WYATT TARRANT & COMBS LLP

The HITECH EHR "Meaningful Use" Requirements for Hospitals and Eligible Professionals

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Before We Begin….

- All lines will be muted during the webinar.
- To ask a question or make a comment, please submit it via the question feature, or enter [*6] on your phone to ask a question during the question and answer period.

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Before We Begin….

- Links to today's slides have been sent to all webinar registrants' email accounts.
- If you did not receive the slides, please notify us through the question feature.

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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.

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Health Information Technology for Economic & Clinical Health Act ("HITECH Act")

- Signed into law on February 17, 2009
- Part of the American Recovery and Reinvestment Act of 2009 ("ARRA") a/k/a the Stimulus Bill

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HITECH Act's EHR Objectives

- Reform the health care system
  - Expand access to affordable care and improve population health
- Improve health care quality
  - Make the right information available when needed
- Increase patient safety
  - Reduce errors and adverse events
- Contain costs in government healthcare programs
  - Eliminate duplicate procedures & decrease paperwork
- Ensure privacy and security

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HITECH Act – Public/Private Collaboration

David Blumenthal, MD
ONC National Coordinator

- HHS Office of National Coordinator for Health Information Technology ("ONC")
  - ONC HIT Standards Committee
  - ONC HIT Policy Committee
- ONC HIT is responsible for HHS' implementation plan for certification & meaningful use standards of Electronic Health Records (EHRs)

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Available Incentives

- Two EHR incentive payment plans are available to Eligible Professionals (EPs) and Eligible Hospitals and CAHs:
  - Medicare Incentive Plan
  - Medicaid Incentive Plan
- Hospitals can participate in both Medicare & Medicaid Incentive Plans, but physicians must choose one.
- Medicare Advantage physicians can also choose the Medicare Advantage Incentive Plan.
- Incentives available for "qualified EHRs" IF you make "meaningful use" of the EHR

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What is "Meaningful Use?"

- The HITECH Act specifies the following three components of "meaningful use":
  - Use of certified EHR in a meaningful manner
  - Use of certified EHR technology for electronic exchange of health information to improve quality of health care
  - Use of certified EHR technology to submit clinical quality measures (CQMs) and other measures selected by the Secretary

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Why Impose "Meaningful Use" Requirements?

- EHRs can only deliver their benefits when information is standardized
  - Therefore, ONC has identified specific standards for EHR systems through the July 28, 2010 Final Rule
- EHRs cannot achieve their full potential if providers do not use the functions that deliver the most benefits
  - Examples include security checks, information exchanges, medical orders through Computerized Provider Order Entry (CPOE)
  - Rationale behind creating an EHR floor and requiring certain "core objectives"

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Meaningful Use and EHR Certification Standards

- Two companion final rules were published in the Federal Register on July 28, 2010
  - CMS Final Rule on how to demonstrate meaningful use of certified EHRs
  - ONC Final Rule on how to implement and certify an EHR to qualify for incentive payments

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Meaningful Use and EHR Certification Resources

- July 28, 2010 – Medicare and Medicaid Programs; Electronic Health Record Incentive Program; Final Rule; 75 F.R. 44314 (July 28, 2010); http://edocket.access.gpo.gov/2010/pdf/2010-17207.pdf
- July 28, 2010 – Health Information Technology: Initial Set of Standards, Implementation Specifications, and Certification Criteria for Electronic Health Record Technology; Final Rule, 75 F.R. 44590 (July 28, 2010); http://edocket.access.gpo.gov/2010/pdf/2010-17210.pdf

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Meaningful Use Final Rule

- Defined minimum requirements that providers must meet through their use of certified EHR technology to qualify for incentive payments
  - Initial criteria that Hospitals, EPs, and CAHs must meet to demonstrate "meaningful use" and qualify for incentive payments
  - Outlined phased approach to implement meaningful use requirements
    - Initially establishes criteria for meaningful use based on currently available technological capabilities and providers' practice experience
    - Graduated criteria for future phases will be established through future rulemaking

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Meaningful Use, Stage 1

- Criteria focused on:
  - Electronically capturing health information in a coded format
  - Using that information to track key clinical conditions
  - Communicating that information for care coordination purposes
  - Initiating the reporting of clinical quality measures and public health information

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Meaningful Use, Stage 1

- Results are first measured in 2011 & 2012
- Electronic capture of health information in a coded format – NOT scanned paper records
- Track key clinical conditions
- Communicate clinical information for care coordination purposes
- Report clinical quality measures to CMS

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Meaningful Use, Stage 1

- EPs, Eligible Hospitals and CAHs must meet certain objectives and their associated measures unless an exclusion applies
- Example:
  - Objective: Use CPOE for medication orders
  - Measure: More than 30% of all unique patients with at least one medication in their medication list seen by the EP have at least one medication order entered through CPOE
  - Exclusion: EP writes fewer than 100 prescriptions during the EHR reporting period

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Meaningful Use Stage 1 Summary

- EPs must report 20 of 25 MU objectives
  - 15 core objectives + 5 menu set objectives
- All objectives contain measures that must also be met
- Some objectives contain possible exclusions

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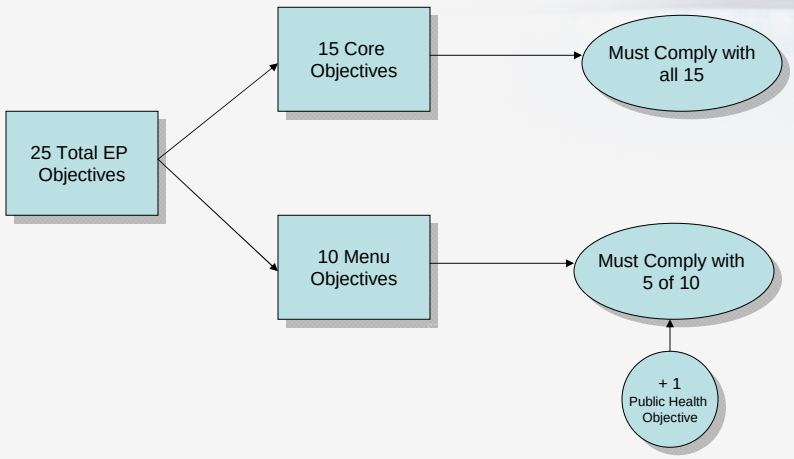
EP Objectives Flowchart



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15 Core Objectives for EPs

- Computerized physician order entry (CPOE)
- E-Prescribing
- Report ambulatory clinical quality measures to CMS/States
- Implement one clinical decision support rule
- Provide patients with electronic copy of health information, if requested
- Provide clinical summaries for patients for each office visit
- Drug-drug and drug-allergy interaction checks
- Record demographics

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15 Core Objectives for EPs, Continued

- Maintain an up-to-date problem list of current and active diagnoses
- Maintain active medication list
- Maintain active medication allergy list
- Record and chart changes in vital signs
- Record smoking status for patients 13 years or older
- Capability to exchange key clinical information among providers of care
- Protect electronic health information

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EP Menu Set Objectives – Select 5

- Drug-formulary checks
- Incorporate clinical lab results as structured data
- Generate lists of patients by specific conditions
- Send reminders to patients for preventative/follow up care, upon request
- Provide patients with timely electronic access to health information
- Identify patient-specific education resources and provide to patient, if appropriate
- Medication reconciliation
- Summary of care record for transitions of care and referrals
- Capability to submit electronic data to immunization registries*
- Capability to provide electronic syndromic surveillance data to public health agencies*

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*EPs must select at least one public health objective

Meaningful Use Stage 1 Summary

- Eligible Hospitals must report on 19 of 24 MU objectives
  - 14 core objectives + 5 menu set objectives
- All objectives contain measures that must also be met
- Some objectives contain possible exclusions

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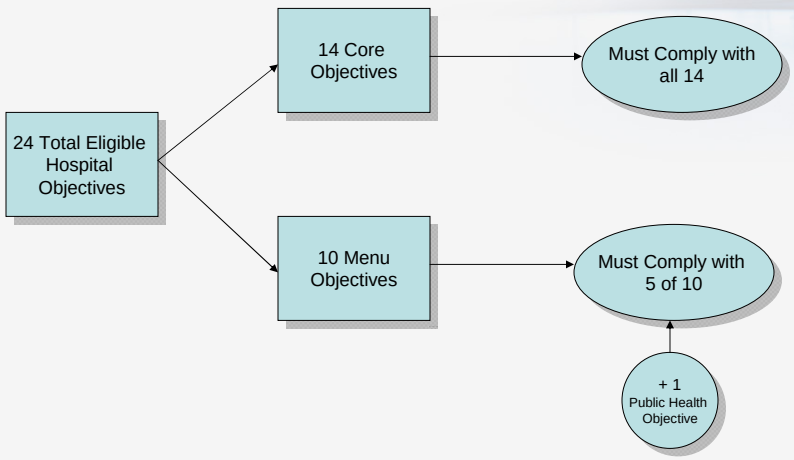
Eligible Hospital Objectives Flowchart



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14 Core Objectives for Eligible Hospitals

- CPOE
- Drug-drug and drug-allergy interaction checks
- Record demographics
- Implement one clinical decision support rule
- Maintain up to date problem list of current and active diagoses
- Maintain active medication list
- Maintain active medication allergy list
- Record and chart changes in vital signs

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14 Core Objectives for Eligible Hospitals, Continued

- Record smoking status of patients 13 years or older
- Report hospital clinical quality measures to CMS or States
- Provide patients with an electronic copy of their health information upon request
- Provide patients with an electronic copy of their discharge instructions at time of discharge upon request
- Capability to exchange key clinical information among providers of care and patient-authorized entities electronically
- Protect electronic health information

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Eligible Hospitals Menu Set Objectives – Select 5

- Drug-formulary checks
- Record advanced directives for patients 65 years or older
- Incorporate clinical lab test results as structured data
- Generate lists of patients by specific conditions
- Identify patient-specific educational resources and provide to patients, if appropriate

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Eligible Hospitals Menu Set Objectives – Select 5, Continued

- Medication reconciliation
- Summary of care record for transitions of care and referrals
- Capability to submit electronic data to immunization registries*
- Capability to provide electronic submission of reportable lab results to public health agencies*
- Capability to provide electronic syndromic surveillance data to public health agencies*

*Eligible Hospitals must select at least one public health objective

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EPs and Eligible Hospitals Must Also Meet Measures Associated with Each Objective

- Measures calculated on percentage basis
- Percentages will increase in Stages 2 & 3
  - So far, we know CPOE measure will increase from 30% to 60% of all unique patients with at least one medication in their medication list
    - applies to both EPs and Eligible Hospitals
  - Additional percentage adjustments expected through future rulemaking

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Reduction of Required Core Objectives and Menu Objectives Possible

- EPs, eligible hospitals, and CAHs may further reduce necessary objectives they have to meet if they fit within specific exclusions in the Meaningful Use Final Rule
  - Exclusions exist for both the core objectives and menu objectives
  - If fit within exclusion, then reduces number of objectives a provider has to meet
    - Example: EP has an exclusion from one of the menu objectives. EP only has to meet 4 menu objectives to be a meaningful user

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How to Determine if Exclusions Apply

- Ensure the core objective or menu objective includes an option for the EP to attest that the objective is not applicable (EP only)
- Meet criteria in the applicable objective that would permit the attestation
- Attest

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Additional Exceptions

- Exception for Medicaid EPs or Medicaid eligible hospitals that adopt, implement or upgrade in their first payment year
  - Stage 1 criteria (core and menu) apply beginning with second payment year

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6 of 15 Core Objectives for EPs Contain Possible Exclusions

- CPOE
  - **Exclusion:** Write less than 100 prescriptions during EHR reporting period
- E-Prescribing (eRx)
  - **Exclusion:** Write less than 100 prescriptions during EHR reporting period
- Provide patients with electronic copy of health information, if requested
  - **Exclusion:** No requests from patients for electronic copies of health information during the EHR reporting period

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6 of 15 Core Objectives for EPs Contain Possible Exclusions, Continued

- Provide clinical summaries for patients for each office visit
  - **Exclusion:** No office visits during EHR reporting period
- Record and chart changes in vital signs
  - **Exclusion:** See no patients 2 yrs or older, or believe that all 3 vital signs of height, weight and blood pressure have no relevance to their scope of practice
- Record smoking status for patients 13 years or older
  - **Exclusion:** See no patients 13 or older

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EPs Must Meet 9 of 15 Core Objectives (No Exclusions Possible)

- Report ambulatory clinical quality measures to CMS/States
- Implement one clinical decision support rule
- Drug-drug and drug-allergy interaction checks
- Record demographics
- Maintain an up-to-date problem list of current and active diagnoses
- Maintain active medication list
- Maintain active medication allergy list
- Capability to exchange key clinical information among providers of care
- Protect electronic health information

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7 of 10 EP Menu Objectives Contain Possible Exclusions

- Incorporate clinical lab results as structured data
  - **Exclusion:** Order no lab tests whose results are either in a positive/negative or numeric format during the EHR reporting period
- Send reminders to patients for preventative/follow up care, upon request
  - **Exclusion:** No patients 65 yrs old or older, or 5 years old or younger, with records maintained using certified EHR technology
- Provide patients with timely electronic access to health information
  - **Exclusion:** Neither orders nor creates lab test results, problem list, medication list, medication allergy list, immunizations, or procedures during the EHR reporting period
- Medication reconciliation
  - **Exclusion:** Not the recipient of any transitions of care during the EHR reporting period

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7 of 10 EP Menu Objectives Contain Possible Exclusions, Continued

- Summary of care record for transitions of care and referrals
  - **Exclusion:** Neither transfer nor refer a patient to another provider during the EHR reporting period
- Capability to submit electronic data to immunization registries*
  - **Exclusion:** Administer no immunizations during the EHR reporting period or where no immunization registry has the capacity to receive the information electronically
- Capability to provide electronic syndromic surveillance data to public health agencies*
  - **Exclusion:** Do no collect any reportable syndromic information on patients during EHR reporting period, or do not submit such information to any public health agency that has the capacity to receive the information electronically

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3 EP Menu Set Objectives Do Not Contain Exclusions

- Drug-formulary checks
- Generate lists of patients by specific conditions
- Identify patient-specific education resources and provide to patient, if appropriate

- But remember, an EP only has to meet 5 total EP Menu Set Objectives

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EPs Working at Multiple Sites

- What if some sites do not have certified EHR technology?
  - Must have 50% of their total patient encounters at locations where certified EHR technology is available
  - Base all meaningful use measures only on encounters that occurred at locations where EHR technology is available

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3 of 14 Core Objectives for Eligible Hospitals and CAH's Contain Possible Exclusions

- Record smoking status of patients 13 years or older
  - Exclusion: Admits no patients 13 years or older to its inpatient or emergency department
- Provide patients with an electronic copy of their health information upon request
  - Exclusion: No request from patients for an electronic copy of patient health information during the EHR reporting period
- Provide patients with an electronic copy of their discharge instructions at time of discharge upon request
  - Exclusion: No requests from patients for an electronic copy of discharge instructions during the EHR reporting period

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11 of 14 Core Objectives for Eligible Hospitals and CAHS Must Be Met and Contain No Exclusions

- Use CPOE for medication orders
- Drug-drug and drug-allergy interaction checks
- Record demographics
- Implement one clinical decision support rule
- Maintain up to date problem list of current and active diagnoses
- Maintain active medication list
- Maintain active medication allergy list
- Record and chart changes in vital signs
- Report hospital clinical quality measures to CMS or States
- Capability to exchange key clinical information among providers of care and patient-authorized entities electronically
- Protect electronic health information

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4 Menu Set Objectives for Eligible Hospitals and CAHs Include Possible Exclusions

- Record advanced directives for patients 65 years or older
  - Exclusion: Admit no patients 65 years old or older during the EHR reporting period
- Capability to submit electronic data to immunization registries
  - Exclusion: Administer no immunizations during the EHR reporting period, or where no immunization registry has the capacity to receive the information electronically
- Capability to provide electronic submission of reportable lab results to public health agencies
  - Exclusion: No public health agency to which eligible hospital or CAH submits information has the capacity to receive the information electronically
- Capability to provide electronic syndromic surveillance data to public health agencies
  - Exclusion: No public health agency to which eligible hospital or CAH submits information has the capacity to receive the information electronically

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6 of 9 Menu Set Objectives for Eligible Hospitals and CAHs Contain Exclusions

- Drug-formulary checks
- Incorporate clinical lab test results as structured data
- Generate lists of patients by specific conditions
- Identify patient-specific educational resources and provide to patients, if appropriate
- Medication reconciliation
- Summary of care record for transitions of care and referrals

- But remember, an Eligible Hospital or CAH only has to meet 5 Menu Set Objectives Total

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Hospitals that Qualify for Both Medicare Incentive Payments and Medicaid Incentive Payments

- Subsection (d) hospitals that are also Medicaid acute care hospitals, including CAHs
- Report on meaningful use to CMS for Medicare EHR Incentive Program
- Automatically deemed meaningful users for Medicaid, even if State has increased core objective requirements

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States May Increase Core Objective Requirements on Limited Basis

- May seek CMS approval to categorize 4 public health-related objectives as "core objectives" instead of menu objectives
  - Generate lists of patients by specific conditions
  - Capability to submit electronic data to immunization registries
  - Capability to submit electronic data on reportable lab results to public health agencies
  - Capability to submit electronic syndromic surveillance data to public health agencies

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Clinical Quality Measures (CQMs)

- EPs, eligible hospitals, and CAHs seeking to demonstrate meaningful use are required to submit aggregate CQM numerator, denominator, and exclusion data to CMS or State
  - For 2011, by attestation
  - For 2012, electronically through certified EHR system

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Denominators for Percentage-Based Measures

- Two types of percentage-based measures:
  - Denominator = all patients seen or admitted during EHR reporting period, regardless of whether records kept using certified EHR technology
  - Denominator = actions or subsets of patients seen or admitted during EHR reporting period, but only patients or actions taken on behalf of patients, whose records are kept using certified EHR technology

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How Do Clinical Quality Measures (CQMs) Fit In?

- Core Objectives for EPs and Eligible Hospitals require reporting of certain clinical quality measures (CQMs) to CMS or applicable State
- EPs must demonstrate use of 3 "core" or "alternative core" measures + any 3 out of 38 other measures
- EP Core Measures:
  - blood pressure for patients with hypertension
  - tobacco use and cessation counseling, and
  - BMI screening and weight management counseling
- Alternative Core Measures:
  - weight measurement and counseling for children and adolescents
  - influenza vaccinations for patients over 50
  - childhood immunization status

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How Do Clinical Quality Measures (CQMs) Fit In?

- Hospitals must comply with 15 CQMs
- 3 major categories:
  - Emergency Department throughput processes
  - Stroke patient management
  - Venous thromboembolism patient management

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How Do I Report?

- 2011 Payment Year: Hospitals and EPs use "attestation" to report the results for all objectives or measures, including clinical quality measures for both Medicare and Medicaid incentive payments
  - Aggregate clinical quality measure numerator, denominator, and exclusion data
- 2012 Payment Year: Hospitals and EPs use their certified EHR technology to directly submit clinical quality measures to CMS (Medicare) or the State (Medicaid), as applicable

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Must Qualify During a "Reporting Period"

- 1st year: Select a 90 day period any time after October 1, 2010
- Subsequent years: Full fiscal or calendar year
- Subject to change for purposes of the Medicare incentive payment adjustment

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Example of First Reporting Period

- Hospitals: Any 90 day period between October 1, 2010 through September 30, 2011
- EPs: Any 90 day period between October 1, 2010 through December 31, 2011

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Meaningful Use, Stage 2 – Criteria To Be Determined Through Future Rulemaking

- Stage 2 will expand Stage 1 criteria with respect to:
  - disease management
  - clinical decision support
  - medication management support for patient access to health information
    - EPs, Eligible Hospitals and CAHs must use CPOE for medication orders in Stage 2
      - Measures change (more challenging to meet)
      - Same potential exclusions apply
  - transition in care
  - quality measurement and research
  - bi-directional communication with public health agencies

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Meaningful Use, Stage 2 – Criteria To Be Determined Through Future Rulemaking

- Stage 1 menu set will be transitioned into a core set for Stage 2
- Greater emphasis on health information exchange across institutional boundaries

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Meaningful Use, Stage 3 – Criteria To Be Determined Through Future Rulemaking

- Stage 3 will focus on:
  - improvements in quality, safety and efficiency
  - decision support for national high priority conditions
  - patient access to self management tools
  - access to comprehensive patient data
  - improving population health outcomes

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Meaningful Use, Stages 2 & 3

- Stage 2 results measured in 2013 & 2014
- Stage 3 results measured in 2015 & beyond
- Eligible Hospitals and EPs may begin adoption of EHRs after 2012, however, you will have to meet ALL applicable stages in that first year of adoption to qualify for an incentive payment

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Impact of Failure to Adopt

- Carrot and Stick approach
- EHR Stimulus Money available AFTER you adopt AND demonstrate you meet specific requirements
- Failure to adopt a "qualified EHR" and make "meaningful use" of it could lead to a reduction in Medicare payments

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Impact of Failure to Adopt

- EPs must be "meaningful users" before 2015 to avoid 1-5% decrease in EP Medicare Fee Schedule (possible exception for "rural" EP)
- Eligible Hospitals face 25 - 75% payment adjustment beginning in 2015 if not "meaningful users" by 2015
- No Medicaid Penalty if fail to adopt

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How Do I Keep the Payments Coming?

- Must continue to make "meaningful use" in EACH "reporting period" for the applicable "payment year" and
- Use must be in compliance with the reporting period's then applicable standards for "meaningful use"

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Stimulus Payments Based on "Payment Years"

- "Payment Year" is a fiscal year for Hospitals (10/1 to 9/30) and a calendar year for EPs (1/1 to 12/31)
- The first "Payment Year" is 2011
- CMS estimates that Medicare incentives will be paid out beginning mid-May 2011
- Medicaid incentive pay outs are determined by the states. States will be initiating incentive programs on a rolling basis, subject to CMS approval

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Early Data Shows Hospitals Struggling to Meet Meaningful Use Criteria

- Only 2.1% of hospitals report having EHRs in place that would meet meaningful use criteria (*Health Affairs* 2010 study)
- Recent AHA hospital survey indicates only "modest gains in [EHR] adoption between 2008 and 2009."

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Physicians Concerned Over Loss of Productivity; Report Potential Misinformation from Vendors

- 68 of 450 physician practices surveyed reported they will need to change their current EHR practices to meet the meaningful use criteria
- 41% of practices reported that their EHR vendors told them their systems would allow providers to qualify for incentives

Source: MGMA 2010 Research Summary

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HHS: A "Coordinated" Approach

- ONC published a final rule to establish a temporary certification program for health information technology on June 24, 2010
- Office For Civil Rights announced a proposed rule specifying additional HIPAA requirements on July 8, 2010

- Part III: HITECH's Changes to HIPAA, September 22 at 12 EDT

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Questions?

- To unmute your line and ask a question, please enter [*6] on your phone.
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