

CMS and ONC Issue Proposed Rule Modifying 2014 Requirements for EHR Incentive Programs and Certified EHR Technology

On May 23, 2014, the Centers for Medicare & Medicaid Services (CMS) and the Office of the National Coordinator for Health Information Technology (ONC) issued a [proposed rule](#) to modify (i) the meaningful use stage timeline of the Medicare and Medicaid Electronic Health Records (EHR) Incentive Programs (the “EHR Incentive Programs”), (ii) the requirements for reporting clinical quality measures (CQMs) for 2014, and (iii) the definition of “certified electronic health record technology” (CEHRT). The proposed rule modifies the EHR Incentive Program Stage 2 final rule and 2014 CEHRT Edition final rule issued by CMS and ONC in 2012, as summarized by Ropes & Gray in a [prior Alert](#).

Proposed Changes to Meaningful Use Stage Timeline in 2014

CMS is reevaluating the requirements of the EHR Incentive Programs for 2014. Many providers have been unable to timely acquire, adopt, or fully implement the 2014 Edition CEHRT as required to successfully demonstrate meaningful use for Stage 1 and Stage 2 in 2014. As such, CMS proposes allowing eligible professionals (EPs), eligible hospitals (EHs), and critical access hospitals (CAHs) that have not been able to fully implement 2014 Edition CEHRT for the 2014 reporting year to use the 2011 Edition CEHRT, or a combination of the 2011 and 2014 Edition CEHRT, for the meaningful use reporting periods in 2014. The proposed change is for 2014 only. Providers must use 2014 Edition CEHRT for the EHR reporting periods in 2015 and in subsequent years, or until new certification requirements are adopted via future rulemaking.

The proposed rule establishes that the CEHRT edition that is available to a provider will dictate the stage and version of the meaningful use objectives and measures to which such provider will be able to attest. The proposed rule sets forth three options for the use of CEHRT editions:

Option 1: 2011 Edition CEHRT Only. All EPs, EHs, and CAHs that use only 2011 Edition CEHRT for their EHR reporting period in 2014 would be required to meet the meaningful use objectives and measures for Stage 1 that were applicable for the 2013 payment year, regardless of their current stage of meaningful use.

Option 2: Combination of 2011 and 2014 Edition CEHRT. All EPs, EHs, and CAHs using a combination of 2011 Edition CEHRT and 2014 Edition CEHRT for their EHR reporting period in 2014 could choose to meet the 2013 Stage 1 or 2014 Stage 1 objectives and measures. Alternatively, if providers are scheduled to begin Stage 2 in 2014, they could choose to meet the Stage 2 objectives and measures.

Option 3: 2014 Edition CEHRT Only. All EPs, EHs, and CAHs that are scheduled to begin Stage 2 for the 2014 EHR reporting period, but are unable to fully implement all the functions of their 2014 Edition CEHRT required for Stage 2 objectives and measures, would have the option of using 2014 Edition CEHRT to attest to the 2014 Stage 1 objectives and measures for the 2014 meaningful use reporting period.

Providers that choose one of these three options would be required to attest that they were unable to fully implement 2014 Edition CEHRT because of issues related to 2014 Edition CEHRT availability delays.

CMS is also proposing a one-year extension of Stage 2, determined according to a provider’s first payment year and its stage of meaningful use. This proposed change is meant to allow CMS and ONC to focus efforts on the successful implementation of Stage 2 requirements, including those of enhanced patient engagement, interoperability and health information exchange, as well as to utilize Stage 2 participation data to inform policy decisions regarding Stage 3.

Modifications to 2014 Clinical Quality Measure Requirement

Under the proposed rule, CMS proposes modifying the reporting options and methods for CQMs in 2014. The relevant requirements will depend on the CEHRT edition that a provider uses for its EHR reporting period in 2014.

2011 Edition CEHRT Only. EPs that chose to use only 2011 Edition CEHRT for their EHR reporting period in 2014 would be required to report CQMs from the set of 44 measures and according to the reporting criteria finalized in the Stage 1 final rule, subject to certain specifications (i.e., 3 core/alternate core, 3 additional measures). EHs and CAHs that choose to use only 2011 Edition CEHRT for their EHR reporting period in 2014 would report all 15 measures finalized in the Stage 1 final rule.

Combination of 2011 and 2014 Edition CEHRT. If a provider elects to use a combination of 2011 Edition and 2014 Edition CEHRT and attests to the 2013 Stage 1 objectives and measures for its EHR reporting period in 2014, the provider would be required to report CQMs by attestation using the same measure sets and reporting criteria summarized above for providers that elect to use only 2011 Edition CEHRT for their EHR reporting periods in 2014. Due to the differences in how CQMs are calculated and tested between 2011 and 2014 Editions of CEHRT, under the proposed rule, a provider could attest to data for the CQMs derived exclusively from the 2011 Edition CEHRT for the portion of the reporting period in which 2011 Edition CEHRT was being implemented.

If a provider elects to use a combination of 2011 Edition and 2014 Edition CEHRT, and attests to the 2014 Stage 1 objectives and measures or the Stage 2 objectives and measures, the provider would be required to submit CQMs in accordance with the requirements and policies established for CQM reporting for 2014 in the Stage 2 final rule and subsequent rulemakings. Under the proposed rule, a provider would be required to submit CQMs in accordance with the requirements and policies established for 2014 in those rulemakings if the provider elects to use only 2014 Edition CEHRT for the entire duration of its EHR reporting period in 2014, regardless of the stage of meaningful use that the provider chooses.

Revision of CEHRT Definition

To support the CMS proposals to provide additional flexibility in the EHR Incentive Programs during 2014, ONC proposes revising the CEHRT definition to change certain federal fiscal year and calendar year cutoffs finalized in ONC's 2014 Edition final rule, such that the CEHRT definition will allow for and parallel the changes being proposed by CMS.

We continue to monitor developments with respect to the EHR Incentive Programs. Should you have questions regarding this alert or the EHR Incentive Programs generally, please contact your usual Ropes & Gray advisor.