

## Economic Stimulus Provides Incentives to Hospitals HITECH Act - How Hospitals Can Benefit

Hospitals and physicians can benefit financially from the recently passed American Recovery and Reinvestment Act (ARRA). The ARRA has allocated \$20 billion to promote the usage of electronic health records (EHR). Two sections in the Act specifically discuss Health Information Technology. The first, Title XIII of Section A, details the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"). The second, Title IV of Section B, details the Medicare and Medicaid Incentives to be paid to both hospitals and individual physician practices to encourage the implementation of the HITECH Act. Hospitals are eligible for both Medicare and Medicaid incentives.

### **Medicare Incentives**

*Who qualifies for the incentive payments?* Hospitals that participate in the Medicare program and are meaningful users of certified Electronic Health Record (EHR) technology.

*How much are the incentive payments?* The bill provides a complicated methodology for determining the amount of incentive payments made to participating hospitals. The calculation includes a base amount of \$2 million plus \$200 per discharge. The \$200 per discharge amount is only calculated for each discharge the hospital has between 1,500 through 23,000 discharges (the first 1,149 discharges and any discharges over 23,000 are not included in the calculation). This amount is then multiplied by the hospital's Medicare Share and a transition factor that ranges from 1 in the first year to 1/4 in the fourth year. The hospital's Medicare Share is determined by calculating the number of Medicare inpatient patient days divided by the hospital's total number of inpatient days multiplied by the total number of hospital charges (not including charity care charges). Computations for Critical Access Hospitals are adjusted slightly, including allowing the Medicare Share percentage to increase by 20 percentage points (not to exceed 100%).<sup>1</sup>

Beginning in fiscal year 2011 (commencing October 2010) hospitals that are meaningful users of certified EHR technology may be eligible for the incentive payments (which means they must implement the EHR system before October 2010). Hospitals that first qualify for the incentive payments after FY2013 would receive incentive payments on a phased transition schedule. After FY2015 no incentive payments will be paid and beginning in FY2015 penalties start to be imposed (in the form of a reduction in Medicare payments).

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<sup>1</sup> Additional provisions apply to Critical Access Hospitals and Medicare Advantage Hospitals. For more information please contact Dave Schoolcraft or Elana Zana.

**Example:** Puget Sound Hospital purchases an EHR system in 2011 but only becomes a meaningful user of EHR technology in 2012.

Total Discharges	25,000
Medicare Inpatient Days =	30,000
Total Number Inpatient Days =	75,000
Total Amount of Hospital Charges =	\$ 700,000,000
Total Charity Care =	\$ 6,000,000
<i>Calculation of Incentive Payment</i>	
Medicare Share	40%
2012 Payment	\$ 2,731,493
2013 Payment	\$ 2,048,620
2014 Payment	\$ 1,365,746
2015 Payment	\$ 682,873
<b>Total Payments</b>	<b>\$ 6,828,732</b>

*What are the penalties?* Hospitals that are subject to Medicare prospective payments and that are not meaningful users of EHRs will be subject to penalties. Starting in 2015 3/4ths of the Medicare applicable percentage increase will be reduced by 33.33%. This percentage reduction will increase in 2016 to 66.66% and 100% in 2017 and in each year thereafter.<sup>2</sup>

### **Medicaid Incentive Programs**

*Which hospitals are eligible?* Hospitals in which at least 10% of the patient volume receives medical assistance are eligible for Medicaid incentive payments. To be eligible for Medicaid incentive payments the hospital must adopt EHRs by 2016. However, in contrast to Medicare incentive payments, a hospital does not need to demonstrate meaningful use of the EHR technology until the second year of incentive payments. A hospital is eligible for Medicaid incentive payments in the first year if it demonstrates that it has engaged in efforts to adopt, implement or upgrade EHR technology.

*How much are the incentive payments?* Medicaid incentive payments are calculated in a similar manner to Medicare incentive payments. The calculation begins with a base amount of \$2,000,000 plus \$200 per discharge. Using the Medicare Share formula, hospitals will compute their Medicaid Share, substituting the number of Medicaid inpatient days for the Medicare inpatient days in the numerator of the formula.

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<sup>2</sup> States will also reduce payments to hospitals that are not meaningful EHR users and which receive payments under SSA § 1814(b)(3). These reductions will begin in 2015 and continue each subsequent year thereafter. The methodology used to make the payment adjustment will be determined by the State.

Additionally, in computing the total number of discharges per year, the hospital shall assume that the discharge rate will increase at the average annual rate of growth based upon the past three years.

States have discretion in determining the transition factor. However, hospitals cannot receive more than 50% of the incentive payments in any one year, and more than 90% of the incentive payment in any two years combined.

**Example:** This example assumes that the State implements a payout schedule in which the hospital receives 50% of the total incentives in the first year, 40% in the second year, and 10% in the third year. Puget Sound Hospital purchases a new EHR system in 2012 and demonstrates a meaningful use of the EHR technology in 2013.

Total Discharges	25,000
Medicaid Patients	5,000
Medicaid Patient Volume	20%
Avg Rate of Discharge Growth	708 patients/year
Medicaid Inpatient Days =	15,000
Total Number Inpatient Days =	65,000
Total Amount of Hospital Charges =	\$ 700,000,000
Total Charity Care =	\$ 6,000,000
<i>Calculation of Incentive Payment</i>	
Medicaid Share	23%
2012 Payment	\$ 2,034,322
2013 Payment	\$ 1,627,457
2014 Payment	\$ 406,864
<b>Total Payments</b>	<b>\$ 4,068,643</b>

**Medicare and Medicaid Incentive Payments require that the Eligible Hospital is a Meaningful User of Electronic Health Records**

*What is certified Electronic Health Record technology?* EHRs contain health information about an individual that:

1. includes demographic and clinical health information (i.e. medical history) of that patient;
2. has the capacity to provide clinical decision support;
3. has the capacity to support clinical physician order entry (CPOE);
4. has the capacity to capture and query information relevant to health care quality; and
5. has the capacity to exchange electronic health information with, and integrate such information from other sources.

*What does meaningful user mean?* A hospital is a meaningful user if:

1. The hospital can demonstrate the use of certified EHR technology in a meaningful manner;
2. The hospital can demonstrate that the certified EHR technology is connected in a manner that provides for the electronic exchange of health information to improve the quality of health care (i.e. promoting care coordination); and
3. The hospital, using the certified EHR technology submits certain reports and information (on such topics as clinical quality measures).

*How does a hospital demonstrate that it is a meaningful user?* HHS shall specify how a hospital shall demonstrate that it is a meaningful user. Options may include an attestation, the submission of claims with specific coding indicating that the patient encounter was documented using an EHR, a survey response, or through a reporting mechanism. HHS will also post on the Centers for Medicare and Medicaid Services website a list of the names of those hospitals that are meaningful EHR users.

Hospitals will have to comply with certain reporting and demonstration requirements that are further detailed in the bill and will be specified by the Secretary of Health and Human Services.

Both HHS and the States will be providing further clarification regarding the distribution and any further requirements related to these incentive payments. If you have any questions regarding these incentive payments or any other provision of the HITECH Act please e-mail Dave Schoolcraft, [dschoolcraft@omwlaw.com](mailto:dschoolcraft@omwlaw.com) or Elana Zana, [ezana@omwlaw.com](mailto:ezana@omwlaw.com), or call (206) 447-7000.