

Electronic Health Record Financial Incentives Available to Medicare and Medicaid Providers

July 2009

The Health Information Technology for Economic and Clinical Health Act ("HITECH"), enacted as part of the American Recovery and Reinvestment Act of 2009, outlines the \$17 billion in financial incentives ("Financial Incentives") soon to be available to Medicare and Medicaid providers if they adopt Electronic Health Records ("EHRs") in their practice pursuant to the terms of HITECH and the guidelines to be implemented by the Secretary of the Department of Health and Human Services ("HHS"). The other side of HITECH penalizes providers' Medicare reimbursements if they fail to qualify as a meaningful user of a Certified EHR Technology by year 2015.

As discussed below, Financial Incentives will be available to Medicare and Medicaid providers who qualify as "eligible professionals" and engage in "meaningful use" of "Certified EHR Technology." Hospitals are also eligible for certain financial incentives, although this article does not address hospital financial incentives. HHS and the Office of the National Coordinator, a Federal office established by the HITECH Act, are charged with generating the criteria required to qualify for Financial Incentives by the end of 2009. A large part of this work is in determining the criteria for "meaningful use" of "Certified EHR Technology," which, in particular, may be preliminarily issued in late summer or early fall. The earlier that a provider can qualify under these soon-to-be issued guidelines as a meaningful user of Certified EHR Technology, the higher the incentive payment may be.

Medicare Financial Incentives

HITECH Medicare Financial Incentive payments to certain non-hospital based healthcare providers may total up to 75% of annual Medicare reimbursements per physician during a "payment year," not to exceed certain specified amounts per payment year. Years 2011 through 2016 are the applicable "payment years," outside of which providers will not be eligible for Medicare Financial Incentives. HITECH limits the total amount a provider may receive per payment year which ranges from \$18,000 in year 2011 to \$2,000 in year 2015, and will provide a maximum of \$44,000 total incentive payments to a provider if the provider qualifies in all payment years.

Medicaid Financial Incentives

Medicaid Financial Incentives under HITECH will be available to certain Medicaid eligible providers, including physicians, dentists, certified nurse mid-wives and nurse practitioners, and physician assistants practicing in rural health clinics or Federally qualified health centers led by a physician assistant. To qualify for Medicaid Financial Incentives, such providers may not be hospital-based and must treat a certain volume of Medicaid patients per year, and further they must be engaged in efforts to adopt, implement, or upgrade Certified EHR Technology.

Medicaid Incentive Payments will be made by the State and may total up to 85% of the "net average allowable costs" of Certified EHR Technology, a number that is to be determined by HHS in forthcoming regulations. The first incentive payment may not be later than year 2016 and may not

exceed \$25,000. Thereafter, providers may be eligible for up to five subsequent years of Medicaid Incentive payments in amounts not to exceed \$10,000 each. Medicaid Financial Incentives will not be available after year 2021.

Practices must choose between Medicare and Medicaid Financial Incentives, as HITECH prohibits providers from receiving both incentives. Providers are encouraged to adopt Certified EHR Technology in their practices as soon as additional guidelines, rules and regulations governing "Meaningful Use," "Certified EHR Technology," and other key terms are issued to ensure that they are eligible for the full amount of the Financial Incentives available.

Miller Canfield is closely monitoring all guidelines, rules and regulations published by governmental authorities on this topic. If you have any questions regarding qualification for HITECH Financial Incentives, please call your Miller Canfield attorney, or the co-authors of this article, Joe Gustavus, at 248.267.3317 or Rose Willis at 248.267.3276.