

PUBLICATION

Maryland Health Care Commission Proposes to Extend and Revise EHR Incentive Regulations [Ober|Kaler]

April 15, 2014

On March 21, 2014, the Maryland Health Care Commission (MHCC) published proposed revisions to the existing Maryland Electronic Health Record Incentives regulations at COMAR 10.25.16. The proposed regulations would extend the incentives for two years, until December 31, 2016, permitting primary care practices that have not previously received incentive payments to be eligible for payments under the new rules. Some of the key changes to the rules are discussed further below. Comments on the proposed rules are due by April 21.

Re-defining Primary Care Practice

The proposed regulations would maintain the identified primary care practice groups that may be eligible to request incentive payments, but the physician practices now also must use one of six specified CMS specialty codes in claims submissions. The regulations would also expand the definition to include practices composed of one or more nurse practitioners who provide health care in those practice areas and who use one of the selected CMS taxonomy codes in claims submissions.

Incorporating Meaningful Use into the Participation Requirements

Under the current rules, primary care practices must implement a nationally certified electronic health records (EHR) system. Under the proposed rules, practices would also have to demonstrate that they attested to the current meaningful use requirements under the Medicare or Medicaid EHR Incentive Program or have achieved National Committee for Quality Assurance level two recognition for participation in a MHCC approved patient-centered medical home program. Primary care practices that attest to compliance with meaningful use standards would have to notify payors in writing within 90 days of a determination by CMS or Medicaid that a physician or nurse practitioner identified as part of the practice's EHR adoption incentive request did not meet the Medicare or Medicaid EHR Incentive Program requirements. Payors could then choose to request reimbursement of the incentive payments.

Expanding the Required Attestation

Under the proposed regulations, authorized members of the primary care practices would have to attest to the fact that *all* physicians in physician-led practices and *all* nurse practitioners in nurse practitioner-led practices use the certified EHR system, in addition to attesting to the accuracy of the information contained in the request. The existing regulations do not require an attestation relating to EHR use by all physicians or nurse practitioners.

Payments

Whereas primary care practices under the existing regulations may receive incentive payments in the form of base incentives and additional incentives, both capped at \$7,500, the proposed regulations remove the

additional incentives option, and instead cap the one-time cash payment at \$15,000 (or an incentive of equivalent value agreed upon by the primary care practice and the payor). The proposed regulations would increase the per-patient rate from \$8 to \$25. Notably, the proposed regulations define the equivalent incentive option to require agreement by the practice, in contrast to the existing regulations that do not plainly require such agreement.

Transition Provisions

The proposed regulations would permit a primary care practice that received an additional incentive that was less than or equal to the base incentive under the earlier incentive program, to request additional amounts. The additional amounts would be the difference between the previously received incentive payment and that which would be calculated under the proposed rules based on the practice's eligible patient enrollment at the time of the original payment. Such requests would have to be made within 90 days of the effective date of the new regulations.

Reports to MHCC

The proposed regulations allow the MHCC to request interim reports from payors, in addition to the required annual reports. They also would require payors to submit a final report, no later than May 31, 2017, that includes all the information required in the annual reports.

Ober|Kaler's Comments

The MHCC's extension of the EHR incentive program would give Maryland's primary care providers that have not previously taken advantage of the EHR incentives the opportunity to do so until the end of 2016. Practices that could be affected by this rule and would like to see changes in the rule should take the opportunity to submit comments to the MHCC by the April 21 deadline, and to participate at the public meeting on May 15, 2014 at 1:00 at 4160 Patterson Ave., Baltimore, Maryland.