

**Healthcare
Department**

For further information on the Healthcare group or this update, please contact one of our partners:

Thomas M. Fahey, Chair
312.977.4376
tmfahey@uhlaw.com

Steven F. Banghart, Partner
312.977.4880
sbanghart@uhlaw.com

James Broeking, Partner
312.977.4109
jbroeking@uhlaw.com

Edward Clancy, Partner
312.977.4487
eclancy@uhlaw.com

John J. Durso, Partner
312.977.4440
jdurso@uhlaw.com

Lynn Gordon, Partner
312.977.4134
lgordon@uhlaw.com

Joseph K. Hasson, Partner
312.977.4437
jkhasson@uhlaw.com

Floyd D. Perkins, Partner
312.977.4411
fdperkins@uhlaw.com

Julie K. Seymour, Partner
312.977.4353
jkseymour@uhlaw.com

Julie E. Treumann, Partner
312.977.4145
jtreumann@uhlaw.com

Sam Vinson, Partner
312.977.4388
svinson@uhlaw.com

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Healthcare Update

HITECH Incentives for Electronic Health Records

The American Recovery and Reinvestment Act (ARRA) authorized the Centers for Medicare & Medicaid Services (CMS), through the Health Information Technology for Economic and Clinical Health Act (HITECH Act), to provide federal incentive payments to eligible hospitals, eligible professionals (generally, non hospital-based physicians) and qualifying Medicare Advantage organizations for the “meaningful use” of “certified” electronic health record (EHR) technology. This alert addresses incentive payments to eligible hospitals and eligible professionals.

Incentive payments are generally available under either the Medicare Incentive Program or the Medicaid Incentive Program. Under the Medicare Incentive Program, incentive payments will be made to eligible hospitals, critical access hospitals and eligible professionals who demonstrate meaningful use of certified EHR technology. Under the Medicaid Incentive Program, incentive payments will be made to hospitals and eligible professionals who adopt, implement or upgrade certified EHR technology or who demonstrate meaningful use in the first year and demonstrate meaningful use for up to an additional five years.

Maximum Incentive Amounts

Eligible professionals can receive up to a general maximum amount of \$63,750 over the six-year period under the Medicaid Incentive Program or up to a general maximum amount of \$44,000 under the Medicare Incentive Program over five years. Hospital incentive payments under both the Medicaid Incentive Program and the Medicare Incentive Program will be made in accordance with a detailed formula based on a hospital’s Medicaid Share or Medicare Share, respectively.

Incentives Require Meaningful Use of Certified Technology

The incentive payments are to be made for meaningful use of certified EHR technology, however “meaningful use” and “certification” standards were not defined under the HITECH Act. Thus some vendors have hesitated to make specific representations of compliance with “meaningful use” and “certification standards” in EHR software contracts without having definitive guidelines for compliance.

On December 30, 2009, CMS released a proposed rule containing the initial definition of “meaningful use” and on January 13, 2010, the Office of the National Coordinator (ONC) for Health Information Technology issued an interim final rule on an initial set of standards, implementation specification and certification criteria for EHR technology. Both rules are open for public comment until March 15, 2010 and thereafter are subject to potential revision.

Proposed Meaningful Use Criteria

Under the proposed rule, “meaningful use” describes the use of health information technology that furthers the goals of information exchange among healthcare professionals to improve the quality of care. Criteria to measure “meaningful use” will be phased in across three stages. Beginning in 2011, Stage 1 criteria will focus on electronically capturing health information in a coded format, using that information to track key clinical conditions, communicating that information for care coordination purposes, implementing clinical decision support tools to facilitate disease and medication management and initiating the reporting of clinical quality measures and public health information.

To qualify as a meaningful user, an eligible hospital or professional will have to demonstrate that all of the objectives and associated measures that have been set forth as indicators of the criteria have been met. For Stage 1, there are 23 objectives/measures for eligible hospitals and 25 objectives/measures for eligible professionals that must be met to be deemed a meaningful EHR user.

Reporting Meaningful Use

For 2011, under the Medicare Incentive Program, eligible professionals and hospitals would have to report results of all objectives/measures, including clinical quality measures, by attestation to CMS, and under the Medicaid Incentive Program, such results would be reported by attestation to the states. In 2012, the results would have to be submitted directly to CMS or the states through certified EHR technology.

Proposed Certification Standards, Implementation Specifications and Criteria

To be “certified” EHR technology under the ONC interim final rule, the technology must meet certain standards, implementation specifications and certification criteria that support meaningful use. In establishing the foregoing, some of ONC’s goals were promoting interoperability through the use of standards and, where necessary, specifications about certain content exchange and vocabulary standards to establish a path forward toward semantic interoperability, supporting the evolution and timely maintenance of adopted standards, promoting technical innovation using adopted standards, encouraging participation and adoption by all vendors, including small businesses and keeping implementation costs as low as reasonably possible.

The proposed standards for supporting meaningful use rely heavily on existing standards for the interoperability of health information technologies, including those established and/or promoted by Health Level 7, Inc. (HL7), the National Institute of Standards and Technology (NIST) and Integrating the Healthcare Enterprise (IHE). The standards also rely on existing classification and nomenclature systems including SNOMED CT®, ICD-9 and 10, X12, LOINC®, NCPDP and RxNorm.

Certifying Organizations

ONC is drafting a notice of proposed rulemaking on the process for recognizing organizations to conduct the certification of health information technology.

Recommendations for Implementing EHR Technology

In implementing an EHR system and seeking incentive payments under either the Medicare Incentive Program or the Medicaid Incentive Program, hospitals and eligible professionals will want to make sure that the EHR system is capable of meeting the final meaningful use objectives and measures and final certified technology standards. These capabilities should be incorporated in appropriate representations and warranties in the EHR agreement.

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For assistance with seeking incentive payments, negotiating vendor agreements for EHR technology or additional information on Stage 1 objectives and measures and certification standards, please contact **Julie E. Treumann** at 312.977.4145, **Valerie Breslin Montague** at 312.977.4485 or any member of the Ungaretti & Harris Healthcare Department.

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CHICAGO
3500 Three First National Plaza
70 W. Madison Street
Chicago, IL 60602
312.977.4400
312.977.4405 fax

SPRINGFIELD
400 East Jefferson Street
Suite 1200
Springfield, IL 62701
217.544.7000
217.544.7950 fax

WASHINGTON
1500 K Street, NW
Suite 250
Washington, DC 20005
202.639.7500
202.639.7505 fax