

MEANINGFUL USE & BEYOND

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HITECH ACT DISCLAIMER

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 that requires the Secretary of Health & Human Services to issue interpretive regulations that have not yet been finalized. 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")

*An overview of certain incentives and other
considerations respecting the
adoption and use of an
Electronic Health Record (EHR).*



WHAT INCENTIVES ARE AVAILABLE?

- Basically, one of two EHR adoption incentive payment plans will be available to eligible professionals (EPs) and eligible hospitals and CAHs who qualify:
 - The Medicare Incentive Plan
 - The Medicaid Incentive Plan



ELIGIBLE HOSPITALS

- A hospital located in one of the fifty States or the District of Columbia.
- Medicare plan excludes:
 - Hospitals located in the territories or in Puerto Rico.
 - Hospitals excluded from IPPS, i.e. psychiatric, rehab, LTC, Children's and cancer.



ELIGIBLE PROFESSIONALS (EPs)

- Medicare incentive plan: A “physician” as defined by the Social Security Act, which is a doctor of medicine; osteopathy; dentistry; podiatry; optometry; chiropractic.
- Medicaid incentive plan: EPs include Physicians; Dentists; Certified nurse mid-wife; Nurse practitioner; Physician assistants employed by a rural health clinic or federally qualified health center (FQHC) that is led by a physician assistant.



HOSPITAL-BASED PHYSICIANS ARE INELIGIBLE?

- EPs cannot be “hospital based,” which means (per the proposed rule):
 - Furnishing 90% of services in an inpatient or outpatient “hospital setting;”
 - Using facilities and equipment (including EHR) owned by the hospital.
 - Focus is site of service, not employee status or who does the billing.



HOSPITAL-BASED PHYSICIANS ARE INELIGIBLE?

- An outpatient “hospital setting” would include either an on-campus or off-campus setting that is integrated operationally and financially into the hospital, which provides primarily diagnostic, therapeutic (both surgical and non-surgical) and rehab services.
- Hospitals might fail the “meaningful use” and/or “certified EHR” test if its EHR does not integrate all “hospital-based” physicians.



HOW TO QUALIFY FOR STIMULUS?

- Must make a “meaningful use” of a “certified EHR.”
- The test for “meaningful use” is designed to encourage early adoption so that adopters will have time to meet an increasingly more difficult test for each stimulus payment year.
- The test is applied in “stages”.



MEANINGFUL USE 1ST STAGE - OVERVIEW

Stage 1 “Meaningful Use” Test

- Results are first measured in 2011.
- 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:
 - 25 objectives/measures for EPs
 - 23 objectives/measures for eligible hospitals.



HOW TO REPORT?

- For 2011 Payment Year: EPs and hospitals use “attestation” to report the results for all objectives or measures, including clinical quality measures. Applies to both Medicare and Medicaid incentive payments.
- For 2012 Payment Year: EPs and hospitals use their certified EHR technology to directly submit clinical quality measures to CMS (or, for Medicaid EPs and hospitals, to the state).
 - This means that CMS expects all EHRs, for both existing and first time adopters, will meet standards that will enable such electronic reporting.



STIMULUS PAYMENT BASED ON PAYMENT YEAR

- Stimulus payment timing is based on the “Payment Year,” which is a:
 - *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.
 - Because of timing issues for the first 2011 Payment Year, actual payments for either EPs or Hospitals will not occur before January 1, 2011.



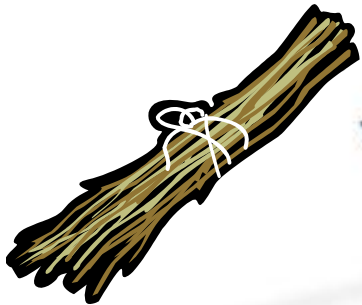
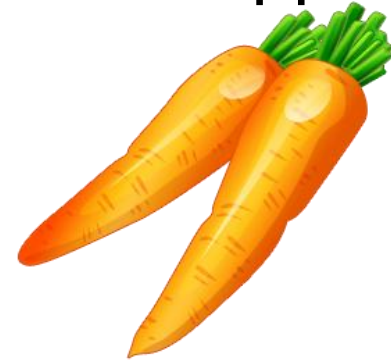
MUST QUALIFY DURING A “REPORTING PERIOD”

- **Must demonstrate “meaningful use” during a “reporting period.”**
 - 1st year only: Select a 90-day period. But the 90-day period cannot begin before October 1, 2010.
 - Subsequent years: Full fiscal or calendar year.
 - Subject to change for purposes of the Medicare incentive payment adjustment.
- **First Reporting Period for:**
 - **Hospitals:** 90 days during October 1, 2010 through September 30, 2011.
 - **EPs:** 90 days during October 1, 2010 through December 31, 2011.
 - **Example:** If a hospital or EP demonstrates “meaningful use” from October 2, 2010 through December 31, 2010 (90 days), the hospital or EP would qualify on January 1, 2011, for the “**2011 Payment Year**” stimulus payment.



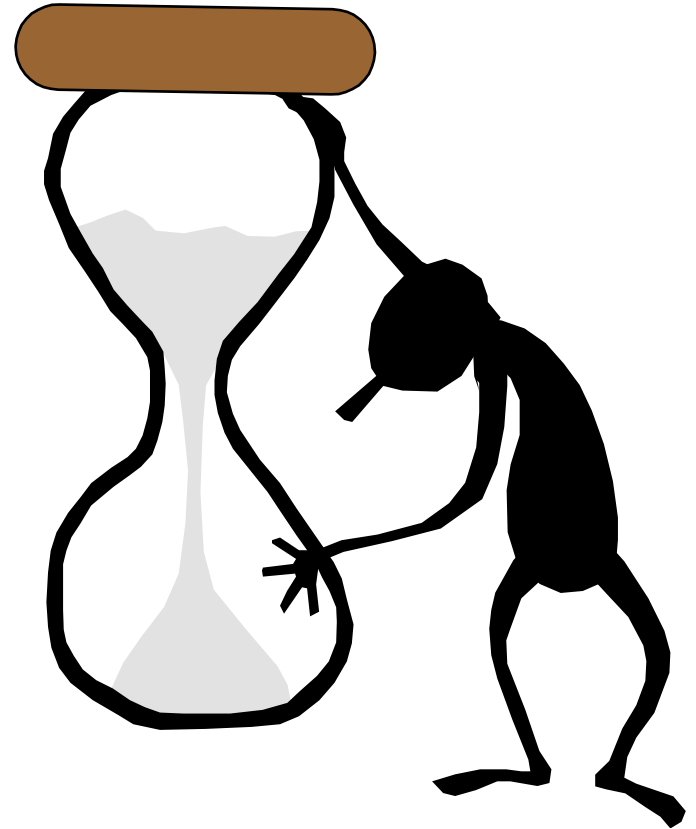
IMPACT OF A FAILURE TO ADOPT?

- HITECH incorporates a “carrot & stick” approach to entice adoption.
- 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.



EPs WHO DON'T ADOPT

- For **Medicare** eligible professionals:
 - Must be a “meaningful user” before 2015 to avoid decrease in the EP Medicare Fee Schedule.
 - Cumulative 1% decrease annually, capped at 5%. Exception for hardship situation (e.g. rural)
- No **Medicaid** penalty.



HOW TO KEEP THE PAYMENTS COMING?

- 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.”



STATE LOANS AND GRANTS

- HITECH Act provides stimulus money to states to “promote HIT” including for EHR Adoption Loan Program.
- Providers must still submit quality reports and satisfy certain standards.
- So far, at least 10 states have received grants, including Iowa, California, Georgia, Idaho, Montana, New York, Texas, U.S. Virgin Islands, Tennessee, and Pennsylvania.



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HHS PROPOSED RULE ON “MEANINGFUL USE”

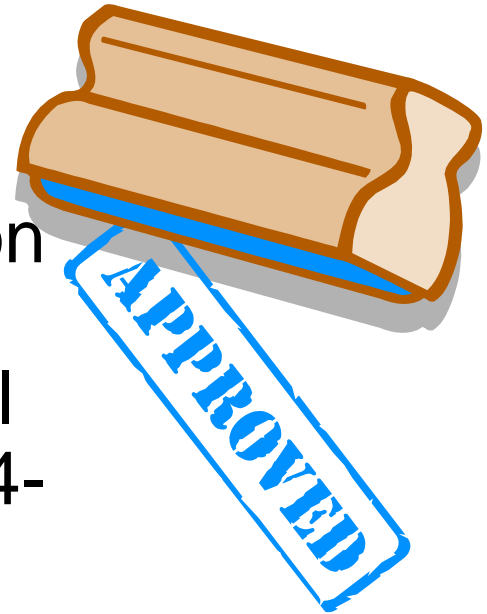
On December 30, 2009, HHS releases its proposed rule for making a “Meaningful Use” of EHR. The proposed rule was published on January 13, 2010 in the Federal Register, Vol. 75, No. 8, pp. 1844-2011.

The public has 60 days to comment on the proposed rule, or no later than 5 pm on March 15, 2010.



HHS PROPOSED CERTIFICATION STANDARDS

- EPs and eligible hospitals must make a meaningful use of “***certified***” EHR technology.
- Initial set of proposed certification standards were published on January 13, 2010, in the Federal Register, Vol 75, No. 8, pp. 2014-2047.
- HHS to continually update the certification standards.



HITECH ACT & HIPAA SECURITY

- HITECH beefed up privacy and security requirements for healthcare providers and their Business Associates (BAs).
 - **Written** Business Associate Agreements are *required*.
 - BAs must comply with HIPAA **Security Rule**.
 - You must **account** for each disclosure of PHI to a BA.
 - **Increased fines** for security breaches.



HITECH ACT & HIPAA SECURITY

- Data Breach Notification Rule.
 - Effective September 23, 2009:
 - All breaches of unsecured personal or protected health information (PHI) must be:
 - Reported by the BA to the CE
 - Logged by the CE
 - Reported annually to HHS
 - Major data breach = 500 people or >500 records
 - Must contact all your patients, a major news outlet, *and* the HHS secretary.



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- **Higher Fines for HIPAA Noncompliance**
 - Effective February 17, 2009, i.e., now!
 - Before HITECH: \$100 per violation with a \$25,000 maximum aggregate
 - After HITECH: \$100 to \$50,000 per violation with an aggregate annual cap of \$25,000 to \$1,500,000.
 - Money collected from fines will be distributed to persons whose information was improperly disclosed or used.



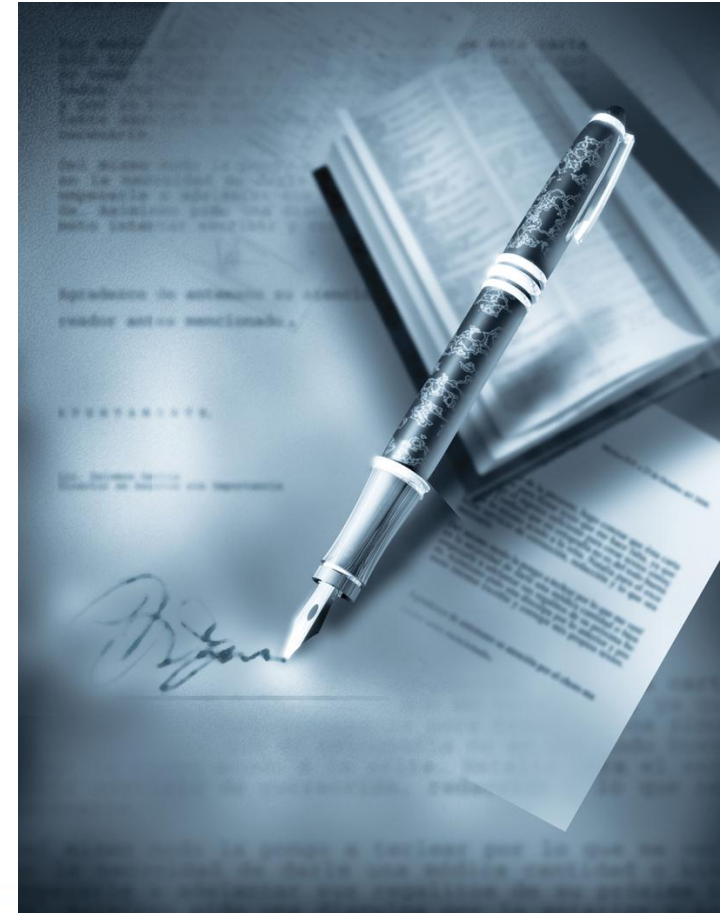
HHS REGULATIONS: ENCRYPTION STANDARDS

- April 17, 2009: HHS issued guidance specifying methodologies that can be used to secure “unsecured PHI.”
- HITECH Act defines “unsecured PHI” as PHI that has not been rendered “unusable, unreadable, or indecipherable” to unauthorized individuals.
- PHI must be encrypted using a NIST approved algorithm and procedure to be considered unreadable, or be destroyed.



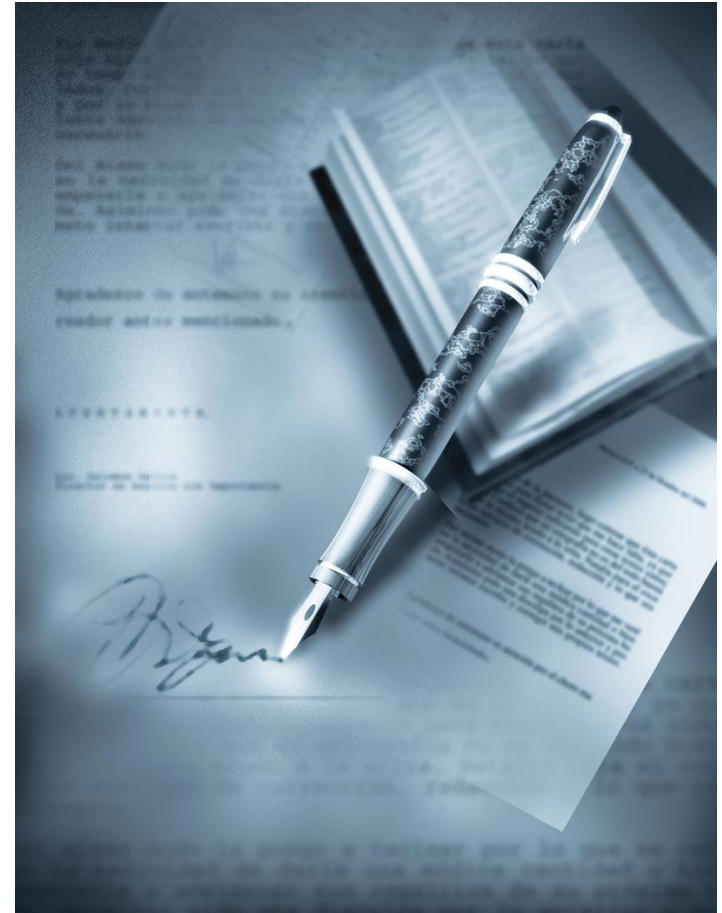
CONTRACTING POINTERS

- Address payment of fees in terms of meeting milestones
- Include deployment schedule
- Address 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. . .
- Address data conversion, paper and electronic



CONTRACTING POINTERS

- Rights to access data upon termination
- Identifies hardware that provider must purchase to make EHR operate per provider expectations and vendor representations
- Addresses maintenance support, fees and updated documentation, source code if vendor ceases business, define what constitutes maintenance, and more
- Address indemnification
- Address need for Business Associate Agreement and obligations in event of data breach
- And more . . .



QUESTIONS?



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