Issue Brief

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KEY POINTS

The rule proposes that all eligible hospitals, critical access hospitals and eligible professionals report on the same eight objectives of meaningful use, which follow.

- protect patient health information
- electronic prescribing
- clinical decision support
- computerized provider order entry
- patient electronic access to health information
- coordination of care through patient engagement
- health information exchange
- public health and clinical data registry reporting

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MISSOURI HOSPITAL ASSOCIATION

CMS Issues Proposed EHR Stage 3 Rule

The Centers for Medicare & Medicaid Services has issued a proposed rule that would specify the meaningful use criteria that eligible professionals, eligible hospitals and critical access hospitals must meet in order to qualify for Medicare and Medicaid electronic health record incentive payments and avoid downward payment adjustments. It would continue to encourage electronic submission of clinical quality measure data for all providers where feasible in 2017, propose to require the electronic submission of CQMs where feasible in 2018 and establish requirements to transition the program to a single stage for meaningful use. Finally, the Stage 3 proposed rule also would change the EHR reporting period so that all providers would report under a full calendar year timeline with a limited exception under the Medicaid EHR Incentive Program for providers demonstrating meaningful use for the first time.

A copy of the 309-page proposed rule is at: https://www.federalregister.gov/articles/2015/03/30/2015-06685/medicare-and-medicaid-programs-electronic-health-record-incentive-program-stage-3. The rule is scheduled for publication in the *Federal Register* on March 30. A 60-day comment period is provided.

In a separate 431-page rule, the National Coordinator for Health Information Technology has published its proposed 2015 Edition Health Information Technology Certification Criteria, 2015 Edition Base Electronic Health Record Definition, and ONC Health IT Certification Program Modifications. A copy is at: https://www.federalregister.gov/articles/2015/03/30/2015-06612/health-information-technology-certification-criteria-base-electronic-health-record-definition-and. It too, will be published on March 30.

The material that follows pertains to the CMS Stage 3 proposal.

MAJOR PROVISIONS

Meaningful Use in 2017 and Subsequent Years

With the exception of Medicaid providers in their first year of demonstrating meaningful use, all providers (EPs, eligible hospitals and CAHs) would report on a CY EHR reporting period beginning in CY 2017.

In addition, all providers, other than Medicaid EPs and eligible hospitals demonstrating meaningful use for the first time, would be required to attest based on a full year of data for a single set of meaningful use objectives and measures, which is proposed as optional for an EHR reporting period in 2017 and mandatory for an EHR reporting period in 2018, and subsequent years.

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This proposal would mean that eligible hospitals and CAHs would have a reporting gap for the objectives and measures of meaningful use consisting of the 3-month quarter from Oct. 1, 2016 through Dec. 31, 2016. Depending on future rulemaking, eligible hospitals and CAHs may still be required to report on CQMs over this time. The next EHR reporting period for eligible hospitals and CAHs to collect data on the objectives and measures of meaningful use would then begin on Jan. 1, 2017 and end on Dec. 31, 2017. Eligible hospitals and CAHs would then report on a full calendar year basis from that point forward.

CMS proposes to eliminate the EHR reporting period of any continuous 90 days for EPs, eligible hospitals and CAHs that are demonstrating meaningful use for the first time.

CMS has identified eight key policy areas, which represent the advanced use of EHR technology and align with the program's foundational goals and overall national health care improvement goals. They are included in the table below.

Objectives and Measures for Meaningful Use in 2017 and Subsequent Years	
Protect Patient Health Information	Foundational to Meaningful Use and Certified EHR Technology Recommended by HIT Policy Committee
Electronic Prescribing	Foundational to Meaningful Use National Quality Strategy Alignment
Clinical Decision Support	Foundational to Certified EHR Technology Recommended by HIT Policy Committee National Quality Strategy Alignment
Computerized Provider Order Entry	Foundational to Certified EHR Technology National Quality Strategy Alignment
Patient Electronic Access to Health Information	Recommended by HIT Policy Committee National Quality Strategy Alignment
Coordination of Care through Patient Engagement	Recommended by HIT Policy Committee National Quality Strategy Alignment
Health Information Exchange	Foundational to Meaningful Use and Certified EHR Technology Recommended by HIT Policy Committee National Quality Strategy Alignment
Public Health and Clinical Data Registry Reporting	Recommended by HIT Policy Committee National Quality Strategy Alignment

EPs Practicing in Multiple Practices/Locations

CMS is proposing that an EP must have 50 percent or more of his or her outpatient encounters during the EHR reporting period at a practice/location or practices/locations equipped with Certified Electronic Health Record Technology. An EP who does not conduct at least 50 percent of their patient encounters in any one practice/location would have to meet the 50 percent threshold through a combination of practices/locations equipped with CEHRT.

Objective 1: Protect Patient Health Information

- **Proposed Objective:** Protect electronic protected health information created or maintained by the CEHRT through the implementation of appropriate technical, administrative and physical safeguards.
- **Proposed Measure:** Conduct or review a security risk analysis in accordance with the requirements under 45 CFR 164.308(a)(1), including addressing the security (including

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encryption) of data stored in CEHRT in accordance with requirements under 45 CFR 164.312(a)(2)(iv) and 45 CFR 164.306(d)(3), implement security updates as necessary, and correct identified security deficiencies as part of the provider's risk management process.

CMS proposes that the timing or review of the security risk analysis to satisfy this proposed measure must be as follows:

- EPs, eligible hospitals and CAHs must conduct the security risk analysis upon installation of CEHRT or upon upgrade to a new edition of CEHRT.
- In subsequent years, a provider must review the security risk analysis of the CEHRT and the administrative, physical and technical safeguards implemented, and make updates to its analysis as necessary, but at least once per EHR reporting period.

Objective 2: Electronic Prescribing

- **Proposed Objective:** EPs must generate and transmit permissible prescriptions electronically, and eligible hospitals and CAHs must generate and transmit permissible discharge prescriptions electronically.
- **Proposed EP Measure:** More than 80 percent (up from the Stage 2 level of 50 percent) of all permissible prescriptions written by the EP are queried for a drug formulary and transmitted electronically using CEHRT.
- **Proposed Eligible Hospital/CAH Measure:** More than 25 percent (up from 10 percent) of hospital discharge medication orders for permissible prescriptions (for new and changed prescriptions) are queried for a drug formulary and transmitted electronically using CEHRT.
- **Exclusions:**
  - Any EP who: (1) writes fewer than 100 permissible prescriptions during the EHR reporting period; or (2) does not have a pharmacy within their organization and there are no pharmacies that accept electronic prescriptions within 10 miles of the EP's practice location at the start of his or her EHR reporting period.
  - Any eligible hospital or CAH that does not have an internal pharmacy that can accept electronic prescriptions and there are no pharmacies that accept electronic prescriptions within 10 miles at the start of their EHR reporting period.

Objective 3: Clinical Decision Support

- **Proposed Objective:** Implement clinical decision support interventions focused on improving performance on high-priority health conditions.
- **Proposed Measures:** EPs, eligible hospitals, and CAHs must satisfy ***both*** measures in order to meet the objective.
- **Measure 1:** Implement five clinical decision support interventions related to four or more CQMs at a relevant point in patient care for the entire EHR reporting period. Absent four CQMs related to an EP, eligible hospital or CAH's scope of practice or patient population, the clinical decision support interventions must be related to high-priority health conditions.
- **Measure 2:** The EP, eligible hospital or CAH has enabled and implemented the functionality for drug-drug and drug-allergy interaction checks for the entire EHR reporting period.

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- **Exclusion:** For the second measure, any EP who writes fewer than 100 medication orders during the EHR reporting period.

Objective 4: Computerized Provider Order Entry

- **Proposed Objective:** Use computerized provider order entry for medication, laboratory and diagnostic imaging orders directly entered by any licensed health care professional, credentialed medical assistant, or a medical staff member credentialed to and performing the equivalent duties of a credentialed medical assistant; who can enter orders into the medical record per state, local and professional guidelines.
- **Proposed Measures:** An EP, eligible hospital or CAH must ***meet all*** three measures.
- **Measure 1:** More than 80 percent of medication orders created by the EP or authorized providers of the eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23) during the EHR reporting period are recorded using computerized provider order entry;
- **Measure 2:** More than 60 percent of laboratory orders created by the EP or authorized providers of the eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23) during the EHR reporting period are recorded using computerized provider order entry; and
- **Measure 3:** More than 60 percent of diagnostic imaging orders created by the EP or authorized providers of the eligible hospital's or CAH's inpatient or emergency department (POS 21 or 23) during the EHR reporting period are recorded using computerized provider order entry.
- **Exclusions:**
  - Any EP who writes fewer than 100 medication orders during the EHR reporting period.
  - Any EP who writes fewer than 100 laboratory orders during the EHR reporting period.
  - Any EP who writes fewer than 100 diagnostic imaging orders during the EHR reporting period.

Objective 5: Patient Electronic Access to Health Information

- **Proposed Objective:** The EP, eligible hospital or CAH provides access for patients to view online, download and transmit their health information, or retrieve their health information through an Application-Program Interface, within 24 hours of its availability.
- **Proposed Measures:** EPs, eligible hospitals and CAHs must satisfy ***both*** measures in order to meet the objective.
- **Measure 1:** For more than 80 percent of all unique patients seen by the EP or discharged from the eligible hospital or CAH inpatient or emergency department (POS 21 or 23):
  - The patient (or patient-authorized representative) is provided access to view online, download and transmit their health information within 24 hours of its availability to the provider; or
  - The patient (or patient-authorized representative) is provided access to an ONC-certified API that can be used by third-party applications or devices to provide patients (or patient-authorized representatives) access to their health information, within 24 hours of its availability to the provider.

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- **Exclusions:**
  - An EP may exclude from the measure if they have no office visits during the EHR reporting period.
  - Any EP that conducts 50 percent or more of his or her patient encounters in a county that does not have 50 percent or more of its housing units with 4Mbps broadband availability according to the latest information available from the FCC on the first day of the EHR reporting period may exclude the measure.
  - Any eligible hospital or CAH will be excluded from the measure if it is located in a county that does not have 50 percent or more of their housing units with 4Mbps broadband availability according to the latest information available from the FCC at the start of the EHR reporting period.
- **Measure 2:** The EP, eligible hospital or CAH must use clinically relevant information from CEHRT to identify patient-specific educational resources and provide electronic access to those materials to more than 35 percent of unique patients seen by the EP or discharged from the eligible hospital or CAH inpatient or emergency department (POS 21 or 23) during the EHR reporting period.
- **Exclusion:**
  - Same as Measure 1 above.
- **Alternate Proposals:** For Measure 1 above, CMS is seeking comment on whether the API option should be required rather than optional for providers, and if so, should providers also be required to offer the view, download and transmit function. CMS has provided three alternatives (refer the proposal starting on page 102).

Objective 6: Coordination of Care Through Patient Engagement

- **Proposed Objective:** Use communications functions of CEHRT to engage with patients or their authorized representatives about the patient's care. CMS is proposing that providers must attest to the numerator and denominator for all three measures, but would only be required to successfully meet the threshold for two of the three proposed measures to meet the Coordination of Care through Patient Engagement Objective.
- **Proposed Measure 1:** During the EHR reporting period, more than 25 percent of all unique patients seen by the EP or discharged from the eligible hospital or CAH inpatient or emergency department (POS 21 or 23) actively engage with the EHR made accessible by the provider. An EP, eligible hospital or CAH may meet the measure by either:
  1. More than 25 percent of all unique patients (or patient-authorized representatives) seen by the EP or discharged from the eligible hospital or CAH inpatient or emergency department (POS 21 or 23) during the EHR reporting period view, download or transmit to a third party their health information; or
  2. More than 25 percent of all unique patients (or patient-authorized representatives) seen by the EP or discharged from the eligible hospital or CAH inpatient or emergency department (POS 21 or 23) during the EHR reporting period access their health information through the use of an ONC-certified API that can be used by third-party applications or devices.

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- **Exclusions:** Applicable for either option discussed previously, the following providers may exclude from the measure:
  - Any EP who has no office visits during the EHR reporting period may exclude from the measure.
  - Any EP that conducts 50 percent or more of his or her patient encounters in a county that does not have 50 percent or more of its housing units with 4Mbps broadband availability according to the latest information available from the FCC on the first day of the EHR reporting period may exclude from the measure.
  - Any eligible hospital or CAH operating in a location that does not have 50 percent or more of its housing units with 4Mbps broadband availability according to the latest information available from the FCC on the first day of the EHR reporting period may exclude from the measure.
- **Proposed Measure 2:** For more than 35 percent of all unique patients seen by the EP or discharged from the eligible hospital or CAH inpatient or emergency department (POS 21 or 23) during the EHR reporting period, a secure message was sent using the electronic messaging function of CEHRT to the patient (or the patient's authorized representatives), or in response to a secure message sent by the patient (or the patient's authorized representative).
- **Exclusion:** Same as Measure 1 above.
- **Proposed Measure 3:** Patient-generated health data or data from a non-clinical setting is incorporated into the certified EHR technology for more than 15 percent of all unique patients seen by the EP or discharged by the eligible hospital or CAH inpatient or emergency department (POS 21 or 23) during the EHR reporting period.
- **Exclusion:** Same as Measure 1 above.

Objective 7: Health Information Exchange

- **Proposed Objective:** The EP, eligible hospital or CAH provides a summary of care record when transitioning or referring their patient to another setting of care, retrieves a summary of care record upon the first patient encounter with a new patient and incorporates summary of care information from other providers into their EHR using the functions of CEHRT.
- **Proposed Measures:** CMS is proposing that providers must attest to the numerator and denominator for all three measures, but would only be required to successfully meet the threshold for two of the three proposed measures to meet the Health Information Exchange Objective.
- **Proposed Measure 1:** For more than 50 percent of transitions of care and referrals, the EP, eligible hospital or CAH that transitions or refers their patient to another setting of care or provider of care: (1) creates a summary of care record using CEHRT; and (2) electronically exchanges the summary of care record.
- **Exclusions:**
  - An EP neither transfers a patient to another setting nor refers a patient to another provider during the EHR reporting period.
  - Any EP that conducts 50 percent or more of his or her patient encounters in a county that does not have 50 percent or more of its housing units with 4Mbps broadband availability according to the latest information available from the FCC on the first day of

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the EHR reporting period may exclude the measures.
  - Any eligible hospital or CAH will be excluded from the measure if it is located in a county that does not have 50 percent or more of their housing units with 4Mbps broadband availability according to the latest information available from the FCC at the start of the EHR reporting period.

- **Proposed Measure 2:** For more than 40 percent of transitions or referrals received and patient encounters in which the provider has never before encountered the patient, the EP, eligible hospital or CAH incorporates into the patient's EHR an electronic summary of care document from a source other than the provider's EHR system.
- **Exclusions:**
  - Any EP, eligible hospital or CAH for whom the total of transitions or referrals received and patient encounters in which the provider has never before encountered the patient, is fewer than 100 during the EHR reporting period is excluded from this measure.
  - Any EP that conducts 50 percent or more of his or her patient encounters in a county
  - that does not have 50 percent or more of its housing units with 4Mbps broadband availability according to the latest information available from the FCC on the first day of the EHR reporting period may exclude the measures.
  - Any eligible hospital or CAH will be excluded from the measure if it is located in a county that does not have 50 percent or more of their housing units with 4Mbps broadband availability according to the latest information available from the FCC at the start of the EHR reporting period.
- **Proposed Measure 3:** For more than 80 percent of transitions or referrals received and patient encounters in which the provider has never before encountered the patient, the EP, eligible hospital or CAH performs clinical information reconciliation.
- **Exclusion:** Same as in proposed Measure 2 above.

Objective 8: Public Health and Clinical Data Registry Reporting

- **Proposed Objective:** The EP, eligible hospital or CAH is in ***active engagement*** with a public health agency or clinical data registry to submit electronic public health data in a meaningful way using CEHRT, except where prohibited, and in accordance with applicable law and practice.

  CMS proposes that "active engagement" may be demonstrated by any of the following options.

Active Engagement Option 1 – Completed Registration to Submit Data

The EP, eligible hospital or CAH registered to submit data with the PHA or, where applicable, the CDR to which the information is being submitted; registration was completed within 60 days after the start of the EHR reporting period; and the EP, eligible hospital or CAH is awaiting an invitation from the PHA or CDR to begin testing and validation. This option allows providers to meet the measure when the PHA or the CDR has limited resources to initiate the testing and validation process. Providers that have registered in previous years do not need to submit an additional registration to meet this requirement for each EHR reporting period.

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Active Engagement Option 2 - Testing and Validation
The EP, eligible hospital or CAH is in the process of testing and validation of the electronic submission of data. Providers must respond to requests from the PHA or, where applicable, the CDR within 30 days; failure to respond twice within an EHR reporting period would result in that provider not meeting the measure.

Active Engagement Option 3 – Production
The EP, eligible hospital or CAH has completed testing and validation of the electronic submission and is electronically submitting production data to the PHA or CDR.

- **Proposed Measures:** CMS is proposing a total of six possible measures for this objective.

  EPs would be required to choose from measures one through five, and would be required to successfully attest to any combination of three measures.

  Eligible hospitals and CAHs would be required to choose from measures one through six, and would be required to successfully attest to any combination of four measures. The measures are shown below.

Measures For Objective 8: Public Health and Clinical Data Registry Reporting Objective		
Measure	**Maximum times measure can count toward objective for EP**	**Maximum times measure can count towards objectives for eligible hospital or CAH**
Measure 1 - Immunization Registry Reporting	1	1
Measure 2 – Syndromic Surveillance Reporting	1	1
Measure 3 – Case Reporting	1	1
Measure 4 - Public Health Registry Reporting	3	4
Measure 5 - Clinical Data Registry Reporting	3	4
Measure 6 - Electronic Reportable Laboratory Results	n/a	1

- **Measure 1** – Immunization Registry Reporting: The EP, eligible hospital or CAH is in active engagement with a public health agency to submit immunization data and receive immunization forecasts and histories from the public health immunization registry/immunization information system.
- **Measure 2** – Syndromic Surveillance Reporting: The EP, eligible hospital or CAH is in active engagement with a public health agency to submit syndromic surveillance data from a non-urgent care ambulatory setting for EPs, or an emergency or urgent care department for eligible hospitals and CAHs (POS 23).
- **Measure 3** – Case Reporting: The EP, eligible hospital or CAH is in active engagement with a public health agency to submit case reporting of reportable conditions.

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- **Measure 4 –** Public Health Registry Reporting: The EP, eligible hospital or CAH is in active engagement with a public health agency to submit data to public health registries.
- **Measure 5 –** Clinical Data Registry Reporting: The EP, eligible hospital or CAH is in active engagement to submit data to a clinical data registry.
- **Measure 6 –** Electronic Reportable Laboratory Result Reporting: The eligible hospital or CAH is in active engagement with a public health agency to submit electronic reportable laboratory results. This measure is available to eligible hospitals and CAHs only.
- **Exclusions:** Refer to the rule.

Payment Adjustments

If an EP is not a meaningful EHR user for the EHR reporting period for the year, then the Medicare physician fee schedule amount for covered professional services furnished by the EP during the year (including the fee schedule amount for purposes of determining a payment based on the fee schedule amount) is adjusted to equal the "applicable percent" of the fee schedule amount that would otherwise apply. For 2016, the amount is 98 percent; and for 2017 and each subsequent year, the amount is 97 percent. For CY 2018 and subsequent years, if the Secretary finds the proportion of EPs who are meaningful EHR users is less than 75 percent, the applicable percent shall be decreased by one percentage point for EPs who are not meaningful EHR users from the applicable percent in the preceding year, but that in no case shall the applicable percent be less than 95 percent.

The HITECH Act, provides for an adjustment to the applicable percentage increase to the IPPS payment rate for those eligible hospitals that are not meaningful EHR users for the associated EHR reporting period for a payment adjustment year, beginning in FY 2015.

The reduction to three-quarters of the applicable update for an eligible hospital that is not a meaningful EHR user will be "33 1/3 percent for FY 2015, 66 2/3 percent for FY 2016, and 100 percent for FY 2017 and each subsequent FY." In other words, for eligible hospitals that are not meaningful EHR users, the Secretary must reduce the applicable percentage increase (prior to the application of other statutory adjustments) by 25 percent (33 1/3 of 75 percent) in FY 2015, 50 percent (66 2/3 percent of 75 percent) in FY 2016, and 75 percent (100 percent of 75 percent) in FY 2017 and subsequent years.

The HITECH Act amended section 1814(l) of the Act to include an adjustment to a CAH's Medicare reimbursement for inpatient services if the CAH is not a meaningful EHR user for an EHR reporting period. For FY 2015, the CAH's reimbursement shall be reduced from 101 percent of its reasonable costs to 100.66 percent of reasonable costs. For a cost reporting period beginning in FY 2016, its reimbursement would be reduced to 100.33 percent of its reasonable costs. For a cost reporting period beginning in FY 2017 and each subsequent fiscal year, its reimbursement would be reduced to 100 percent of reasonable costs.

COMMENT

For those involved in EHR activities, it is imperative to fully review the rule itself. Note that many of the threshold criteria are increasing significantly. Successfully demonstrating meaningful use means that providers would be required to attest to the results for the numerators and denominators of all measures associated with an objective. Those aspects need careful attention as well.

Analysis provided for MHA by Larry Goldberg, Goldberg Consulting