



American Hospital
Association

SPECIAL BULLETIN

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Recent Guidance on Meaningful Use of EHRs Makes Compliance More Difficult: *Requires hospital implementation of all 24 meaningful use capabilities*

The Centers for Medicare & Medicaid Services (CMS) and the Office of the National Coordinator for Health Information Technology (ONC) recently released guidance adding more roadblocks for hospitals working to become meaningful users of electronic health records (EHRs) and receive incentive payments promised in the stimulus bill. At issue is the extent of technology a hospital must have deployed in order to meet the definition of meaningful use put forward by CMS.

ONC posted on its website a Frequently Asked Question (FAQ) stating that **hospitals must have EHRs that have been certified against all 24 objectives of meaningful use, not just the 19 they plan to use to demonstrate meaningful use.** This means that hospitals will need to purchase and implement technology beyond that required to comply with the meaningful use requirements, delaying many hospitals' efforts to become meaningful users.

This guidance establishes a back-door "all-or-nothing" approach to meaningful use by taking away the flexibility to choose how to stage implementations that CMS had previously offered in its final rule. The AHA believes that this interpretation of the regulations will significantly increase the financial and human resources required to achieve meaningful use and may delay hospitals' progress in meeting meaningful use. ONC's approach will lock hospitals into the technology currently on the market, limiting their ability to benefit from innovative solutions that arise in the coming years. It also could limit the entrance of new vendors offering new approaches to meeting specific objectives.

BACKGROUND

In response to concerns from hospitals and physicians that the proposed rule on meaningful use asked for “too much, too soon” and adopted an “all-or-nothing” approach to meeting the requirements of meaningful use, CMS in July outlined a “flexible” approach to demonstrating meaningful use in its [final rule](#). For hospitals, the rule set forth 14 “core,” or mandatory, objectives and a set of 10 “menu items,” of which hospitals could choose five to demonstrate meaningful use, for a total of 19 objectives. Specifically, CMS said that hospitals could “defer” up to five of the objectives in the initial years of the program. In its July 13 press release announcing the final rule, CMS stated that “this [approach] gives providers latitude to pick their own path toward full EHR implementation and meaningful use.”

The ONC FAQ takes away the flexibility to defer objectives and requires hospitals and physicians to have in place EHRs certified against all 24 objectives of meaningful use. It reads:

Question [9-10-017-1]:

Under the Medicare and Medicaid EHR Incentive Programs Final Rule, eligible health care providers are permitted to defer certain meaningful use objectives and measures and still receive an EHR incentive payment. However, it is our understanding that in order for us to have our EHR technology certified, we must implement all of the applicable capabilities specified in the adopted certification criteria regardless of whether we intend to use all of those capabilities to qualify for our EHR incentive payment. Is our understanding correct?

ONC Answer:

Yes, this understanding is correct. The flexibility offered as part of the Medicare and Medicaid EHR Incentive Programs Final Rule is not mirrored in the Initial Set of Standards, Implementation Specifications, and Certification Criteria Final Rule because we believe that it is important to accommodate eligible health care

providers' ability to achieve meaningful use. We recognize that in some circumstances an eligible health care provider may not know which meaningful use measures they will seek to defer until they begin implementation and in others an individual provider (even within a specialty) will want to choose different measures to defer based on their local situation and implementation experience. Thus, in order to possess EHR technology that meets the definition of Certified EHR Technology, it must be tested and certified by an [ONC-Approved Testing and Certification Body] to all applicable certification criteria adopted by the Secretary.

ONC issued this guidance almost two months after CMS released its final rule, and only 10 days before the official start of the Medicare EHR Incentive Program on October 1. The lack of consistency between CMS and ONC, and the changing interpretation of rules when hospitals are in the middle of planning their meaningful use implementations, creates confusion and will likely delay the progress of hospitals working diligently to comply with the already challenging meaningful use requirements in a very short timeframe.

WHAT THIS MEANS FOR HOSPITALS

To qualify for the incentive payments, hospitals must have an EHR certified against all 24 objectives of meaningful use, while demonstrating meaningful use against only 19 objectives. Thus, they will need to buy now technology that CMS does not require them to use until later, and which may need to be replaced or upgraded when new certification criteria are adopted for later stages of meaningful use. Hospitals will also have to buy technology to achieve objectives for which CMS provided specific exclusions in the final rule. For example, they will need to purchase the technology to support reporting of biosurveillance and immunization data to public health departments directly from the EHR, even if the hospital's public health department is not capable of receiving the data in the standardized electronic formats required by ONC and CMS. In the final rule, CMS provided specific exclusions from the public health objectives in the event that a hospital's public health department cannot receive the

data. Nevertheless, the recent guidance requires hospitals to have the technology to meet these objectives, even if they qualify for the exclusion.

NEXT STEPS

The AHA continues to advocate for a withdrawal of this interpretation and the provision of real flexibility in the Medicare and Medicaid EHR Incentive programs. The AHA is sending a letter to Department of Health and Human Services Secretary Sebelius expressing our concern about this ONC requirement that undercuts the flexibility offered in CMS' meaningful use regulation. We are urging the department to use its regulatory discretion to clarify and implement the ONC and CMS rules in a way that fully realizes the flexibility hospitals envisioned and were promised.

While we will continue to urge CMS and ONC to provide the promised flexibility, we encourage you to evaluate how this interpretation will affect your ability to meet the meaningful use and certification requirements and determine any necessary revisions to your strategy for becoming a meaningful user.

Both CMS and ONC continue to issue new guidance on these programs. CMS has published more than 100 FAQs on its website, while ONC has published 21 FAQs. We encourage you and your staff to review the FAQs posted by the agencies at <http://questions.cms.hhs.gov/app/answers/list/p/21,26,1058> and http://healthit.hhs.gov/portal/server.pt/community/onc_regulations_faqs/3163. We will continue to review the new guidance coming from the agencies and provide updates to the field as these programs are established. Further information on the Medicare and Medicaid EHR Incentive programs can be found on the AHA's [website](#).

If you have questions or comments about this *Special Bulletin*, please contact Chantal Worzala, director of policy, at cworzala@aha.org.