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HE WHO HESITATES IS LOST--INCENTIVES AND *PENALTIES* RELATING TO ELECTRONIC HEALTH RECORDS

by Robert Landau, Esq.¹

Think not implementing EHRs is merely a foregone benefit? Think again. While some incentives are still available for a limited time to assist in EHR implementation, penalties for failing to do so are coming and will be in place indefinitely.

The American Recovery and Reinvestment Act of 2009 (ARRA) offered an important financial incentive for physicians to help reduce costs and increase the quality of patient care by implementing EHRs. Allotted within ARRA's \$787 billion of expenditures and tax cuts was \$19.2 billion for the "Health Information Technology for Economic and Clinical Health (HITECH) Act. HITECH intended to reduce health care costs and improve patient care by streamlining patient record sharing through the use of EHRs.

While the health benefits to patients and the overall cost savings to the health care system offered by EHRs are generally accepted, many small groups have been "stuck in neutral." Lacking the capital, the initiative or leadership to invest in EHRs, their thought has been that the worst thing they will have to deal with is a forgone benefit—the cost of which exceeds the benefit's value. The problem is, whether or not providers avail themselves of the incentives, they will need to meet the important requirements of EHR adoption by 2015 or will face penalties anyways.

Still Time to Take Advantage

Under the HITECH provisions in ARRA, physicians and medical practices can qualify for \$44,000 in incentives over five years if they can demonstrate "meaningful use" of an electronic health record. This amount is increased by 10% for eligible providers who provide services in a health professional shortage area. Though financial incentives will remain in effect for those failing to meet meaningful use criteria in 2011, reporting requirements become more complex and the incentive dips to \$24,000 in the next two-to-three years. ***To get the maximum benefit, participation must begin by 2012.***

¹ Thank you to Daniel Landau for his research and drafting help with this article. Additional edits also by Nathaniel Guest, Esq.

Whether or not they choose to accept the incentives, practices that do not implement an EHR program or who cannot demonstrate a meaningful use by 2015 *will be penalized* with Medicare reimbursement cuts.

Steps To Payment

So if you haven't gotten on the ball yet, here's what to do....

Preliminary Steps

First, if you haven't already undertaken to do so, find out whether you are qualified for the Medicare or Medicaid EHR Incentive Programs at the [Eligibility Page](#) for hospitals and professionals. If you are eligible for both, choose either the Medicare or Medicaid Incentive Program and read the checklist provided.

Medicare EHR Incentive Program Checklist

Eligible professionals can earn up to \$44,000 from Medicare by becoming a user of certified electronic health records. Here are the steps to qualify:

-Ensure eligibility by checking the [eligibility](#) page.

-If you are also eligible for the Medicaid program, you may want to consider doing that since there may be more money given out in incentives (up to \$63,750). The Medicaid checklist is provided below. If you are considering Medicare over Medicaid, the [advantages](#) web page has some interesting information that may concern you.

-Registration is explained in more detail at the [registration page](#). Registration should be completed as soon as possible, and registration is allowed *before* a system is installed.

-The EHR technology that you are using or considering buying must be certified by the Office of the National Coordinator for Health Information Technology in order to receive incentive payments. There are details on the [Certified EHR Technology](#) page.

-In order to get incentive payments, you must be a "meaningful user" of the technology for 90 consecutive days in the first year of participating in the incentive program, and for a full year for each of the following years. The terms of being a meaningful user are outlined on the [meaningful use](#) page. Being a "meaningful user" includes: the use of a certified EHR in a meaningful manner, such as e-prescribing, the use of certified EHR technology for electronic exchange of health information to improve quality of health care, and the use of certified EHR technology to submit clinical quality and other measures.

-You must attest that you have demonstrated meaningful use through Medicare's website in order to receive EHR incentive payments. To access the webpage where you can attest, go to the [attestation](#) page.

Medicaid EHR Incentive Program Checklist

Eligible professionals can earn up to \$63,750 from Medicaid by becoming a user of certified electronic health records. Here are the steps to qualify:

-Ensure eligibility by checking the [eligibility](#) page.

-To see if your state is participating in the Medicaid EHR Incentive Program, check the [Medicaid State Information Page](#).

-If your state is participating, visit the [registration](#) page.

-If your state does not participate in the Medicaid EHR Incentive Program, you may want to consider trying the Medicare EHR Incentive Program, which is detailed above in this article.

- The EHR technology that you are using or considering buying must be certified by the Office of the National Coordinator for Health Information Technology in order to receive incentive payments. There are details on the [Certified EHR Technology](#) page.

-In order to receive your incentive payments in the first year under the program, you must do (at least) one of the following:

- Adopt Certified HER Technology

- Implement certified HER technology which you have purchased already

- Upgrade your current HER technology to the newest version

- Be a “meaningful user” of the technology for 90 consecutive days in the first year of participating in the incentive program, and for a full year for each of the following years. The terms of being a meaningful user are outlined on the [meaningful use](#) page. Meaningful use will be measured in stages over five years.

-To get your EHR payments, you must attest through your state’s Medicaid agency website. You must attest that you have wither adopted the technology, implemented the technology, sufficiently upgraded your technology, or meaningfully used your technology. Your states Medicaid agency website will have more information.

The Cost of Non Implementation

Though eligibility for most incentives will be phased out likely after 2014, penalties for non-compliance will remains. Physicians who have not implemented an EHR program or cannot demonstrate “meaningful use” by 2015 will see their Medicare Part B reimbursements reduced by 1%. The rate of reduction increases in subsequent years by 2% in 2016, 3% in 2017, 4% in 2018, and up to 5% depending on future adjustments.

The message, then, is act now or regret later. While no practice is excited about the capital outlay necessary to implement an EHR program, a guaranteed reduction in Medicare re-imburements up to 5% into perpetuity is an even tougher pill to swallow. That said, it makes little sense to forgo the opportunity to lessen the upfront cost of an EHR program through the HITECH incentives. Time is of the essence, however, as the size and ease of obtaining the incentives will be reduced in the next two years.