

CMS Delays Enforcement of Stage Three Meaningful Use Requirements

Following the establishment of the *Health Information Technology for Economic and Clinical Health (HITECH)* Act in 2009, the *Centers for Medicare and Medicaid Services (CMS)* issued rules promoting the use of *electronic health records (EHRs)* and interoperable *health information technology (HIT)* by establishing incentives for eligible providers. Each year since 2010, CMS has published updated rules to facilitate the use of EHRs by healthcare organizations,¹ but there has been considerable push-back from both healthcare organizations as well as legislators because of the financial, technological, and logistical difficulties encountered during implementation of HIT.² On October 16, 2015, CMS published its Stage Three rule to accommodate some of the complaints received and ease the implementation requirements of meaningful use programs.³ This Health Capital Topics article will briefly explain each of the three stages and discuss some of the critiques of the newest rule.

When Congress passed the HITECH Act in 2009, the law established the *EHR Incentive Program*, which was expected to be implemented in three stages. CMS uses the *EHR Incentive Program* to motivate eligible providers to use HIT and EHRs, so that CMS can achieve these five health goals:

- (1) Improve quality, safety, & efficiency of care;
- (2) Encourage patient participation in care;
- (3) Promote public health;
- (4) Improve care coordination; and,
- (5) Support privacy & security of patient health information.⁴

In return for establishing EHR programs, CMS would reward participating providers with incentive payments.⁵ In 2011, CMS expected all Medicare-eligible professionals and hospitals to meet the meaningful use requirements by 2015, or face a financial penalty.⁶ Further, CMS expected that providers that met Stage One criteria for meaningful use by 2011 would meet Stage Two criteria by 2013.⁷

When CMS finalized the Stage Two rule, it delayed the effective date for many of Stage One criteria to fiscal year 2014.⁸ Stage Two of the *EHR Incentive Program* eliminated or combined some of the requirements of Stage One, but more importantly, it elevated the threshold that providers must meet in order to satisfy the criteria for Stage Two.⁹ This elevated threshold required eligible professionals to meet seventeen core objectives

and three menu objectives, and eligible hospitals and *critical access hospitals (CAHs)* to meet sixteen core objectives and three menu objectives.¹⁰ Stage Two initiatives were delayed in order to give providers more time to use the 2011 EHR software systems and to grant providers more time to meet Stage One criteria.¹¹ Importantly, for providers struggling to meet the requirements of meaningful use, CMS released a rule in 2014 delaying the start date of Stage Three until 2017.¹² In large part, CMS delayed the implementation of Stage Three to address industry concerns regarding the slow delivery and implementation of the 2014 software necessary for Stage Two.¹³

On October 16, 2015, CMS released its *EHR Incentive Program* Stage Three final rule, which addressed continued provider concerns regarding EHR implementation.¹⁴ CMS's Stage Three regulations include revisions to the benchmark objectives necessary to receive incentive payments. For 2015 to 2017, Stage Three requires eligible professionals to meet ten objectives (reduced from eighteen previously), eligible hospitals and CAHs to meet nine objectives (reduced from twenty previously), and both eligible professionals and hospitals to continue to meet clinical quality measures reporting as finalized in previous stages.¹⁵ Eligible professionals, hospitals, and CAHs must include one public health reporting objective as part of their required objectives.¹⁶ The other required objectives vary depending on the eligible provider, but generally include: (1) patient information protection, (2) information exchange, (3) patient access, (4) electronic prescribing, (5) clinical decision support, and (6) electronic provider order entry.¹⁷ For 2017 and beyond, CMS expects:

- (1) Eligible professionals, hospitals, and CAHs to meet eight objectives;
- (2) Interoperability of health data for more than 60% of the objective measures (compared to Stage Two's 33% requirement);
- (3) Public health reporting with flexibility for measure selection;
- (4) Clinical quality measures reporting alignment with CMS quality reporting programs; and,
- (5) Finalization of the use of application program interfaces that enable the development of new functionalities to connect systems and increase data access.¹⁸

Providers may choose to opt in to Stage Three requirements in 2017, and will have a 90-day reporting period to demonstrate Stage Three requirements.¹⁹ However, providers are required to fully comply with the Stage Three rule by 2018, or face a reimbursement penalty of undetermined amount.²⁰ Beginning in 2018, providers are expected to use the EHR software certified to the 2015 edition.²¹ Other notable changes in the 2015 final rule include: (1) shifting from a fiscal year to a calendar year reporting timeframe for all providers starting in 2015; and, (2) offering 90-day reporting periods to demonstrate Stage Three requirements, rather than the one year period required under previous rules.²² This change is applicable to current participants in 2015, new participants in 2016 and 2017, and any participants adopting Stage Three in 2017.²³

Stage Three is a continuation of previous efforts by CMS to make the reporting requirements less burdensome for providers, while still focusing on improved patient outcomes. The Stage Three final rule adds more flexibility for providers to choose measures that accurately report their meaningful use progress. Beyond extending the deadline for provider compliance, the new rule also extends the deadline for developers to create advanced technology that will aid in providers' use and access of healthcare data.²⁴ The Stage Three rule will support provider health information exchange to make the process more interoperable for patients and providers, as well as address health information blocking problems for patients and providers.²⁵

To address the numerous provider concerns for established deadlines, the final rule includes a hardship exemption to extend Stage Three implementation for providers struggling to meet the criteria of previous stages.²⁶ Given the many failed attempts by providers to meet Stage One and Two requirements, the *American Medical Association* (AMA) noted its appreciation for the hardship exemption.²⁷ In fact, there was 12% lower physician participation in 2014 than in 2013, possibly due to the difficulties physicians faced in implementing the EHR software and meeting the objectives required.²⁸ In addition to reduced overall participation, of the providers that do participate, 60% of hospitals and 90% of physicians still have not yet met the criteria for Stage Two, according to the *American Hospital Association* (AHA).²⁹

However, the AMA critiqued CMS for finalizing the new requirements, since CMS has not yet developed its guidelines for the implementation of the *Merit-Based Incentive Payment System* (MIPS), which was created through the *Medicare Access and CHIP Reauthorization Act* (MACRA) in April 2015.³⁰ The MACRA changed the *EHR Incentive Program* by integrating existing Medicare payment adjustments under the HITECH Act into the MIPS.³¹ Providers are concerned that the requirements of the MIPS, expected for publication in mid-2016, will not be compatible with Stage Three meaningful use and will force providers to expend additional time and money to re-alter their EHR programs.³² Furthermore, the AMA and others criticized

CMS for relying on assumptions of the Stage Two achievements and failures before publishing Stage Three requirements.³³ Those critics specifically argue that by not relying on actual data from Stage Two implementation, there is a lower likelihood of Stage Three success.³⁴ Instead, according to Senator Alexander, who chairs the Senate Health, Education, Labor and Pensions Committee, CMS “*rushed ahead with the rule against the advice of some of the nation’s leading medical institutions and physicians.*”³⁵

Despite the mixed feedback from the industry, CMS plans to continue Stage Three implementation as outlined in the October final rule. CMS also included a sixty day comment period for the rule, and stated that it plans to use the comments to help develop the MIPS regulations in 2016. Furthermore, CMS has acknowledged that additional changes to the *EHR Incentive Program* are almost guaranteed over the next few months as information is gathered from existing participants.³⁶ In light of these developments, it may be prudent for healthcare providers to continue to develop their HIT plans according to the final rule, while monitoring CMS for additional guidance on Stage Three or the MIPS program.

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