American Society of Anesthesiologists

Frequently Asked Questions Regarding Electronic Health Records and Meaningful Use

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1) What is the Electronic Health Record Incentive Program?

In 2009, Congress passed and the president signed into law the American Recovery and Reinvestment Act. Included in the bill was the Health Information Technology for Economic and Clinical Health (HITECH) Act, which created the Electronic Health Record (EHR) Incentive Program. The Centers for Medicare and Medicaid Services (CMS) will implement the EHR Incentive Program in 3 Stages. Stage 1 began in 2011. Stage 2 will begin in 2014 and Stage 3 is expected to be implemented in 2016. The EHR Incentive Program consists of incentives for meeting the criteria and penalties for not meeting the criteria. For Stage 1 there are 15 core objectives that must be achieved to demonstrate meaningful use, additionally, physicians must meet 5 of 10 menu objectives. Some core and menu measures may be excluded if the EP can demonstrate a 0 denominator. Also, the anesthesiologist is not necessarily obligated to personally provide all the care elements as long as the care was provided by someone during the care encounter. Click here to see CMS' FAQ on the subject by clicking here.

2) What are the differences/similarities between the Medicare and Medicaid Program?

The Meaningful Use Incentive program actually consists of two programs – one for Medicare patients administered by the Federal government and one for Medicaid patients administered by the individual state. Requirements, duration and maximum incentive payments differ between the two programs.

- There is a minimum Medicaid patient volume (30%) to be eligible for the Medicaid EHR Incentive Program.
- Incentives for the Medicaid EHR Incentive program can be up to \$63750 over a period of 6 years. Incentives for the Medicare Program can equal up \$39,000 over a period of 5 years.
- CMS states that
 - "In the event an EP qualifies for EHR incentive payments from both the Medicare and Medicaid programs, the EP must elect to receive payments from only one program and may only switch between the two programs once prior to 2015 after receiving an incentive."

- "EPs may not receive EHR incentive payments from both the Medicare and Medicaid programs in the same year."
- o "an EP who selects Medicaid must only receive incentive payments from one state in any payment year."

More information from CMS that explains the Medicaid EHR Incentive Program in further detail can be viewed by clicking <u>here</u> and <u>here</u>.

A current list of where to find information about each state's program can be found by clicking here.

3) Can anesthesiologists receive incentive payments under the Electronic Health Records Incentive Program?

Yes, but only IF the anesthesiologist provides less than 90% of their Medicare or Medicaid services in the hospital inpatient or emergency room setting AND the patients they care for receive all required elements of what is referred to as "meaningful use" during a care encounter. Those who provide less than 90% of their services in the hospital inpatient or emergency room setting are referred to by CMS as "eligible professionals".

4) How do I determine if I provide less than 90% of my services in the hospital inpatient or emergency room setting?

This is determined by place of service (POS) codes. If you have less than 90% of your services in the hospital inpatient (POS 21) or emergency room (POS 23) you are eligible to apply for the incentives. Please note that services in an ASC (POS 24), office (POS 11), or hospital outpatient (POS 22) setting, are not considered inpatient services. Based on reports to ASA, most clinical anesthesiologists provide less than 90% of their services to Medicare or Medicaid patients in the inpatient setting.

5) Where can I find out more about how to become a "meaningful user?"

Please visit the CMS meaningful use page by clicking <u>here</u>. To view the criteria to meet meaningful use click <u>here</u>. CMS provides a series of answers to frequently asked questions. These questions and answers may be found <u>here</u>.

6) What if I provide more than 90% of my services in the hospital inpatient or emergency room setting?

You are considered "hospital based" and are thus ineligible for the program. Under current regulations, you are ineligible for the incentives and will not incur penalties associated with the EHR Incentive Program.

7) Please provide an example?

Anesthesiologists Mike Smith of Oregon works 4 days a week in a hospital and one day a week in an ASC. 80% of his services are in a hospital inpatient (POS 21) or emergency room (POS 23) setting. Dr. Smith is eligible to apply to become a "meaningful user" of health information technology.

Anesthesiologists Jane Doe of Texas works 5 days a week in a hospital. 91% of Dr. Doe's services are in a hospital inpatient (POS 21) or emergency room (POS 23) setting. Dr. Doe is ineligible to apply to become a "meaningful user" of health information technology. She is exempt from incentives as well as penalties associated with the EHR Incentive program.

8) Are there penalties for not becoming a meaningful user of health IT?

Yes, however, <u>as a direct result of ASA's advocacy efforts</u>, the recently released Stage 2 Final Rule creates an automatic hardship exemption from the penalties for anesthesiologists. CMS has indicated that they will revisit this hardship exemption periodically to determine if substantial barriers for meaningful use for anesthesiologists and other exempted specialties still apply.

9) How does the hardship exemption work?

In the Stage 2 Final Rule, CMS created a hardship exemption for anesthesiologists. This is determined automatically. Anesthesiologists who designate their primary specialty as anesthesiology (05) under Provider Enrollment, Chain and Ownership System (PECOS) would get an automatic annual exemption. This is only an exemption from the penalties; the Stage 2 Final Rule would still allow anesthesiologists to apply for the incentives. CMS stated the following in the Stage 2 Final Rule, "We also encourage all anesthesiologists, radiologists, and pathologists to continue to build out their ability to participate in health information exchange, adopt CEHRT and apply for the Medicare or Medicaid EHR incentives."

10) I want to be to be a "meaningful user" and apply to receive incentives, but because my primary specialty is anesthesiology I will likely be granted a hardship exemption, does this exemption make me ineligible for the incentives?

No, if you are able to meet all the criteria to demonstrate meaningful use this will override your hardship exemption.

11) Are there other hardship exemptions?

Yes, there are similar hardship exemptions for pathologists and radiologists. There are additional hardship exemptions for eligible professionals without sufficient access to internet or broadband internet, in cases of unforeseen circumstances or natural disasters and a two year exemption for newly practicing eligible professionals.

12) Should I attempt to become a meaningful user?

This is a determination that should be made by each individual physician or practice. ASA will neither encourage nor discourage participation in the program. Please keep in mind all applicable laws, regulations and requirements when making this determination.

13) My practice is currently considering buying health information technology to demonstrate meaningful use, what questions should I ask vendors?

This is not an exhaustive list of questions. There are a number of questions that will depend on your individual circumstances. ASA will neither endorse nor discourage the use of any particular product. However, here are some basic questions you should ask:

Ask the vendor if the health information technology has been certified by the Office of the National Coordinator (ONC) for Heath Information Technology? If not, it cannot be used to demonstrate meaningful use. If yes, ask for the certification number and verify the number by visiting this link on ONC's website. Please note that having ONC certified technology alone does not guarantee that physicians will receive incentives or avoid penalties, although certification is a requirement.

There are a number of criteria that I must meet to demonstrate meaningful use. How would this technology help me demonstrate meaningful use? For your reference, ASA put together a document that goes through the different criteria to meet meaningful use. Those highlighted red and yellow are criteria that make it difficult for anesthesiologists to demonstrate meaningful use. You may choose to focus your questions to vendors on those criteria. The document can be viewed by clicking here.

ONC also provides a resource on vendor selection that can be viewed by clicking here.

14) Will CMS audit physicians that are meaningful users?

Yes, in fact CMS already has started auditing hospitals and eligible professionals who received incentives under the EHR Incentive Program. All eligible professionals who apply for these incentives must sign the following statement: "I certify that the foregoing information is true, accurate, and complete. I understand that the Medicare EHR Incentive Program payment requested will be paid from Federal funds, and that the use of any false claims, statements, or documents, or the concealment of material fact used to obtain Medicare EHR Incentive Program payment, may be prosecuted under applicable Federal or State criminal laws and may be subject to civil penalties."

It is important that you follow all applicable laws and regulations when applying for incentives under the meaningful use program. CMS will recoup incentive payments if you are found to have failed to meet meaningful use requirements. Additional penalties may apply if you are

determined to have willfully and knowingly attested inaccurately, including potential liability under the False Claims Act, the Civil Monetary Penalties Law, and a host of Federal criminal statutes.

15) Where can I find additional resources regarding the EHR Incentive Program?

To view the Stage 2 Final Rule click here.

To view the CMS Fact Sheet on the Stage 2 Final Rule click here.

To view ASA's formal comments on the Stage 2 Proposed Rule click here.

To view CMS FAQ's regarding the EHR Incentive Program click here.

16) I am a practice manager for an anesthesiology group. Our anesthesiologists practice in multiple locations. Some of these locations have certified EHRs and meet meaningful use. Some of them do not have certified EHR technology (CEHRT). How does the EHR Incentive Program work for anesthesiologists practicing in multiple locations?

To demonstrate meaningful use CMS states "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 CEHRT. 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."

Please note whether a physician is hospital based or an eligible professional is determined prior to the multiple location requirement.

17) What if I have additional questions?

If you have any additional questions please feel free to email Grant Couch at g.couch@asawash.org or call (202) 289-2222.