

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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CENTER FOR MEDICARE

DATE: June 22, 2011

TO: All Medicare Advantage Organizations

FROM: Cheri Rice /s/
Director, Medicare Plan Payment Group

SUBJECT: **2011 Electronic Health Record Incentive Program for Medicare Advantage Organizations**

The Health Information Technology for Economic and Clinical Health (HITECH) Act, which is a part of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5), provides incentive payments to eligible professionals (EPs) and hospitals participating in the Original Medicare and Medicaid programs that adopt and meaningfully use certified Electronic Health Record (EHR) technology. Qualifying Medicare Advantage (MA) organizations may also receive incentive payments for their qualifying MA Eligible Professionals (MA EP) and qualifying MA-affiliated Eligible Hospitals (MA EH) that meaningfully use certified EHR technology and that meet other requirements. See 42 C.F.R. §495.200 for the definitions of “qualifying MA organization”, “qualifying MA EP”, and “qualifying MA-affiliated eligible hospital”. See 42 CFR § 495.4, which references 45 CFR §170.102, for the definition of “certified EHR technology”. The purpose of this memorandum is to provide guidance to MA organizations that are considering participation in the MA EHR Incentive Program.

An MA organization may qualify for, and participate in, the MA EHR Incentive Program provided the MA organization is organized as a health maintenance organization (HMO) and meets certain other requirements. See 42 U.S.C. 300gg-91(b)(3) for the definition of an “HMO”. Absent evidence to the contrary, a qualifying MA organization that offers an MA HMO plan will satisfy the definition of an “HMO”. If a qualifying MA organization does not offer an MA HMO plan and instead offers other types of MA plans, it must attest by July 15, 2011 for payment year 2011, that it meets the definition of an HMO (specifically, that it is organized as either a Federally Qualified HMO, an organization recognized as an HMO under state law, or a similar organization regulated for solvency under state law in the same manner and to the same extent as an HMO). The attestation must be signed by the Chief Executive Officer or another responsible officer of the qualifying MA organization. When applicable, this attestation must be submitted to the Centers for Medicare & Medicaid Services (CMS) via the CMS MA HITECH mailbox at MA_EHRincentiveprogram@cms.hhs.gov. The attestation form that must be completed is attached to this document. A qualifying MA organization that offers an MA HMO plan generally will not have to make this attestation unless specifically required by CMS.

EHR Incentive Program Registration

Registration of Potentially Qualifying MA EPs through the Health Plan Management System (HPMS): Between June 27 and July 15, 2011, a qualifying MA organization must register the potentially qualifying MA EPs for which it expects to seek an incentive payment by submitting through the HPMS a list of MA EPs it expects will meet MA program requirements for EHR incentive payments in 2011. The attached template provides the required file layout for HPMS registration of potentially qualifying MA EPs. This template will be used for the initial submission in June/July 2011. This template will also be located in HPMS when registration opens in June. In subsequent years, registration may occur as early as the date Part C bids are due. Note that registration in June/July 2011 is for the 2011 EHR incentive payment year, even though the June 2011 bids to participate in the Part C Program are for the 2012 MA plan payment year.

The list of potentially qualifying MA EPs will be run against the National Level Repository (NLR) in order to provide feedback to qualifying MA organizations on MA EPs that:

- do not have a valid National Provider Identifier (NPI) Type-1,
- are on the Death Master File,
- have also registered for the Original Medicare or Medicaid EHR Incentive Programs,
- have already received payment under the Original Medicare or Medicaid EHR Incentive Programs,
- have been identified as having federal exclusions, or
- are identified as having state rejections.

Each qualifying MA organization will have the opportunity to make monthly additions and corrections in HPMS to their potentially qualifying MA EP registration file during the last week of each month.

Final registration of, and attestation of meaningful use for, potentially qualifying MA EPs must be completed in HPMS no later than 60 calendar days after the close of the payment year for which EHR incentive payments are sought. For the 2011 EHR incentive payment year, final registration of, and attestation for, potentially qualifying MA EPs must be submitted on or before 11:59 p.m. EST on February 29, 2012. Additional information on the HPMS final registration and attestation module will be provided at a later date.

To minimize post-payment issues, a qualifying MA organization that participates in the MA EHR Incentive Program is required to notify EPs that it has registered or plans to register them as MA EPs for the purpose of seeking an MA EHR incentive payment that would be made to the qualifying MA organization. The qualifying MA organization must also inform such EPs that if the qualifying MA organization receives MA EHR incentive payments for them for a payment year, then the EPs cannot receive a *partial* EHR incentive payment under the Original Medicare or Medicaid EHR Incentive Program for the same year. See 42 CFR §495.204, 208. It is worth noting that a qualifying MA organization cannot seek and/or receive an MA EHR incentive payment for an EP who is eligible for the maximum incentive payment under the Original Medicare EHR Incentive Program or who has registered under a state's Medicaid EHR Incentive Program.

Registration of Potentially Qualifying MA EHs through HPMS: Between June 27 and July 15, 2011, a qualifying MA organization must submit through HPMS a list of potentially qualifying MA EHs that it expects will meet program requirements for EHR incentive payments to qualifying MA organizations for the 2011 EHR incentive payment year. The attached template provides the required file layout for

initial HPMS registration of potentially qualifying MA EHs. This template will also be located in HPMS when registration opens in June. In subsequent years, registration may occur as early as the date Part C bids are due. Note that registration in June/July 2011 is for the 2011 EHR incentive payment year, even though the June 2011 bids to participate in the Part C Program are for the 2012 MA plan payment year. The list of potentially qualifying MA EHs will be run against the NLR in order to provide feedback to a qualifying MA organization. CMS will notify the qualifying MA organization of any hospital it is claiming that has registered in the NLR as anything other than “MA-affiliated”.

Final registration of potentially qualifying MA EHs by the qualifying MA organization must be completed in HPMS by 11:59 p.m. on November 30, 2011 for the 2011 EHR incentive payment year. Additional information on the HPMS final registration and attestation module will be provided at a later date.

Registration by Potentially Qualifying MA EHs in the NLR: Once the applicable qualifying MA organization submits its initial list through HPMS of potentially qualifying MA EHs, a potentially qualifying MA EH must also register with the NLR. The NLR has not yet been modified to accommodate registration of MA EHs so MA EHs should not attempt to register through the NLR until later in the year. CMS will notify qualifying MA organizations when NLR system modifications necessary to register potentially qualifying MA EHs are complete.

Methodologies for Calculating Qualifying MA EP Compensation

All qualifying MA organizations registering potentially qualifying MA EPs are required to submit an explanation to CMS of the methodology or methodologies that will be used to calculate the portion of each qualifying MA EP’s salary or compensation that is attributable to providing services that would otherwise be covered as Part B professional services to MA plan enrollees of the qualifying MA organization in the payment year. Methodologies may be submitted directly to CMS by a third party instead, but in those instances qualifying MA organizations must facilitate the submission and explanation of the methodologies to CMS. Methodological proposals must provide a basis for audit by an independent third party. To the extent methodological proposals do not contain sufficient information to ensure a strong likelihood of empirical verification of compensation paid to each qualifying MA EP for professional services that would otherwise be covered under Part B and that are provided to MA plan enrollees of the qualifying MA organization for the payment year, CMS will not provide approval. Furthermore, CMS will require the methodologies to be reasonable in light of the specific employment and/or compensation arrangements between the qualifying MA organization, the entity employing the qualifying MA EP or with which the qualifying MA EP has a partnership interest, if applicable, and the applicable qualifying MA EP. Methodological proposals must be submitted to CMS by 11:59 p.m. EST on July 15, 2011 and must be approved by CMS on or before October 1, 2011, for EHR incentive payments to be available for the 2011 payment year. A CMS-approved methodology is a prerequisite for submitting a final registration and attestation, and receiving an MA EHR incentive payment. Whether submitted by the qualifying MA organization or a third party, the qualifying MA organization and the associated MA contract number must be clearly identified with this submission. If more than one methodological explanation is needed to document different payment arrangements with qualifying MA EPs of the same qualifying MA organization, a single document should be used. Methodologies must be submitted to CMS via the CMS MA HITECH mailbox at MA_EHRincentiveprogram@cms.hhs.gov. The format of the methodologies can be PDF-file, Word doc., or other, similar format.

Qualifying MA Organization Claiming Overhead On Behalf of Salaried EP: For a qualifying MA EP who is compensated on a salary basis, a qualifying MA organization may include in the methodology described above an additional amount related to overhead, where appropriate, attributable to services provided by the qualifying MA EP to MA plan enrollees of the qualifying MA organization that would otherwise be covered under Part B. In order for a qualifying MA organization to claim overhead, the qualifying MA EP must be salaried by the qualifying MA organization, or by a third party contracting directly with the qualifying MA organization. In instances when a third party will be submitting a methodology directly to CMS, the qualifying MA organization must facilitate the submission and explanation of the overhead estimation methodology. Thus, if a qualifying MA EP's salary does not account for practice costs that would otherwise be part of the Part B professional charges normally paid to an EP billing under the Original Medicare Part B fee schedule, a qualifying MA organization may develop a reasonable methodology for estimating the amount of those costs, or ensure that the third party submitting the methodology develops a reasonable methodology for estimating the amount of those costs.

Qualifying MA EP Not Compensated by the Qualifying MA Organization: A qualifying MA organization may submit a compensation methodology or methodologies on behalf of its qualifying MA EPs who are not directly compensated by the qualifying MA organization. The methodologies may also be submitted directly to CMS by the qualifying MA EP or the entity that employs or partners with the qualifying MA EP, to the extent the entity or qualifying MA EP does not wish to disclose the qualifying MA EP's compensation arrangement to a qualifying MA organization. But in instances when the compensation methodology is submitted by a qualifying MA EP or the entity by which the qualifying MA EP is employed or in which the qualifying MA EP has a partnership interest, CMS will require a qualifying MA organization to *facilitate* the submission and explanation of the methodology or methodologies that meet the same requirements set out above.

Meaningful Use Attestation

“Meaningful use of certified EHR technology” includes, among other requirements, that for the *first* payment year that a qualifying MA organization participates in the MA EHR Incentive Program, any qualifying MA EH and/or qualifying MA EP that the qualifying MA organization is claiming must meaningfully use certified EHR technology as defined by CMS during any continuous 90-day period within the payment year. For *subsequent* payment years when a qualifying MA organization participates in the MA EHR Incentive Program, any qualifying MA EH and/or qualifying MA EP that the qualifying MA organization is claiming must meaningfully use certified EHR technology as defined by CMS for the full payment year. For more information on the criteria and other requirements of meaningful use, see CMS's final rule (75 Fed. Reg. 44314, July 28, 2010) and the EHR Incentive Programs website (<http://www.cms.gov/EHRIncentivePrograms/>).

Qualifying MA EP: The qualifying MA organization will submit via HPMS the attestation of meaningful use for each qualifying MA EP it is claiming. This attestation must be completed no later than 60 calendar days after the close of the payment year, which for payment year 2011 is February 29, 2012. See 42 CFR 495.210(b). CMS plans to open the 2011 MA EP HPMS meaningful-use-attestation portal in February 2012. The qualifying MA organization will be required to attest to the meaningful use objectives for each qualifying MA EP as specified in 42 CFR §495.6. It should be noted that a qualifying MA organization will not be required to submit an attestation with respect to the ambulatory clinical quality measures (CQMs) noted in 42 CFR 495.6(d)(10) for qualifying MA

EPs because these CQMs are already reported by qualifying MA organizations through other existing means.

Qualifying MA EHs: Qualifying MA EHs, as opposed to the qualifying MA organization, will attest to meaningful use of certified EHR technology through the NLR. CMS will notify qualifying MA organizations when the NLR has been updated to accept qualifying MA EH registration and attestation. Only those qualifying MA EHs that have first been registered by the applicable qualifying MA organization through HPMS will be able to register, and attest to meeting the meaningful use requirements, in the NLR. Attestation for qualifying MA EHs must be completed by 11:59 p.m. on November 30, 2011 for the payment year that ends on September 30, 2011. The qualifying MA EH will submit an attestation for each of the meaningful use objectives as specified in 42 C.F.R. §495.6. Similar to qualifying MA EPs, the qualifying MA EH will not attest with respect to hospital CQMs in 42 CFR §495.6(f)(9).

Reporting Part B Annual Revenue for Qualifying MA EPs

A qualifying MA organization must also submit through HPMS, for each qualifying MA EP (whether salaried or not salaried), the actual annual amount of compensation received by the qualifying MA EP for services provided to MA plan enrollees of the qualifying MA organization that would otherwise be covered under Part B, by 11:59 p.m. EST on February 29, 2012, for payment year 2011.

Qualifying MA EP Not Compensated by the Qualifying MA Organization: While a qualifying MA organization is required to submit actual annual amount of compensation received by the qualifying MA EP for services provided to MA plan enrollees of the qualifying MA organization that would otherwise be covered under Part B for all MA EPs for which it is claiming an incentive payment, in instances when a qualifying MA organization does not have such information available, the qualifying MA organization may obtain an attestation regarding such compensation amount from the qualifying MA EP (or from the entity that employs the qualifying MA EP or in which the qualifying MA EP has a partnership interest). The qualifying MA organization may then base its submission to CMS on the attestation received from the qualifying MA EP (or from the entity that employs the qualifying MA EP or in which the qualifying MA EP has a partnership interest). See 42 CFR §495.204(b)(5). Each compensation attestation may cover one or more qualifying MA EPs, provided the amount is auditable back to a given qualifying MA EP. If a qualifying MA EP (or entity that employs the qualifying MA EP or in which the qualifying MA EP has a partnership interest) does not wish to disclose to the qualifying MA organization the total amount of such compensation received by the qualifying MA EP for services that would otherwise be Part B services, then the attestation may be limited to the amount of such compensation that would cause the qualifying MA organization to receive its maximum MA EHR incentive payment for a given payment year. For example, for the 2011 payment year, the attestation could be limited to \$24,000 of the total amount of such compensation received by the qualifying MA EP.

Qualifying MA EH Payments

A qualifying MA organization will submit its preliminary and final lists of potentially qualifying MA EHs via HPMS. The potentially qualifying MA EH will perform the remainder of the tasks via the NLR required to receive payment, and will actually receive the payment on behalf of the qualifying MA organization. As explained in the final rule (75 Fed. Reg. 44476-44477), in an effort to reduce administrative burden, qualifying MA organizations are required to receive payment through their

qualifying MA EHs under the Original Medicare EHR Incentive Program, instead of through the MA EHR Incentive Program. A qualifying MA organization that has qualifying MA EHs must sign an amendment to its contract with CMS to offer an MA plan that will permit CMS to make payment directly to the qualifying MA EH on behalf of its qualifying MA organization. Please contact CMS via the CMS MA HITECH mailbox at MA_EHRincentiveprogram@cms.hhs.gov, if your organization has a potentially qualifying MA EH and your organization has not yet executed the necessary contract amendment.

Recoupment

CMS may recoup all or a portion of a payment made to an MA organization or an MA EH, on behalf of an MA organization, if the payment is made based on an incorrect or fraudulent attestation, incorrect or fraudulent cost data, or any other submission required to establish eligibility or to qualify for such payment, if the submission is incorrect or fraudulent. 42 CFR §495.204(e)(4). If a third party that submitted a methodology fails to comply with an audit request to produce applicable documents and/or data, CMS will presume that the third party does not possess the requisite documents or data, and will view the portion of the payment attributed to the third party as being made based on, minimally, incorrect data, resulting in CMS recouping all or a portion of the incentive payment.

Please send any questions about this guidance to the CMS MA HITECH mailbox at MA_EHRincentiveprogram@cms.hhs.gov.

ATTACHMENTS (4)