The HITECH EHR Incentives and Certification Requirements

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DISCLAIMER

The information in the following slides is a summary, and is not intended to cover all the fine points of the HITECH Act, which is a multifaceted law and dependent on specific situations. Accordingly, it is not intended to be legal advice, which should always be obtained in direct consultation with an attorney.

- **Health Information Technology for Economic & Clinical Health Act ("HITECH Act")**
  - What are the incentive payments?
  - What are the important dates and deadlines?
  - What is a "certified EHR"?

The HITECH Act was signed into law on February 17, 2009, as part of the American Recovery and Reinvestment Act of 2009 ("ARRA")

a/k/a the Stimulus Bill

HITECH Act's EHR Objectives:

1. **Reform the health care system**
   - expand access to affordable care and improve population health

2. **Improve health care quality**
   - making the right information available to physicians when needed

3. **Increase patient safety**
   - reducing errors and adverse events

4. **Contain costs in government healthcare programs**
   - eliminating duplicate procedures & decreasing paperwork

5. **Ensure privacy and security**

David Blumenthal, MD
ONC National Coordinator

- **HHS Office of National Coordinator for Health Information Technology ("ONC")**
  - The ONC HIT Standards Committee
  - The ONC HIT Policy Committee

HITECH – Infrastructure

- ONC HIT is responsible for HHS' implementation plan for certification & meaningful use standards of Electronic Health Records (EHRs).

- The HHS implementation plan, including the plan to disperse Medicare & Medicaid EHR stimulus money, is available at: http://www.hhs.gov/recovery/reports/plans/index.html

*See 74 Federal Register 10743 (March 12, 2009).

HITECH Act's Final Rules

- The Proposed Rule for HITECH EHR Incentives was published January 13, 2010
  - Over 2,000 comments received
- Final Rule was released July 13, 2010 and published July 28, 2010

- Most who are "eligible" to participate will qualify for either the:
  - Medicare Incentive Plan
  - Medicaid Incentive Plan
- Hospitals can participate in both Medicare & Medicaid incentives, but physicians must choose between Medicare and Medicaid.
- Medicare Advantage physicians can also choose the Medicare Advantage Incentive Plan.

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Eligible Hospitals

- Subsection D hospitals include:
  - Hospitals located in one of the 50 States or the District of Columbia.
- Subsection D does not include:
  - Hospitals located in the territories or in Puerto Rico.
  - Hospitals excluded from IPPS, i.e. psychiatric, rehab, children's and cancer *and Critical Access Hospitals (CAHs)* <u>but</u> . . .
- CAHs are also eligible

# Eligible Professionals ("EPs")

WHO IS AN ELIGIBLE PROFESSIONAL (EP)?

- <u>Medicare incentive plan</u>
  Physicians in medicine, osteopathy, dental surgery or dental medicine; podiatric medicine; optometry; or Chiropractor.

- <u>Medicaid incentive plan</u>

  All of the above plus certified nurse mid-wife; nurse practitioner; physician assistant working in a rural health clinic (RHC) or federally qualified health center (FQHC) that is led by a PA.

- Under the Medicare Incentive Plan, EPs cannot be "hospital based," which means:

  - Furnishing 90% or more of your services in an **inpatient** or **emergency department** of a hospital.

 - Focus is site of service, not employee status or who does the billing.
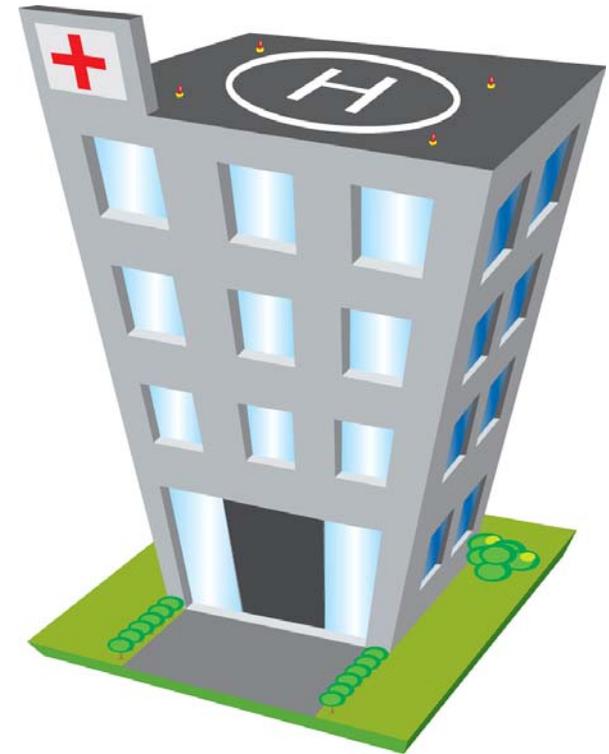
Hospital-Based Physicians are ineligible?

- Under the **Continuing Extension Act of 2010** signed April 15, 2010: Physicians practicing in hospital outpatient settings (other then ERs) are not to be deemed hospital-based physicians.

  - **PRACTICE POINTER:** To take advantage of this opportunity for additional funding, hospitals with employed or contracted EPs providing services in such outpatient clinics need to address whether their employed EPs can assign their rights to receive the incentive payments to their employing or contracting hospitals.

How to Qualify for Incentives?
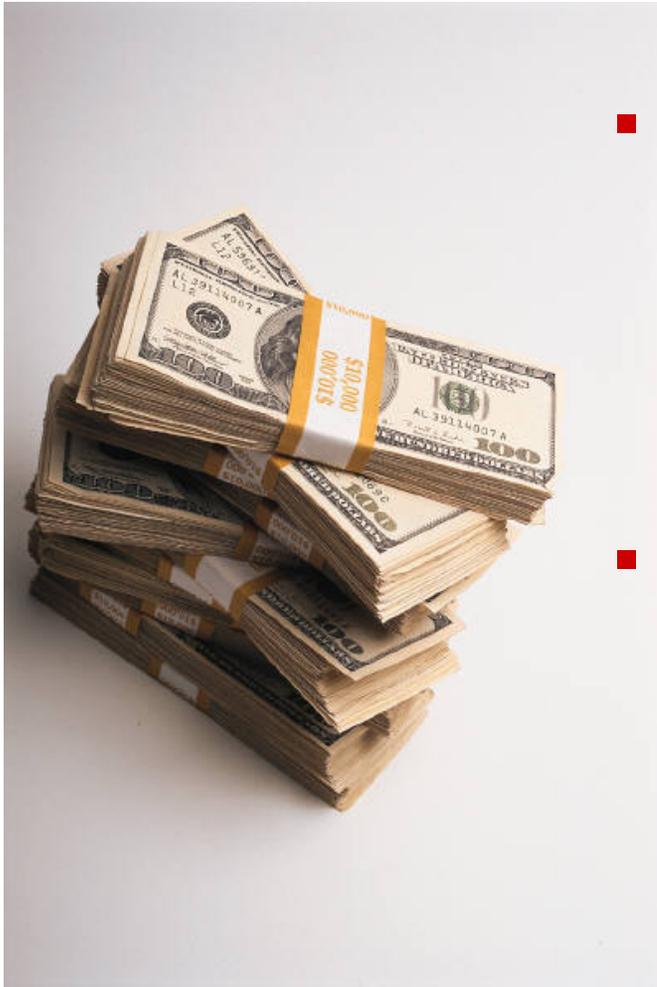
- Make a "meaningful use" of a "certified EHR"
  - Meaningful Use to be covered in more detail in HITECH Webinar Part II on September 1, 2010.

- Failure to qualify could lead to a reduction in your reimbursement of services and items under Medicare, but not under Medicaid.

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- The test for "meaningful use" is designed to encourage early adoption. Adopters will have to meet an increasingly more difficult test for each stimulus payment year.

- The Final Rule applies the MU test in three "**stages**" . . .

  Stage 1, Stage 2, Stage 3

Must demonstrate "meaningful use" during a "reporting period."

- 1st year only: Select a 90-day period.
- Subsequent years: Full fiscal or calendar year.
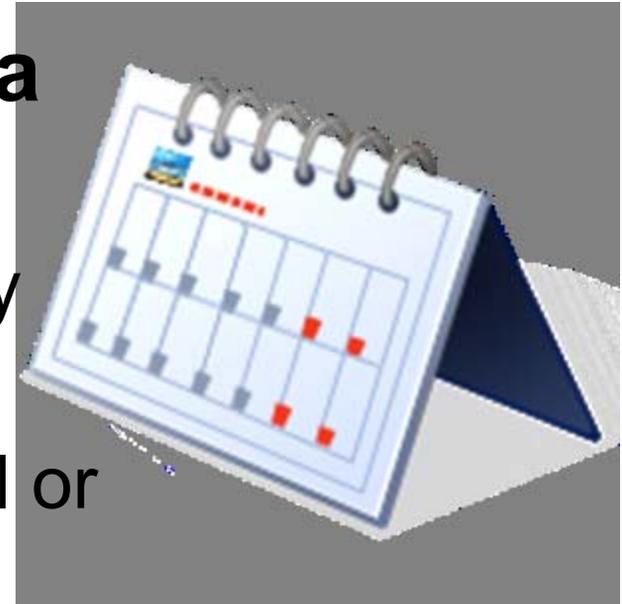
INCENTIVE PAYMENT BASED ON PAYMENT YEAR

- Medicare incentive payment timing is based on the "Payment Year," which is a:
  - *Medicare Fiscal Year* for Hospitals (10/1 to 9/30)
  - *Calendar Year* for EPs (1/1 to 12/31)

- The first Payment Year is 2011, the "2011 Payment Year". The second payment year is 2012, third is 2013, etc.

HOW TO REPORT?

- For 2011 Payment Year: Use **attestation** to report the results for all objectives or measures, including the clinical quality measure. Applies to both Medicare and Medicaid incentive payments.

  - *For the Medicare program, attestations begin in April 2011*

- For 2012 Payment Year: Use **certified EHR technology** to directly submit clinical quality measures to CMS (or, for Medicaid EPs and hospitals, to the state).*

  - *CMS expects all EHRs, for both existing and first time adopters, will meet standards that will enable such electronic reporting.*

*This assumes that CMS is technologically prepared for electronic submission.

- Registration by both EPs and eligible hospitals with CMS for the EHR incentive program **begins in January 2011**.

- Registration for both the Medicare and Medicaid incentive programs will occur at one virtual location, managed by CMS.

REGISTRATION DEADLINES

- **Last day for EP's to register and attest** to receive an incentive payment **for calendar year 2011**: February 29, 2012

- **Last day for hospitals to register and attest** to receive an incentive payment **for calendar year 2011**: November 30, 2011

- Registration for both the Medicare and Medicaid incentive programs will occur at one virtual location, managed by CMS.

MUST BE ENROLLED TO REGISTER

- All providers must be enrolled in Medicare FFS, MA, or Medicare (FFS or managed care)

- All providers must have a National Provider Number (NPI)

- All Medicare providers and Medicaid eligible hospitals must be enrolled in PECOS

  - **www.cms.gov/EHRIncentivePrograms**
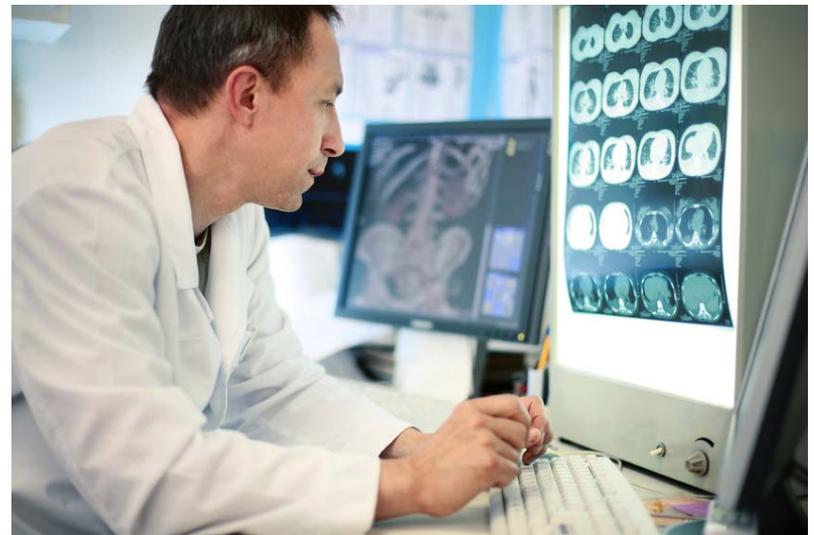
When Do Incentive Payments Begin?

- Medicare EHR incentive payments will begin in **mid May 2011**.

- States will be initiating their incentive programs on a rolling basis, subject to CMS approval of the State Medicaid HIT plan, which details how each State will implement and oversee its incentive program.

MEDICARE PLAN – KEY DATES

- Must "adopt" <u>before</u> 2015 or you get NO stimulus payments.

- The total stimulus payments are spread over 3 to 5 years, depending on when you first adopt.

- The last "payment year" is 2016, regardless of year of adoption.

- A bonus equal to 75% of Medicare allowable charges for covered services that EP provided in prior Medicare fiscal year, but not to exceed:

- **Up to $44,000** (*plus* 10% bump-up for HPSAs which equals a maximum stimulus of $48,400)

Medicare Plan – Incentive Schedule

"Payment Year" Below	Adopt by 12/31/2011:	Adopt by 12/31/2012:	Adopt by 12/31/2013:	Adopt by 12/31/2014	Adopt in 2015 or after
2011	$18,000 cap	$ 0	$ 0	$ 0	$ 0
2012	$12,000 cap	$18,000 cap	$ 0	$ 0	$ 0
2013	$ 8,000 cap	$12,000 cap	$15,000 cap	$ 0	$ 0
2014	$ 4,000 cap	$ 8,000 cap	$12,000 cap	$ 12,000	$ 0
2015	$ 2,000 cap	$ 4,000 cap	$ 8,000 cap	$ 8,000	$ 0
2016	$ 0	$ 2,000 cap	$ 4,000 cap	$ 4,000	$ 0
2017	$ 0	$ 0	$ 0	$ 0	$ 0
Totals	$44,000	$44,000	$39,000	$24,000	$0

Each Eligible Professional can qualify for the stimulus bonus payment.

Example:

- 10 EPs in an Internal Medicine Group Practice.

- The Practice adopts a "qualified EHR" in 2011.

- 5 EPs in the Practice make a "meaningful use" of the EHR during 2011 and continue to prove "meaningful use" each "payment year" through 2016.

- The remaining 5 EPs fail to meet the "meaningful use" requirements before 2015.

- Cumulative max. "bonus" payments received by the 5 EPs under the Medicare Bonus Plan = $220,000.

A bonus equal to 85% of "net average allowable costs" (TBD*) for "certified EHR" (new or upgrade) and for support and training to adopt/operate, **capped at $63,750**:

- 1st year: 85% of $25,000 ($16,667 for peds)
- 2nd year & after: 85% of $10,000 per year ($6,667 for peds)
- Payments after 1st year are limited to 5 years.
- No payment after 2021.
- Must incur EHR costs by 2016.

EPs – Medicaid EHR Bonus Plan

- EP must waive right to Medicare EHR bonus.
- EP must have adequate patient volumes:
  - Non-hospital based (except peds): ≥ 30% of patients receive medical assistance;
  - Non-hospital based peds: ≥ 20% of patients receiving medical assistance;
  - Practice predominantly in rural area health clinics or FQHCs: ≥ 30% of patients are "needy"
    - Medicaid – SCHIP – Uncompensated care – or Charged on sliding scale based on ability to pay
- CMS to provide EPs information to help select incentive under Medicare or Medicaid.*

*See HHS HIT implementation plan, p. 3. Names of incentive recipients to be posted on-line.

- The incentive payment for Eligible Hospitals is determined based on a formula and data from the hospital's **cost report**. The incentive payment for each Eligible Hospital would be calculated based on the product of:
  - Base amount of $2M *plus* per-discharge amount ($200 for every discharge between 1,150 and 23,000) *multiplied by*
  - Medicare Share and
  - Transition Factor

- ## Medicare Share

  - ### Numerator is total of Part A and Part C inpatient days

  - ### Denominator is total inpatient days, multiplied by a fraction of non-charity care charges over total charges.

- ## Transition Factor (see chart)

Hospitals – Medicare EHR Payment Plan

Transition Factor Depends on Year of Adoption

	Payment in 2011	Payment in 2012	Payment in 2013	Payment In 2014	Payment in 2015	Payment in 2016	Payment in 2017
2011 Adoption	100%	75%	50%	25%			
2012 Adoption		100%	75%	50%	25%		
2013 Adoption			100%	75%	50%	25%	
2014 Adoption				75%	50%	25%	
2015 Adoption					50%	25%	
Penalty For No Adoption					25% of APU	50% of APU	75% of APU

- CMS will use the hospital's cost report tied to its provider number or CMS Certification Number (CCN). This will adversely impact multiple-campus hospital systems that consolidate all hospitals under one CCN.

- On July 30, 2010, HR 6072, The Electronic Health Record Incentives for Multi-Campus Hospitals Act of 2010 (Multi-campus Hospital Act) was introduced to address this inequity.

- The **payment amount** is calculated similar to the Medicare amount except *Medicaid Share* is used instead of Medicare Share:
  - Medicaid Share:
    - Numerator is Medicaid fee for service inpatient days and Medicaid MCO inpatient days.
    - Denominator is total days, adjusted for charity care.
  - Annual cap: Only 50% of cap can be paid in any given year and only 90% in any 2-year period.

- Hospitals can participate in both the Medicare and Medicaid EHR incentive plans

- Qualifying hospitals:
  - Children's Hospitals
  - Hospitals with at least 10% Medicaid patient base.

- 2016 deadline for adoption and no payments extend beyond a 6-year period.

WHAT IF YOU DON'T ADOPT?

- For Medicare:
    - **EPs** must be "meaningful user" before 2015 to avoid 1%-5% decreases in the EP Medicare Fee Schedule (possible exception for "rural" EP)
    - **Eligible Hospital** faces 25% to 75% downward payment adjustment beginning in 2015 if not "meaningful user" by 2015.

- No Medicaid penalty.
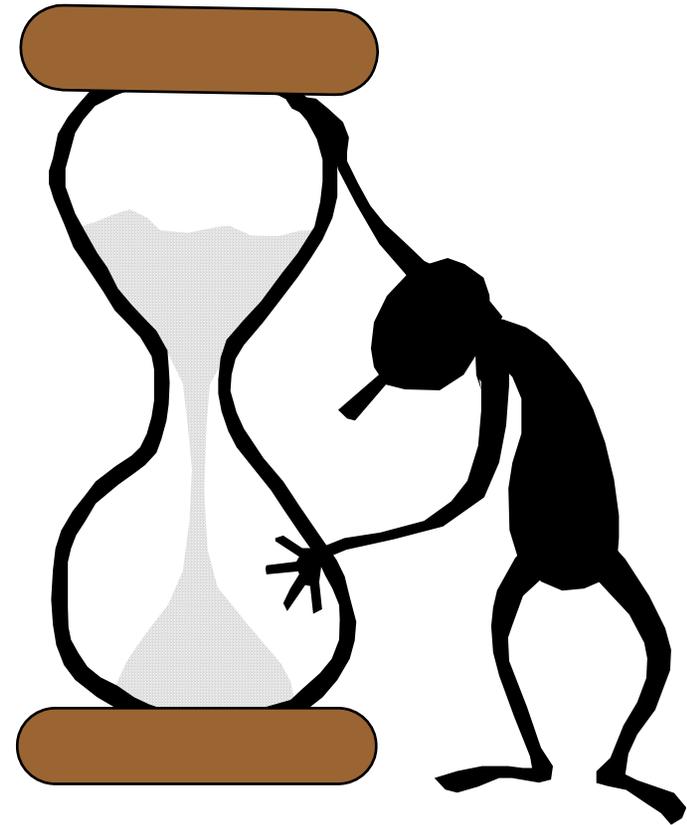
- Must continue to make "meaningful use" in *each* "reporting period" for the applicable "payment year" and

- Such use must be in compliance with the reporting period's then applicable standard for "meaningful use."
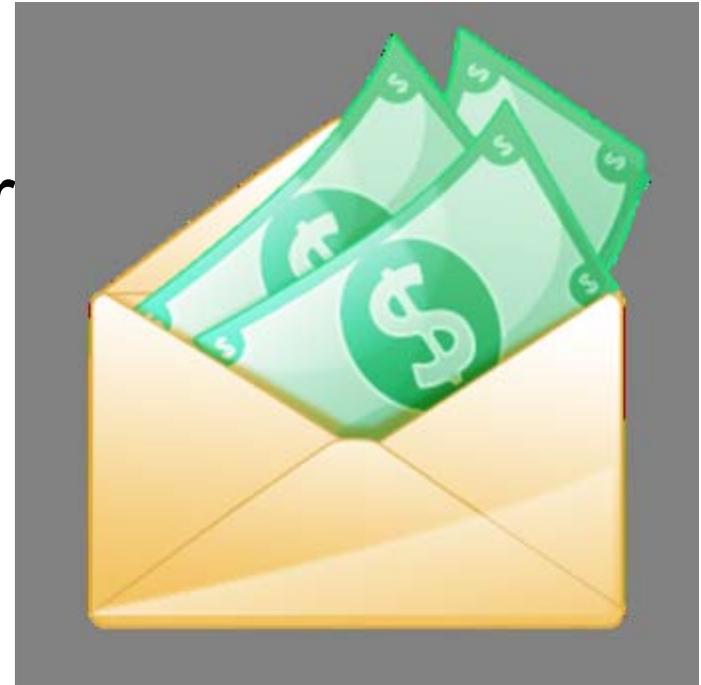
HHS Proposed Rule on "Meaningful Use"

- CMS Final Rule on Meaningful Use and Incentives: Federal Register, Vol. 75, No. 144, pp. 44314 – 44588, available at: **http://edocket.access.gpo.gov/2010/pdf/2010-17207.pdf**

HHS Rule on "Certified" EHR

- EPs and eligible hospitals must make a meaningful use of "*certified*" EHR technology.

- On July 28, 2010, HHS ONC published its Interim Final Rule on the standards, implementation specifications and certification criteria that an EHR will need to meet in order to satisfy the Stage I "meaningful use". *See* the Federal Register, Vol 75, No. 144, pp. 44590 – 44654, available at: http://edocket.access.gpo.gov/2010/pdf/2010-17210.pdf.
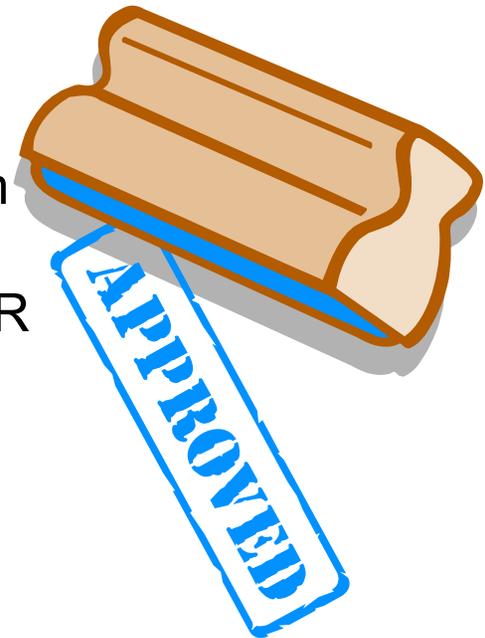
Temporary certification program.

- ONC will authorize organizations to test and certify Complete EHRs and/or EHR Modules

- Assures the availability of Certified EHR Technology prior to the date on which health care providers seeking the incentive payments may begin demonstrating meaningful use of their EHR.

EHR Certification Programs

- The temporary certification program establishes:

  - The process and requirements for becoming an ONC-Authorized Testing and certification Body (ATCB), authorized to test and certify EHR technology and products.

  - The parameters around testing and certification by ATCBs.

EHR Certification Programs

- ONC is in the process of authorizing "testing and certification bodies" for temporary certification.

- Certified products are expected for be available in the Fall 2010.

- The list of certified EHRs and EHR modules will be posted on ONC website.

Permanent certification program.

- Will replace the temporary program.
- Separates responsibilities for performing testing and certification
- Introduces accreditation requirements
- Establishes requirements for certification bodies authorized by the ONC related to the surveillance of Certified EHR Technology
- Includes potential for certification bodies authorized by the ONC to certify other types of HIT besides Complete EHRs and EHR Modules.

Can I Use Separate Modules to Qualify?

HHS ONC stated in its July 22, 2010 conference call that the published list of certified EHR technology will list all products that are certified, including products that may be modules of a larger system. The Meaningful Use criteria that the product meets will be specified. If you are looking for a module to complete the MU criteria that you must meet, this list will assist providers in selecting product to complete their certified EHR.

More Information on Certification

- **<u>Certification Programs</u>**:

  www.healthit.hhs.gov/certification

- **<u>Temporary Certification Programs</u>:**

  www.healthit.hhs.gov/tempcert

- **<u>NIST Health IT Home Page</u>:**

  Test Methods for Health Information Technology:

  http://xw2k.nist.gov/healthcare/use_testing/index.html

  Approved Test Procedures:

  http://xw2k.nist.gov/healthcare/use_testing/finalized_require ments.html

More information is available on the following government websites:

CMS:

www.cms.gov/EHRIncentivePrograms

ONC:

http://healthit.hhs.gov

Contracting pointers

- Payment of fees in terms of meeting milestones

- Deployment schedule

- Data encryption

- Representations and warranties beyond standard IP non-infringement:
  - Is and will remain certified
  - Is and will remain compliant with HIPAA
  - Free of viruses, worms, etc.
  - Compatible enhancements and interfaces
  - Free of defects, and more. . .

- Data conversion, paper and electronic

- Safeguards to prevent upcoding and False Claims Act liability
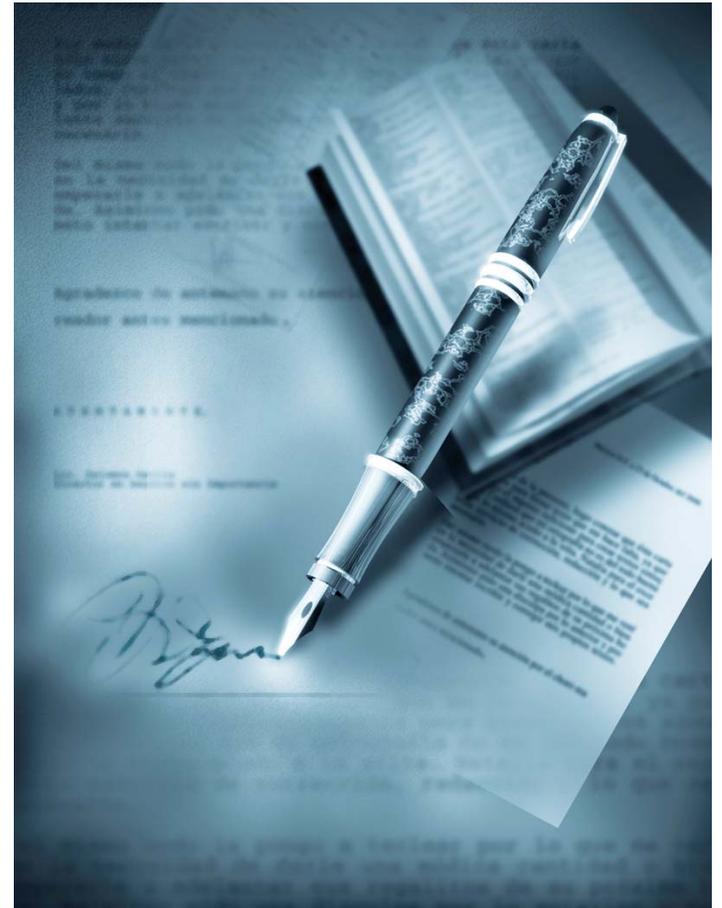
Contracting pointers

- Rights to access data upon termination

- Identify hardware that provider must purchase to make EHR operate per provider expectations and vendor representations

- Maintenance support, fees and updated documentation, source code if vendor ceases business, define what constitutes maintenance, and more

- Indemnification

- Business Associate Agreement and obligations in event of data breach

- And more!

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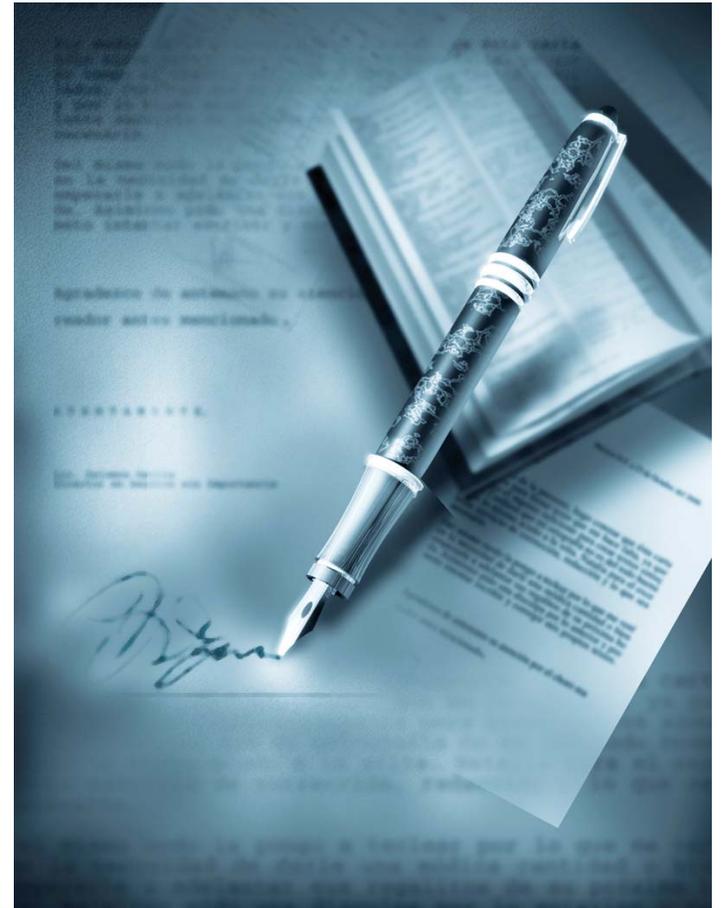
QUESTIONS?

To place your question in the queue, look for a small toolbox in the lower right hand corner of your screen. Click on the *Question Mark icon* in the toolbox. This will open the Q&A panel. Type your question and click SEND.

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