn't put a, "you have to have it in place for this many days or not this many days" or "you have to have this many machines upgraded or this many modules" and that's what counts to fully implement. Or, you know, you got it yesterday and you can't necessarily start an EHR Reporting Period today because your staff doesn't know how to use it, and you really don't want them using the drug on drug check if they don't know how to use yet because it's a patient safety issue.

So we get that there are lots and lots of nuances. So what we're trying to say is that there's a bunch of things that don't count and those things are cases where a provider deliberately delays, or the objective is missed by a percentage that had nothing to do with the software, for example, you just didn't provide patient-specific education to your patients, which you can do in a paper format so it has nothing to do with the function of the software in that case. You missed it because you just didn't do it. Those types of things do not allow a provider to exercise flexibility. If there is some issue that they cannot use the functions they need to meet the objective and measures and that is in the root cause of that, is this overall — we all know it's there — industrywide delay in 2014 CEHRT availability, they should absolutely seek to use the flexibility options that work best for their practice.

Diane Maupai: Thank you Beth. We'll move on to the next caller, please.

**Operator:** The next question comes from the line of Michelle Wong.

Michelle Wong: Hi, thank you for taking the question. It actually is the same question for the fully implement due to delay. We actually tried to contact our vendor. They certified in mid-June of 2014 for the — 2014, the newer version. However, when we send the email out — we've been waiting for a while and we sent out twice. And they were saying they have a long waiting list because a lot of providers waiting to upgrade.

So when we finally get in touch with them, and it's already past the time so we didn't implement in time. So in this case, can we use the 2011 Certified EHR to meet the meaningful use? And we — actually, we've been using it for some — January. So we're already using the previous version to meet the meaningful use Stage 1. So can we continue to use the 2011 Certified EHR and to meet the meaningful use of Stage 1 for this year?

Vidya Sellappan: So this is Vidya. So if you — it sounds like you had a very detailed sequence of events that demonstrate that due to vendor delays you weren't able to fully implement, and so you're on 2011 instead of 2014. If you can document that appropriately and you feel that you qualify for the flexibility, then you can use the flexibility and/or apply for the hardship exception if you're a first-year participant.

Michelle Wong: Oh, actually we are the second year — we are the second year.

Vidya Sellappan: OK. Well, if you do — if the reason you were unable to fully implement a 2014 Certified EHR Technology was due to a sequence of events where you were trying to work with the vendor and get it upgraded and it did not happen, as long as you have that documented, that clearly demonstrates that you made a good-faith effort to try and get the software upgraded and due to delays by the vendor that you were not able to, then you may qualify for the flexibility and you should look at the flexibility options and see which options apply to you. Thank you.

Diane Maupai: Thank you Vidya.

Michelle Wong: OK, that's good. So we can actually use any quarter that we — for this ...

Vidya Sellappan: In 2014, if you are beyond your first year of meaningful use — I am sorry, I didn't mean to interrupt, you choose any quarter in the — any 3-month period tied to a quarter of a year. So if you're an EP, it would be any calendar quarter.

Michelle Wong: OK, so we can use July, August, and September and so ...

Elizabeth Myers: Yes, I'm sorry to cut you off. I just want to answer this quickly for everyone, and then move on from individual circumstances to see if we can't do some broader questions because we're going to run out of time. But for everyone's knowledge, we did put this in the rule, too. Again, I strongly encourage you to read just the Comments and Responses section of the rule. It's not as long and scary as the rest of it frankly. And avoid the regs. text, just read that section, and I think it'll help.

So you can use any reporting period during the year. Even though it's the end of the year, it is absolutely acceptable to use first quarter, the second quarter, the third quarter. If you're a new provider you can use any 90 days. You don't have to do the last quarter just because we're at the end of the year at this point. You can use the first quarter, second quarter, any quarter that's available to you, you are allowed to use for the 2014 Reporting Period.

Diane Maupai: OK, thank you. This is Diane.

Michelle Wong: Thank you so much.

Diane Maupai: We have time for a question from one more caller, and then that's going to be it for today. Sorry.

**Operator:** The final question comes from the line of Robin Hook.

Robin Hook: Thank you. I have actually one question, it will just be a yes or a no. On the CQMs for 2014, do they have to attest on those electronically or can they do those manually?

Elizabeth Myers: So for 2014, you have all of the options that you had before we did the flexibility option, which included attesting or electronically reporting through one of the quality measurement portals. And if you electronically reported, you could get credit for the quality measurement portal, or just meaningful use, whichever choice you chose.

So, it's — all of those options are still available. So again, that's — you can attest, you can electronically report to the quality measurement portal, and you can electronically report to the quality measurement portal and get dual credit.

Diane Maupai: Thank you Beth.

Robin Hook: OK. The other thing real quick, the other one is on — again on the previous question, the examples that do not count. I noticed you talked about a lot of elements that do count. I don't see those written. Are those going to be in a written statement so that's clear to the users?

Elizabeth Myers: No, there won't be any further written, I'll repeat this. The reason we do not overly specify what does count is so that every individual nuance or circumstance is going to be different. And we recognize that, and so we ask that providers document their individual circumstance. And as long as you have documented your individual circumstance that meets the broad, big wide path, then you would be able to exercise the flexibility options. And the very specific reason we did that is that if we narrow things down too far in very explicit definitions, we would inadvertently leave out people who, through no fault of their own, were unable to attest because of this issue. So defining ...

Robin Hook: OK.

Elizabeth Myers: ... what does not count allows us to sort of weed out the edges while allowing everyone else to self-define a document for their own records and for the purposes of maintaining those records what their individual circumstance is.

## **Additional Information**

Diane Maupai: Thank you Beth. Unfortunately, that's all the time we have for questions today. On slides 29 and 30 you'll find links to more resources. I want to point you especially to slide 30, the middle bullet is the phone number for the EHR Incentive Program Information Center. So if we didn't get to your question today, you can call them and ask your question there. Again, an audio recording and written transcript of today's call will be posted to the [MLN Connects Call](#) website, and we will release an announcement in the [MLN Connects Provider eNews](#) when these are available.

On slide 33 of the presentation, you'll find information and a URL to evaluate your experience with today's call. They're anonymous, confidential, and voluntary. And we hope you'll take a few minutes to evaluate your MLN Connects Call experience.

Again, my name is Diane Maupai. I'd like to thank Vidya and Elizabeth for presenting and answering questions today. And thank you for participating. Have a great day everyone.

This document has been edited for spelling and punctuation errors.

**Operator:** This concludes today's call.

**-END-**

