

# Who Can Enter Orders for Meaningful Use? An Evolving Challenge for Practice Managers

Donald A. Balasa, JD, MBA\*

Meeting the required objectives of the Medicare and Medicaid Electronic Health Record (EHR) Incentive Programs is a high priority for most medical practice managers and their employers and staff. Failure to meet even one of the objectives established by the Centers for Medicare & Medicaid Services (CMS) results in the eligible professional receiving no incentive payment. A key element of the Incentive Program rules is the requirement that only “credentialed medical assistants” (in addition to “licensed healthcare professionals”) are permitted to enter medication, laboratory, and radiology/diagnostic imaging orders into the computerized provider order entry system and have such entry count toward meeting the CMS Meaningful Use threshold. The CMS rules for Stages 1 and 2 of the Incentive Programs are final, and proposed rules for Stage 3 were issued by CMS March 20, 2015. This article discusses the order entry requirements of the proposed Stage 3 rule, as well as the order entry provisions for Stages 1 and 2.

**KEY WORDS:** Medicare and Medicaid Electronic Health Record Incentive Programs; computerized provider order entry; meaningful use; credentialed medical assistant; eligible professional.

\*CEO and Legal Counsel, American Association of Medical Assistants (AAMA); e-mail: dbalasa@aama-ntl.org.  
Copyright © 2015 by Greenbranch Publishing LLC.

The electronic health record (EHR) has become an increasingly vital component of the American healthcare delivery system. The United States Congress accelerated the move away from paper medical records by enacting the provisions of the American Recovery and Reinvestment Act (ARRA) of 2009 that authorized incentive payments for eligible professionals (EPs), critical access hospitals (CAHs), eligible hospitals, and Medicare Advantage organizations that utilize Certified Electronic Health Record Technology in a meaningful way. The ARRA created two similar but distinct programs—the Medicare and Medicaid EHR Incentive Programs—and delegated the implementation and management of these programs to the Centers for Medicare & Medicaid Services (CMS) of the Department of Health and Human Services.

CMS was empowered by Congress to issue regulations/rules establishing the specifics of the Incentive Programs. The CMS rules are extensive, and a complete analysis is well beyond the scope of this article. However, an issue confronting medical managers, healthcare providers, and staff on an almost daily basis is the following: Who is

permitted to enter orders into the computerized provider order entry (CPOE) system for Meaningful Use (MU) calculation purposes under the CMS rules? This article provides some basic facts about the Incentive Programs, and then will answer this key question.

## FACTS ABOUT THE INCENTIVE PROGRAMS

### Who are EPs Under the Incentive Programs?

The following healthcare providers are considered EPs under the Medicare and Medicaid EHR Incentive Programs:

- Doctors of Medicine (MDs);
- Doctors of Osteopathy (DOs);
- Doctors of Dental Medicine and Surgery (DDMs and DDSs);
- Doctors of Optometry (ODs);
- Doctors of Podiatric Medicine (DPMs);
- Doctors of Chiropractic (DCs);

- Nurse Practitioners (NPs);
- Certified Nurse Midwives (CNMs); and
- Physician Assistants (PA-Cs) when working at a Federally Qualified Health Center or a Rural Health Clinic led by the physician assistant.

## For which of the two Incentive Programs are these EPs eligible?

Physicians, osteopaths, and dentists may be eligible for both the Medicare and Medicaid EHR Incentive Programs. However, they are permitted to participate in only one of the two programs. Optometrists, podiatrists, and chiropractors are eligible only for the Medicare Incentive Program. Nurse practitioners, nurse midwives, and qualifying physician assistants are eligible only for the Medicaid Incentive Program.

## Do these EPs participate in the Incentive Programs as individuals or as groups?

The law is very clear that EPs participate as individual healthcare providers, not as part of a group practice, clinic, or health system. Each EP individually must meet the Incentive Program requirements. An EP cannot rely on the data from another provider in the group to compensate for any deficiencies in meeting the mandatory CMS objectives.

## Are any EPs disqualified from participating in an Incentive Program?

Yes. EPs who provide at least 90% of their covered professional services in hospitals or emergency departments are not eligible to participate in either Incentive Program.

## How many stages of the Incentive Programs are there?

The Medicare and Medicaid EHR Incentive Programs have three stages. The CMS rules for Stages 1 and 2 are final. On March 20, 2015, CMS published a notice of proposed rulemaking (NPRM) for Stage 3 of the Incentive Programs.<sup>1</sup> The official notice of this NPRM was published in the *Federal Register* on March 30, 2015. CMS accepted comments on its NPRM until May 29, 2015, and will issue the final rule after all comments have been considered. All subsequent references to Stage 3 of the Incentive Programs in this article, therefore, address proposed (not final) CMS regulations.

## What does an EP need to do to receive an incentive payment?

Under Stage 1 of the Incentive Programs, CMS requires EPs to meet 15 Core Objectives and 5 of 10 Menu Objectives. For Stage 2, the CMS requirement is 17 Core Objectives

and 3 of 6 Menu Objectives. In its March 20, 2015, notice of proposed rulemaking, CMS stated the following:

[O]ne significant change we propose for Stage 3 includes establishing a single set of objectives and measures (tailored to EP or eligible hospital/CAH) to meet the definition of meaningful use. This new streamlined definition of meaningful use proposed for Stage 3 would be optional for any provider who chooses to attest to these objectives and measures for an EHR reporting period in 2017; and would be required for all eligible providers—regardless of prior participation in the EHR Incentive Program—for an EHR reporting period in 2018 and subsequent years.<sup>1</sup>

## Is an EP required to meet all specified CMS Objectives to obtain an incentive payment?

Yes. If an EP fails to meet any one required objective, the EP does not receive any incentive payment.

## Are there hardship exemptions for the Incentive Programs' requirements?

The CMS provides the following exceptions for participants in the Incentive Programs, as delineated in the Stage 3 NPRM:

- The lack of availability of Internet access or barriers to information technology infrastructure;
- A time-limited exception for newly practicing EPs or new hospitals that would not otherwise be able to avoid payment adjustments;
- Unforeseen circumstances such as natural disasters that would be handled on a case-by-case basis;
- (EP only) exceptions due to a combination of clinical features limiting a provider's interaction with patients, or, if the EP practices at multiple locations, lack of control over the availability of CEHRT [Certified Electronic Health Record Technology] at practice locations constituting 50 percent or more of their encounters.<sup>1</sup>

## What is the maximum amount EPs may receive under one of the Incentive Programs?

For the Medicare EHR Incentive Program, the maximum amount of payments is \$44,000 over five years. For the Medicaid EHR Incentive Program, the maximum payment is \$63,750 over six years.

## Are the Incentive Programs mandatory?

No. However, the CMS guide "An Introduction to the Medicare EHR Incentive Program for Eligible Professionals" specifies that:

Medicare eligible professionals who do not meet the requirements for meaningful use by 2015 and in each subsequent year are subject to payment adjustments to their Medicare reimbursements that start at 1 percent per year, up to a maximum 5 percent annual adjustment.<sup>2</sup>

## COMPUTERIZED PROVIDER ORDER ENTRY

### What are the order entry requirements under the Incentive Programs?

- Stage 1: More than 30% of all unique patients with at least one medication in their medication list seen by the EP must have at least one medication order entered using CPOE.
- Stage 2: More than 60% of medication, 30% of laboratory, and 30% of radiology orders created by the EP during the EHR reporting period are recorded using CPOE.
- Proposed Stage 3: Eighty percent of medication orders, 60% of laboratory orders, and 60% of diagnostic imaging orders must be entered using CPOE.

### Why do the proposed Stage 3 requirements refer to “diagnostic imaging orders” instead of “radiology orders”?

Note the following paragraph from the CMS notice of proposed rulemaking for Stage 3:

We propose to continue our policy from the Stage 2 final rule that the orders to be included in this objective are medication, laboratory, and radiology orders as such orders are commonly included in CPOE implementation and offer opportunity to maximize efficiencies for providers. However, for Stage 3, we are proposing to expand the objective to include diagnostic imaging, which is a broader category including other imaging tests such as ultrasound, magnetic resonance, and computed tomography in addition to traditional radiology. This change addresses the needs of specialists and allows for a wider variety of clinical orders relevant to particular specialists to be included for purposes of measurement.<sup>1</sup>

### Are there exclusions for EPs who do not issue a certain number of orders in one of the three categories?

EPs who issue fewer than 100 orders in one or more of the three categories (i.e., medication, laboratory, and radiology [diagnostic imaging in Stage 3]) in the reporting period are

not required to meet the percentage thresholds for each category with fewer than 100 orders during the reporting period.

### Who can enter orders into the CPOE system and have such entry count toward meeting the order entry percentage requirements under the Incentive Programs?

Note the following from the March 20, 2015, CMS notice of proposed rulemaking:

In Stage 3, we propose to continue the policy from the Stage 2 final rule at 77 FR [Federal Register] 53986 that orders entered by any licensed healthcare professional or credentialed medical assistant would count toward this objective. A credentialed medical assistant may enter orders if they are credentialed to perform the duties of a medical assistant by a credentialing body other than the employer. If a staff member of the eligible provider is appropriately credentialed and performs assistive services similar to a medical assistant, but carries a more specific title due to either specialization of their duties or to the specialty of the medical professional they assist, orders entered by that staff member would be included in this objective. We further note that medical staff whose organizational or job title, or the title of their credential, is other than medical assistant may enter orders if these staff are credentialed to perform the equivalent duties of a credentialed medical assistant by a credentialing body other than their employer and perform such duties as part of their organizational or job title. We defer to the provider’s discretion to determine the appropriateness of the credentialing of staff to ensure that any staff entering orders have the clinical training and knowledge required to enter orders for CPOE . . .<sup>1</sup>

### Why does CMS not permit anyone who is not a “licensed healthcare professional” or a “credentialed medical assistant” to enter orders for MU purposes?

CMS provides its rationale in the March 20, 2015, NPRM:

. . . as stated in the Stage 2 final rule at 77 FR [Federal Register] 53986, it is apparent that the prevalent time when CDS [Clinical Decision Support] interventions are presented is when the order is entered into CEHRT, and that not all EHRs also present CDS when the order is autho-

rized (assuming such a multiple step ordering process is in place). This means that the person entering the order would be required to enter the order correctly, evaluate a CDS intervention either using their own judgment or through accurate relay of the information to the ordering provider, and then either make a change to the order based on the information provided by the CDS intervention or bypass the intervention. The execution of this role represents a significant impact on patient safety; therefore, we continue to maintain for Stage 3 that a layperson is not qualified to perform these tasks . . .<sup>1</sup>

### Does the CMS regulation limit who can enter information other than orders into the EHR?

No. Individuals who are not “licensed healthcare professionals” or “credentialed medical assistants” (i.e., laypersons) are allowed to enter information *other than* orders into the EHR. For example, the CMS rule does not prohibit laypersons from entering financial information, demographic data, a list of medications, patient history, and names of and contact information for other healthcare providers who treat a patient.

## COMPLIANCE

### How will CMS monitor compliance with the CMS EHR Incentive Programs?

CMS is authorized to send auditors to the offices of eligible professionals to determine whether the EPs are, and have been, in compliance with the requirements of the Incentive Program. CMS auditors have already completed a number of onsite audits of eligible professionals.

### If EPs are found to not be in compliance with the applicable CMS regulations, what are the consequences?

If an EP is found to not be in compliance with one or more required objectives, the EP will not receive an incentive payment for the period in question, or will have to pay back any incentive payment already received for a prior period in which there was noncompliance. ■■

### REFERENCES

1. Medicare and Medicaid Programs; Electronic Health Record (EHR) Incentive Programs—Stage 3. *Fed Regist.* 2015;80(60). 42 CFR §495.
2. Centers for Medicare and Medicaid Services. An introduction to the Medicare EHR Incentive Program for eligible professionals. [www.cms.gov/Regulations-and-Guidance/Legislation/EHRIncentivePrograms/downloads/Beginners\\_Guide.pdf](http://www.cms.gov/Regulations-and-Guidance/Legislation/EHRIncentivePrograms/downloads/Beginners_Guide.pdf). Accessed April 16, 2015.