



# Legal ALERT!

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## Path Emerging for Medical Professionals to Receive their EHR Stimulus Dollars

Details are emerging as to how the Department of Health and Human Services will implement the electronic medical record incentive program established by the American Recovery and Reinvestment Act of 2009 (the "Stimulus Act"). The program will provide incentive payments to eligible professionals and eligible hospitals participating in Medicare and Medicaid that adopt and make "meaningful use" of certified electronic health record (EHR) technology. Proposed regulations published on December 30, 2009, provide a comprehensive overview as to the amount of incentive payments that providers can expect, as well as what will be required of providers to receive these payments.

### The Incentive Payments

The Program permits "eligible professionals" ("EPs") to collect incentive payments commencing in January, 2011. An EP is a doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor.

Incentive payments for EPs are based on 75% of their Medicare fee schedule of allowed charges (for each fiscal year) up to the following limits:

### Maximum Total Amount of EHR Incentive Payments per Medicare EP

Calendar Year	First CY in which the EP Receives an Incentive Payment				
	2011	2012	2013	2014	2015-subsequent years
<b>2011</b>	\$18,000.00	---	---	---	---
<b>2012</b>	\$12,000.00	\$18,000.00	---	---	---
<b>2013</b>	\$8,000.00	\$12,000.00	\$15,000.00	---	---
<b>2014</b>	\$4,000.00	\$8,000.00	\$12,000.00	\$12,000.00	---
<b>2015</b>	\$2,000.00	\$4,000.00	\$8,000.00	\$8,000.00	\$0
<b>2016</b>	---	\$2,000.00	\$4,000.00	\$4,000.00	\$0
<b>TOTAL</b>	<b>\$44,000.00</b>	<b>\$44,000.00</b>	<b>\$39,000.00</b>	<b>\$24,000.00</b>	<b>\$0</b>

To receive the maximum in fiscal year 2011, an EP must therefore have allowed Medicare charges of \$24,000.00. If the EP's estimated total allowed charges are less than that, for example, \$10,000, the 2011 payment would be \$7,500.00 (.75 x \$10,000.00).

Additionally, EPs practicing in a Geographic Health Professional Shortage Area (HPSA) can receive a 10% bonus on these amounts if they become an early adopter.

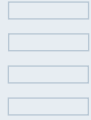
A provider is in a Geographic HPSA if they practice predominantly in a zip code listed on the Centers for Medicare and Medicaid Services ("CMS") website. Particularly, as New York State has 362 zip codes listed as Geographic HPSAs, we urge our clients to check this website to see if they will qualify for the HPSA bonus.

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Medicaid EPs (providers who qualify both as a Medicare EP or a Medicaid EP can choose to either get their incentives through Medicaid or Medicare – but not both) will be reimbursed with regard to a different formula, but they will only qualify if they are not hospital based, and if they i) have a minimum 30 percent patient volume attributable to individuals receiving Medicaid; ii) have a minimum 20 percent patient volume attributable to individuals receiving Medicaid, and be a pediatrician; or iii) practice predominantly in a FQHC or RHC and have a minimum 30 percent patient volume attributable to needy individuals.

The calculus for incentive payments for Hospitals and acute care facilities is different and is based not on the above chart but rather on a formula involving patient volume. The formulas are also different with respect to EPs participating in the Medicare fee-for-service program, Medicare Advantage programs, and Medicaid Preferred plans.

**Requirements of the EHR System to Qualify for Incentive Payments**

To qualify for the incentive payments, the provider must show that they are a “meaningful user” of EHR technology. The proposed rules specify the criteria for “meaningful use” for eligible hospitals and eligible professionals. To achieve meaningful use, the provider must adopt technology that achieves specific objectives and which achieve a certain performance threshold of use with that technology. The proposed rules articulate these objectives.

The “meaningful use” guidelines include 25 objectives for EPs and 23 objectives for eligible hospitals. The meaningful use objectives include, for example, that EPs maintain an active medication allergy list for at least 80% of all permissible prescriptions in order to be eligible for the incentive payments in the first year. Another objective requires EPs to provide to 80% of requesting patients an electronic copy (via patient portal, personal health record (PHR), CD, or USB drive) of their health information.

To assist early adopters, the meaningful use objectives will be phased in through three “stages”: stage two and stage three will have more rigorous requirements and will have higher performance thresholds than stage one. For example, stage one will require eligible professionals to use computerized provider order entry (CPOE) for 80% of all orders. Stage two and stage three will increase this performance threshold, and will also require more capabilities from CPOE, such as the ability to electronically transmit these orders. The stage three objectives will be released by 2015, and any provider who waits until 2015 to adopt will be responsible for meeting the rigorous stage three objectives to avoid penalty (Medicare/Medicaid payment adjustments).

The proposed technological specifications that the EHR technology must also contain, as well as the certification criteria that will be used to certify EHR technology are detailed in the proposed rules. The Secretary of Health may exempt from compliance an EP if the Secretary of Health determines that compliance with the requirement for being a meaningful EHR user would result in a significant hardship for the EP.

**How Hiscock & Barclay, LLP Can Assist Your Organization**

It is not too early to begin to consider whether your organization will want to become an early adopter of EHR technologies. Although there is a risk that the meaningful use objectives will change; the proposed rules are the product of significant discussion and debate throughout most of last year. In any event, the proposed rules will become final in 60 days.

We can help your organization identify how much in incentive payments your organization would qualify for and provide further guidance with respect to the criteria that your organization will need to adopt to obtain the incentive payments. We can also work closely with your technology vendor to ensure the technology your organization chooses meets the criteria required by these rules to ensure the maximum incentive payment. For further information, contact David Glasel, Chair of the Firm’s Health Care & Human Services, Melissa Zambri or Charles Feldman. ■

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