

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Small Entity Compliance Guide

Medicare and Medicaid Programs; Electronic Health Record Incentive Program— Stage 3 and Modifications to Meaningful Use in 2015 Through 2017 Final Rule

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CMS-3310-FC and 3311-FC, RINs 0938-AS26 and 0938-AS58

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA, P.L. 104-121, as amended by P.L. 110-28, May 25, 2007) contains requirements for issuance of “small entity compliance guides.” Guides are to explain what actions affected entities must take to comply with agency rules. Such guides must be prepared when agencies issue final rules for which agencies were required to prepare a Final Regulatory Flexibility Analysis under the Regulatory Flexibility Act (RFA).

The complete text of this final rule with comment period can be found on the Centers for Medicare & Medicaid Services (CMS) Web site at:

<https://www.cms.gov/Regulations-and-Guidance/Legislation/EHRIncentivePrograms/EducationalMaterials.html>

This final rule specifies requirements that eligible professionals (EPs), eligible hospitals, and critical access hospitals (CAHs) must meet in order to qualify for Medicare and Medicaid electronic health record (EHR) incentive payments and avoid downward payment adjustments under the Medicare EHR Incentive Program. In addition, it changes the Medicare and Medicaid EHR Incentive Programs reporting period in 2015 to a 90-day period aligned with the calendar year. This final rule also removes reporting requirements on measures that have become redundant, duplicative, or topped out from the Medicare and Medicaid EHR Incentive Programs. This final rule also establishes the requirements for Stage 3 of the program as optional in 2017 and required for all participants beginning in 2018. The final rule continues to encourage the electronic submission of clinical quality measure (CQM) data, establishes requirements to transition the program to a single stage, and aligns reporting for providers in the Medicare and Medicaid EHR Incentive Programs.

We estimate that small hospitals and most eligible professionals are small entities, either by being nonprofit status or by qualifying as small businesses under the Small Business Administration’s (SBA’s) size standards (having revenues of \$7.5 million to \$38.5 million in any 1 year). We estimate that the total potential eligible providers are as follows:

- About 660,000 Medicare FFS EPs (some of whom will also be Medicaid EPs) comprising the following:
 - ++ About 595,100 non-hospital based Medicare EPs.
 - ++ About 64,900 hospital-based Medicare EPs
- About 58,300 non-Medicare eligible EPs (such as dentists, pediatricians, and eligible non-physicians such as certified nurse-midwives, nurse practitioners, and physicians assistants).
 - 4,900 eligible hospitals comprising the following:
 - ++ 3,397 acute care hospitals.
 - ++ 1,395 CAHs.
 - ++ 97 children's hospitals (Medicaid only).
 - ++ 11 cancer hospitals (Medicaid only).
 - 16 Medicare Advantage (MA) organizations and 13,635 MA EPs.

For 2015 through 2017, we estimate the reduction in the reporting burden for providers demonstrating meaningful use in a calendar year as 1.45 to 1.9 hours per EP respondent and 2.62 hours per eligible hospital or CAH respondent. We estimate the total annual cost savings related to this reduction at \$52,547,132 for a low estimate and \$68,617,864 for a high estimate. We expect spending under the EHR Incentive Programs for transfer payments to Medicare and Medicaid providers between 2017 and 2020 to be \$3.7 billion (this estimate includes net payment adjustments in the amount of \$0.8 billion for Medicare providers who do not achieve meaningful use).

We further estimate that EPs will spend approximately \$54,000 to purchase and implement a certified EHR and \$10,000 annually for ongoing maintenance according to the Congressional Budget Office (CBO).

While the program is voluntary, in the first 5 years it carries substantial positive incentives that make it attractive to virtually all eligible entities. Furthermore, entities that do not demonstrate meaningful use of EHR technology for an applicable EHR reporting period will be subject to significant Medicare payment reductions beginning in 2015. These Medicare payment adjustments are expected to motivate EPs, eligible hospitals, and CAHs to adopt and meaningfully use certified EHR technology.

In order to assist small healthcare entities in understanding this program and successfully demonstrating meaningful use of certified EHR technology, we have developed a Web page that includes substantial downloadable explanatory materials at <http://www.cms.gov/EHRIncentivePrograms>.