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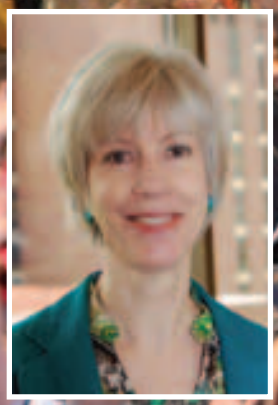
Meet Danna Teicheira, System Privacy Officer at St. Luke's Health System

PAGE 16



Compliant DMEPOS telemarketing: Strategic approaches and practical tips

PAGE 54

Feature Focus:

A new era of HIPAA compliance: HHS actions suggest increased HIPAA enforcement

PAGE 40

Achieving "meaningful use" in the Medicare Advantage incentive program: Part 2

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The American Recovery and Reinvestment Act (ARRA), passed in February of 2009 through the Health Information Technology for Economic and Clinical Health (HITECH) Act, established three incentive programs focused on promoting the adoption of electronic health record (EHR) technology: a Medicare Fee-For-Service (FFS) incentive program, a Medicare Advantage (MA) incentive program, and a Medicaid incentive program. The Medicare Fee-For-Service incentive program was addressed in the January 2011 issue of **Compliance Today**, and the Medicaid incentive program will be addressed in next month's issue.

The first round of final regulations (the final rule) related to "meaningful use" was released on July 13, 2010 by the Centers for Medicare and Medicaid Services (CMS). The final rule sets forth the criteria required to achieve meaningful use in the first stage of the incentive programs, the relevant time lines for each incentive program, and the amount of incentive payments that a provider may be eligible for in each program.[1] The details related to the MA incentive program are described below.

Importantly, the MA incentive program differs from the Medicare FFS incentive program in that the incentive payments are paid to "qualifying MA organizations" rather than to the individual eligible professionals (EPs) or eligible hospitals (EHs). Pursuant to the final rule, a "qualifying MA organization" is defined as an organization that is organized as a federally qualified health maintenance organization (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. Because there are only a few federally qualified HMOs, most MA organizations that qualify for the MA incentive payments will be state-licensed HMOs or organizations regulated for solvency under state law in the same manner and to the same extent as HMOs.

Qualifying MA eligible professionals (MA-EPs)

An EP who may qualify as an MA-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 who is legally authorized to practice under state law.

A qualifying MA organization may receive an incentive payment only for EPs that are either:

- employed by the qualifying MA organization within the meaning of an employer-employee

relationship under the Internal Revenue Service Code; or
- employed by or are a partner of (i.e., have an ownership interest in) an entity that through a contract with the qualifying MA organization furnishes at least 80% of the entity's Medicare patient care services to enrollees of the MA organization.

EPs must also:
- furnish at least 80% of their Medicare-reimbursed services in a year (i.e., total revenue from Medicare FFS and MA organizations) to enrollees of the (i.e., a single) qualifying MA organization; and
- furnish, on average, during the relevant reporting period, at least 20 hours per week of patient care services that would qualify as "covered professional services," including such services rendered to non-Medicare patients.

As is the case under the Medicare FFS incentive program, without exception, MA incentive payments are not available for hospital-based EPs, which are defined as EPs (e.g., pathologists, anesthesiologists, or emergency physicians) who furnish substantially all of their Medicare-covered professional services during the relevant reporting period in a hospital inpatient or emergency room setting through the use of the facilities and equipment of the hospital, including the hospital's qualified EHRs. This means that there will be cases where a hospital-based EP practicing in an MA-affiliated hospital (MA-EH) will not receive any type of incentive for achieving meaningful use (i.e., through the hospital's receipt of an incentive payment), if the MA-EH does not meet the MA incentive eligibility criteria, even if the hospital-based EP would have otherwise met the MA-EP criteria, except for being hospital-based.

The eligibility standards described above clearly limit incentive payments related to a specific MA-EP to a single qualifying MA organization. This means that if an EP splits his/her time evenly between two MA organizations, neither MA organization may receive an incentive payment on the EP's behalf. Rather, the EP would receive an incentive payment through the Medicare FFS incentive program in an amount less than the maximum allowable amount. Additionally, in this same vein, CMS does not have the authority to combine payments across the Medicare FFS or MA incentive programs, which means that either an EP may receive an incentive payment under the Medicare FFS program or a qualifying MA organization may receive an incentive payment for such MA-EP, not both. The HITECH Act specifically prohibits CMS from making payments to EPs for both FFS and MA services. The mechanisms that CMS will use to monitor this are discussed below.

If an EP is not eligible for the maximum incentive payment amount for any payment year under the Medicare FFS incentive program and if the qualifying EP is also a qualifying MA-EP, the qualifying MA organization with which the EP is affiliated must receive the incentive payment for the EP through the MA incentive program.

Under the MA incentive program:
- Qualifying MA organizations are entitled to receive incentive payments for their qualifying MA-EPs for only five years, with the first opportunity for payment in early 2012.
- No incentives will be paid after CY2016.
- The aggregate maximum amount of total incentive payments that a qualifying MA organization can receive for each MA-EP is $44,000.
- If the MA-EP "predominantly furnishes" services (i.e., over 50% of professional services) in a Health Professional Shortage Area (HPSA), the maximum annual incentive amounts are increased by 10%.

Continued on page 45

 ...continued from page 43

Table 1 shows the maximum incentive payment amounts available to a qualifying MA organization on behalf of an MA-EP in a non-HPSA area each year under the MA incentive program.

Similar to the Medicare FFS incentive program, there will be penalties imposed on qualified MA organizations whose MA-EPS do not all achieve meaningful use by 2015 through reductions in reimbursement. Although the final rule does not provide the specific mechanism for such reimbursement reductions, the HITECH Act provides that the payment adjustment be applied to the proportion of a physician's expenditures under Medicare Parts A and B paid to the qualifying MA organization in the form of capitation payments that are not attributable to the EHR incentive payment program, but rather are attributable to expenditures for physician services. The reimbursement adjustments will be made for qualifying MA organizations that attest that not all of its MA-EPs are meaningful EHR users with respect to years beginning with 2015. The adjustment will be made on the proportion of the capitation payment with respect to the MA-EPs of the qualified MA organization who are not meaningful users. The adjustment amounts will be 1% for 2015, 2% for 2016, and 3% in 2017 and subsequent years.

Table 1

Meaningful use established	Qualifying MA incentive payment for eligible professionals						
	2011	**2012**	**2013**	**2014**	**2015**	**2016**	**Total**
2011	$18,000	$12,000	$8,000	$4,000	$2,000	0	$44,000
2012		$18,000	$12,000	$8,000	$4,000	$2,000	$44,000
2013			$18,000	$12,000	$8,000	$4,000	$39,000
2014				$12,000	$8,000	$4,000	$24,000
2015					0	0	0

**Note that these maximum incentive amounts are equivalent to those for EPs made under the Medicare FFS incentive program.*

All MA-EPs of a specific qualifying MA organization will be considered to be in the same payment year with respect to the amount of the incentive payment paid to the qualifying MA organization for each qualifying MA-EP in that payment year, regardless of in which payment year the specific MA-EP first established meaningful use. For example, if a qualifying MA organization is in its second payment year (2013) and the MA organization hires a new EP for which the qualifying MA organization has not previously received an EHR incentive payment, CMS will only make a second year incentive payment (i.e., $12,000) with respect to such an MA-EP (assuming the MA-EP meets all other meaningful use requirements).

Qualifying MA-affiliated EHs

An eligible hospital (EH) is paid under the hospital Inpatient Prospective Payment System (IPPS) that is located in one of the 50 states or the District of Columbia. Eligible hospitals do not include psychiatric, rehabilitation, long-term care, children's, or cancer hospitals, which are excluded from the IPPS.

A qualifying MA organization may receive an incentive payment only for a qualifying MA-affiliated eligible hospital. Qualifying MA-affiliated hospitals (MA-EHs) are "eligible hospitals" that are under common corporate governance with a qualifying MA organization (i.e., both entities have a common parent corporation, one entity is

Continued on page 46

a subsidiary of the other, or both entities have a common board of directors) that services individuals enrolled under MA plans offered by such organization where more than two-thirds of the Medicare hospital discharges (or bed-days) are Medicare individuals enrolled under MA plans offered by such organization.

If in a payment year, at least one-third of an EH's discharges (or bed-days) of Medicare patients are covered under Part A (rather than under Part C), the hospital may receive an incentive payment only under the Medicare FFS incentive program. To the extent a hospital does not meet the one-third (i.e., 33%) threshold requiring payment through the Medicare FFS incentive program, incentive payments will be made to the qualifying MA organization under common corporate governance on behalf of the MA-EH to the extent the other requirements of the MA incentive program are met.

Under the MA incentive program:

- A qualifying MA organization may receive incentive payments for up to four years, beginning FY 2011, on behalf of MA-EHs.
- FY 2015 is the last year for which a qualifying MA organization can begin receiving incentive payments for meaningful use on behalf of MA-EHs.
- If an MA-EH is eligible for incentive payments under the Medicare FFS incentive program, the incentive payments must be made through the Medicare FFS incentive program.

Unlike incentive payments for MA-EPs where all MA-EPs of a qualified MA organization are paid on the same payment schedule (i.e., first payment year, second payment year, etc.), incentive payments for MA-EHs will be made on a hospital-specific basis. This means that for one qualified MA organization, an MA-EH may have a first payment year of FY 2012, and another MA-EH may have a first payment year of FY 2013.

CMS will determine incentive payments under the MA incentive program at the same time as for the Medicare FFS incentive program (i.e., at the time of settling the 12-month cost report for the MA-EH's fiscal year after the beginning of the payment year). The data used will be based on the hospital discharge and other data from that cost reporting period report once the MA-EH has qualified for meaningful use. Payments to qualified MA organizations for MA-EHs will be made on a hospital-specific basis and CMS will not make MA-EH incentive payments to MA organizations for MA-EHs other than through the Medicare FFS incentive payment program without first ensuring that no such payments under the Medicare FFS program were made.

Like for MA-EPs, qualified MA organizations will also be penalized for MA-EHs that do not meet the meaningful use requirements by FY 2015 and beyond, in the form of reductions in reimbursement. Specifically, under the HITECH Act, CMS will apply the adjustment to its estimate of the proportion of the expenditures under Medicare Parts A and B paid to the qualifying MA organization in the form of capitation payments that are not attributable to the EHR incentive payment program, but rather are attributable to expenditures for inpatient hospital services. In 2015, if a qualified MA organization attests that not all of its MA-EHs are meaningful users of EHR, the payment adjustment will be applied. The adjustment amount will be equivalent to three-fourths of the market basket increase related to a hospital by a 33-1/3% reduction in 2015, by a 66-2/3% reduction in 2016, and by a 100% reduction in 2017 and all subsequent years. Effectively, the reduction is equal to all but 25% of the market basket increase for a specific hospital in years after 2016.

Identifying qualifying MA organizations, MA EPs and MA-Affiliated EHs

Unlike in the Medicare FFS incentive program where an EP or EH attests to or reports its participation and achievement of meaningful use after meeting all of the meaningful use requirements, in the MA incentive program, a qualifying MA organization must make certain indications about itself, qualifying MA-EPs and MA-EHs prior to meeting the meaningful use requirements. Specifically, to participate in the MA incentive program, the MA organization must indicate its anticipated participation during its initial MA bid process, and at that time should also attest that it meets the requirements of a qualifying MA organization. Also as part of the initial bid process, the MA organization should make a preliminary identification of its potential qualifying MA-EPs and MA-EHs for which the MA organization would seek incentive payments under the MA incentive program. Along with such identifications, the qualifying MA organization is also required to submit an attestation that the EPs and EHs meet the criteria to be considered eligible as MA-EPs and MA-EHs.

Within 60 days after the close of the relevant payment year for which the MA incentive payments were sought, the MA organization is also required to provide a final identification of the MA-EPs and MA-EHs. This final identification would include the name, practice address, and other identifying information, such as the National Provider Identifier number (NPI), for all physicians that meet the requirements of a qualifying MA-EP and MA-EH.

Through the MA organization reporting process, CMS will be able to ensure that such MA-EPs do not receive the maximum incentive payment for the relevant payment year under the Medicare FFS incentive program. For this reason, payments to MA organizations for MA-EPs will not be made for a payment year until after the final computation of EP incentive payments is made for that year under the Medicare FFS program.

Calculating MA incentive payments

In the Medicare FFS incentive program, incentive payments to EPs are based on the covered professional services provided. Because under MA plans, MA-EPs are generally paid on a capitated basis, the Medicare FFS incentive program calculation would not necessarily be appropriate for calculating MA incentive program payments to qualified MA organizations. For purposes of calculating MA-EP incentive payments, CMS will only consider the covered professional services provided to enrollees of MA plans that are offered by qualifying MA organizations. Services reimbursed by Medicare FFS that are provided by MA-EPs will not be taken into consideration in calculating the incentive payments under the MA incentive program.

There are two methods for determining the amount of professional services provided to MA plan enrollees that CMS has endorsed. These two methods are:

- The revenue received by the qualifying MA-EP for services provided to enrollees of the qualifying MA organization would serve as a proxy for the amount that would have been paid if the services were payable under Part B. The MA organization would report to CMS the aggregate annual amount of revenue received by each qualifying MA-EP for MA plan enrollees of the MA organization. The incentive payment amount would be equal to 75% of the reported annual MA revenue of the MA-EP, up to the maximum amount.
- If an MA-EP is compensated on a salary basis by the qualified MA organization, the MA organization would be required to develop a methodology for estimating the portion of the MA-EP's salary attributable to providing services that would otherwise be covered as professional services under Part B. The incentive payment

Continued on page 48

under this method would also be capped at the maximum allowed incentive payment amount.

In reporting the information to be used for determining these calculation methodologies, a qualifying MA organization may obtain attestations from qualifying MA-EPs and may submit such information to CMS. In the alternative, the MA-EP may provide the reimbursement information directly to CMS. CMS would use the MA-EP reimbursement data for no other purpose than to calculate the MA-EP incentive payment due to the qualifying MA organization. Once CMS calculates the amount of an incentive payment that is due to a qualified MA organization on behalf of an MA-EP, there will be no administrative or judicial review of the methodology and payment amounts determined by CMS.

For purposes of the MA incentive program, CMS will use the FFS incentive program methodology for calculating and making the incentive payment to qualified MA organizations for MA-EHs (i.e., an initial amount composed of a base incentive payment of $2,000,000 and a second incentive payment amount of $200 per discharge for discharges 1,150 – 23,000 during a 12-month period, the Medicare share, and a transition factor). To the extent the relevant data is not available to CMS through the normal submission of hospital cost reporting data, data would be required to be submitted.

Reimbursement only under the MA incentive program is not required for MA-EHs that are under common corporate governance. Rather, payment is permitted under the MA incentive program only when Medicare hospital inpatient-bed days covered under Part A are below 33% of all Medicare inpatient days.

Criteria and incentive time line for achieving meaningful use

A qualified MA organization will receive MA incentive payments for its MA-EPs and MA-EHs if the MA-EPs and MA-EHs establish meaningful use of EHR technology during the specified reporting period by:

- demonstrating the use of certified EHR technology in a meaningful manner;
- demonstrating that the certified EHR technology is connected in a manner that provides for the electronic exchange of health information in order to improve the quality of health care, such as promoting care coordination; and
- continuing to submit certain quality measures as described below.

As has been previously discussed, the meaningful use criteria will be rolled out by CMS in three "stages" and it is anticipated that each of the stages will build on the criteria in the prior stage. The final rule includes the criteria for Stage 1 only and, CMS has not yet proposed criteria for Stages 2 and 3. Under the final rule, in order to achieve meaningful use in Stage 1, MA-EPs and MA-EHs must be able to meet 14 required criteria objectives for MA-EHs and 15 required criteria objectives for MA-EPs, and 5 of 10 optional criteria objectives with their associated measures which are found on a "menu" of 10 optional criteria objectives.

In the first payment year only, a provider need only satisfy the Stage 1 criteria for any continuous 90-day period during the payment year in order to qualify for an incentive payment. After the initial payment year, however, the provider must meet all of the Stage 1 criteria for the entire payment year. This gives providers some leeway in getting EHR technology up and running in FY 2010, which runs from October 1, 2010 to September 30, 2011. However, providers should consider attempting to meet more than the minimum Stage 1 meaningful use criteria from the outset, as CMS has indicated that all Stage 1 criteria objectives, including all "menu" set objectives will likely be a required in later stages.

Another requirement that must be met in order to achieve

meaningful use in the Medicare FFS incentive program is that the EP and EH must use certified EHR technology to submit information to the Secretary of CMS on specified clinical quality measures and other measures. Differently, in the MA incentive program, qualifying MA organizations, for their MA-EPs as well as MA-EHs, will continue to submit Healthcare Effectiveness Data and Information Set (HEDIS), Health Outcome Survey (HOS), and Consumer Assessment of Healthcare Providers and Systems (CAHPS) measures, as is already required of these providers, instead of the clinical quality measure results required to be reported under the Medicare FFS incentive program.

Use of certified EHR technology

As described above, in order for a provider to achieve meaningful use of EHRs, a provider must use certified EHR technology. In conjunction with the release of the final rule, ONCHIT released the Certification Criteria Final Rule, which details the standards, implementation specifications, and certification criteria for EHR technology required for Stage 1 of the incentive programs (Certification Criteria).

The Certification Criteria represent the floor of the EHR technology's capabilities required for the incentive programs; the minimum requirements that EHR technology must meet in order to achieve certification. It is not, however, intended to act as a limit on the use of additional functionality or capabilities of EHR technology generally.

Potential legal pitfalls

Under the MA incentive program, CMS explicitly contemplates the performance of compliance reviews to ensure that MA-EPs and MA-EHs for which qualified MA organizations received incentive payments are actually meaningful users of certified EHR technology. The compliance reviews will include validation of meaningful user attestations, the status of the organization as a qualifying MA organization, and verification of both meaningful use and data used to calculate incentive payments. As such, the final rule suggests that all documentation related to the MA incentive program should be maintained for a period of 10 years after the date payment is made.

Additionally, as part of its discussion related to the MA incentive program, CMS has specified that payments that result from incorrect or fraudulent attestations, cost data, or any other submissions required to establish eligibility or to qualify for a payment, will be recouped by CMS from the MA organization. This explicit statement by CMS should serve as an indication to qualified MA organizations of the importance that each qualified MA organization ensures that all information and certifications that it, as well as its MA-EPs and MA-EHs, provides to CMS are complete and accurate. Qualified MA organizations', and MA-EPs' and MA-EHs', compliance efforts should particularly ensure that duplicate payments are neither requested nor received under the Medicare FFS incentive program and the MA incentive program for each EP or EH that meets the meaningful use criteria.

As an enforcement-type mechanism to ensure that CMS is not making a payment on behalf of an EP to the EP under the Medicare FFS incentive program and to the qualifying MA organization under the MA incentive program and to aid in providers' compliance efforts, the Secretary is required to list the names, business addresses, and business phone numbers of the EPs and EHs in the MA incentive program on the CMS website. Additionally, the Secretary must post the names of qualifying MA organizations receiving the MA incentive payment or payments. ■

1 The information contained in this article can be found at 75 Fed. Reg. number 144; 44314, 44468 – 44482 (July 28, 2010). Readers can also find additional information at http://www.cms.gov/ehrincentiveprograms/.