NATIONAL HEALTH POLICY FORUM

Implementing Incentives for Health IT:
The Meaningful Use Rule and Beyond

FORUM SESSION ANNOUNCEMENT

A DISCUSSION FEATURING:

Farzad Mostashari, MD
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Donald Fischer, MD
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Christine Bechtel
Vice President
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FRIDAY, SEPTEMBER 24, 2010

11:45AM–12:15PM—Lunch

12:15PM–2:15PM—Discussion

LOCATION

Reserve Officers Association
One Constitution Avenue, NE
Congressional Hall of Honor
Fifth Floor
(*Across from the Dirksen Senate Office Building*)

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After receiving more than 2,000 comments on its proposed rule, the Department of Health and Human Services (HHS) on July 13 released its final rule defining requirements for health care providers to receive incentive payments for "meaningful use" of health information technology (IT). As part of the 2009 American Recovery and Reinvestment Act (ARRA), the health IT incentive program was required to gear up quickly on a large scale. The Health Information Technology for Economic and Clinical Health program, or HITECH, will offer up to $27 billion in payments over ten years starting in 2011—just two years after passage of the ARRA. Despite widespread agreement that health IT can help improve the quality and efficiency of care, the clinical and technical complexities of adoption have resulted in painfully slow progress in the past. Comments on the proposed rule expressed stakeholders' concerns about the difficulty of trying to pick up the pace of adoption and the risk that the program would fail by trying to do too much too soon. Many members of Congress also signed letters to HHS urging less demanding requirements. Consumer groups, quality improvement advocates, and others pressed HHS not to back away from the ambitious objectives in the proposed rule. The final rule reflects an effort to balance these concerns against the need to improve quality and efficiency and to take advantage of the financial opportunity offered by the AARA.

COMPROMISES IN THE FINAL RULE

The biggest compromise in the final rule was a reduction in the number of objectives providers would be required to meet to be eligible for incentive payments in the first stage of the HITECH program in 2011 and 2012. The proposed rule listed 24 required objectives for hospitals and 25 for physicians and other eligible clinicians. The objectives represent health IT functionalities for capturing, storing, and exchanging health data and using them to improve the quality and efficiency of care. In the final rule, the required objectives were reduced to 14 for hospitals and 15 for physicians, and each group is allowed to choose which 5 of the remaining 10 they will implement to receive first-stage payments. Thus, hospitals are responsible for a total of 19 objectives and physicians for 20. Required objectives include recording patient demographics and vital signs, maintaining medication and problem lists, implementing at least one clinical decision support rule, and reporting selected quality indicators. Optional objectives include drug formulary checks, incorporation of clinical lab results in patient records, and the generation of lists of patients with specific conditions.[1] In addition, the final rule reduced

most of the thresholds specifying the percent of patients whose data must be managed electronically for providers to qualify for payments. For example, the threshold for e-prescribing was reduced from 75 percent of patients to 40 percent in response to comments that characterized the proposed threshold as unachievable. The threshold for use of computerized order entry (CPOE) by eligible clinicians was lowered from 80 percent to 30 percent and narrowed to apply only to medication orders. Another important change was the removal of administrative transaction requirements, which will be deferred to stage two of the program, after providers argued that these functions are now performed by practice management software and cannot quickly be transferred to new electronic health record (EHR) systems focused on clinical data.[2]

FAR-RANGING CONCERNS

Other reactions, expressed in comments on the proposed rule, reflected the broad range of viewpoints among stakeholders affected by the rule and the magnitude of the challenges that remain to be addressed. The American Medical Association (AMA) recognized the important improvements in the final rule but expressed concerns about tight timelines, the availability of EHR products, and the overall number of requirements facing providers, especially physicians in small practices.[3] A recent survey of hospital executives found that, while only 50 percent expect to be ready to apply for meaningful use incentives in 2011, the number rises to 79 percent in 2012 and 90 percent in 2014.[4] In a July 27 hearing of the House Energy and Commerce Committee, Rep. John Dingell (D-MI) echoed worries about product availability and the adequacy of the Office of the National Coordinator for Health Information Technology's (ONC's) strategy for certifying compliance of EHR products with standards for meeting meaningful use requirements.[5]

In some cases, critics charged that the final rule was too lenient. At a House Ways and Means Committee hearing on July 20, Rep. Wally Herger (R-CA) called the rule a missed opportunity because of the reduction in requirements and lowering of thresholds. Rep. Herger also noted that the rule does not appear to require providers to engage in significant electronic data exchange with other parties; another witness at the hearing charged that the rule failed to fulfill congressional intent by not requiring any meaningful data exchange in the first stage of the HITECH program. National Coordinator for Health IT David Blumenthal responded that some of the

objectives in the final rule do in fact entail data exchange but that requirements had been softened because of a lack of an adequate infrastructure for exchange for many providers—a shortcoming that should be remedied in future stages of the program.[6] In a June meeting of the ONC's Policy Committee, Blumenthal acknowledged ONC's "relatively modest" goals for exchange in 2010 and 2011 and explained in more detail why it had been necessary to "compromise on our aspirations."

At the same time that the final rule on meaningful use was released, HHS also issued companion rules that specified (i) technical standards that IT products would have to meet to fulfill meaningful use requirements and (ii) the process for certifying compliance with those standards. To meet the type of concerns voiced by Rep. Dingell and the AMA about adequate certification capacity, the ONC has created a temporary certification program that will contract with private organizations to certify product compliance. Robust electronic information exchange depends on the deployment of these certified, standardized products, but it is not expected that enough of these products will be installed in time for most providers to be able to engage routinely in data exchange during 2010 and 2011. State-based health information exchanges that will facilitate this activity are "still incubating," Blumenthal said.[7]

LOOKING AHEAD

The final rule, then, is final only in a very limited sense. HITECH calls for defining meaningful use in three stages, set for 2011, 2013, and 2015. This rule is only the first installment. Incentive-payment requirements that were dropped in the July 13 final rule appear at the top of the agenda for the stage-two rulemaking process, which has already begun and will also include another round of new objectives for accelerating "meaningful" utilization of health IT. The optional objectives detailed in the stage-one rule will become mandatory. Compliance thresholds that were reduced in the compromise rule will be raised again. Data exchange requirements will be increased, with an emphasis on e-prescribing, automated reporting of lab results, and use of CPOE. Quality-reporting measures, which were minimized in the July 13 rule, will be increased in number and will have to be submitted electronically starting in 2012—if CMS and the states have by that time developed the capability to receive such submissions.[8] The ONC's strategic plan calls for a steady increase in meaningful use of required functionalities through the next two

stages of HITECH implementation, beginning in 2013 and 2015 and eventually encompassing provider data exchange with patients and public health agencies as well as payers, pharmacies, clinical labs, researchers, and others.

As the stage-one consideration of data exchange has shown, the pace of meaningful use advancement depends on multiple aspects of the supporting infrastructure. Technical standards to enable EHR systems to communicate across organizational boundaries will be necessary for meaningful exchange to take place. Vendors will have to develop products that can deliver the functions required to meet expanding meaningful use criteria; adequate capabilities for testing and certifying these products are expected to be created as well. A large education effort will be needed to prepare providers and others to use new health IT tools on a daily basis. Rigorous privacy and security standards must be perfected and put in place. States have to develop their capacity to implement the HITECH incentive program for Medicaid providers. The "final" rule is in fact only the beginning of this journey.

SESSION

This Forum session will review the thinking of the ONC and the Centers for Medicare & Medicaid Services in deciding on a final rule for meaningful use, why they made some changes from the proposed rule and did not make others, and how they will measure success in achieving meaningful use. A panel of stakeholders will discuss the benefits and challenges posed by the new rule and their own outlook for achieving HITECH's goals.

SPEAKERS

Farzad Mostashari, MD, deputy national coordinator for programs and policy in ONC, will present HHS's rationale for the final rule and talk about the outlook for its success in bringing real change to the health care system. **Donald Fischer, MD,** senior vice president and chief medical officer of Highmark, will discuss the insurance industry's response to public-payer requirements. **Michael Galang, DO,** chief information officer of the Catholic Health System in Buffalo, will comment on hospitals' priorities in pursuing meaningful use. **Stuart Henochowicz, MD,** an internist in a two-physician practice, will explore physicians' decision-making process with respect to HITECH incentives. **Christine Bechtel,** vice president of the National Partnership for

Women & Families, will comment on how the changes in payment and delivery that meaningful use is meant to encourage will affect patients and families.

KEY QUESTIONS

- What are the most significant differences between the proposed rule and the final rule, and what were the key factors that shaped the changes?
- What rates of adoption and levels of program participation are expected in 2011 and 2012? In other words, what will define success?
- From the stakeholder perspective, what short-term benefits are anticipated from health IT adoption and meaningful use?
- What evidence is there that the prospect of incentives has begun to change the behavior of vendors and providers or the dynamics of the marketplace?
- Going forward, what are the most critical challenges to meeting the HITECH program's goals? What could be done on a policy level to mitigate their difficulty?
- In general terms, what objectives can be expected in the proposed rule for stage two?

ENDNOTES

1. David Blumenthal and Marilyn Tavenner, "The 'Meaningful Use' Regulation for Electronic Health Records," *New England Journal of Medicine*, July 13, 2010; available at http://healthpolicyandreform.nejm.org/?p=3732.
2. Tony Trenkle, Centers for Medicare & Medicaid Services, testimony before the House Committee on Energy and Commerce, Subcommittee on Health, July 27, 2010; available at http://energycommerce.house.gov/documents/20100727/Trenkle.Testimony.07.27.2010.pdf.
3. American Medical Association, "AMA Pleased With Improvements to EHR Meaningful Use Requirements, But Challenges Remain to Widespread Adoption," press release, July 21, 2010; available at www.ama-assn.org/ama/pub/news/news/ama-review-meaningful-use_print.html.
4. PricewaterhouseCoopers, "Ready or Not: On the road to the meaningful use of EHRs and health IT," June, 2010; available at http://pwchealth.com/cgi-local/hregister.cgi?link=reg/Ready-or-not-On-the-road-to-meaningful-use-of-EHRs-and-health-IT.pdf.
5. Genevieve Douglas, "Barton Asks ONC, CMS for Proof Of IT Job Creation From ARRA Funding," *BNA Daily Report for Executives,* July 28, 2010; and Glen Tullman, Allscripts, testimony before the House Committee on Energy and Commerce, Subcommittee on Health, July 27, 2010, available at http://energycommerce.house.gov/documents/20100727/Tullman.Testimony.07.27.2010.pdf.

6. Genevieve Douglas, "Final Rule on 'Meaningful Use' Receives Tough Questioning During House Hearing," *BNA Daily Report for Executives,* July 21, 2010; and Jonathan Hare, Resilient Network Systems, Inc., testimony before the House Committee on Ways and Means, July 20, 2010, available at http://waysandmeans.house.gov/Hearings/Testimony.aspx?TID=9352.

7. David Blumenthal, comments, HIT Policy Committee meeting, Office of the National Coordinator for Health Information Technology, June 25, 2010, p. 14, available at http://healthit.hhs.gov/portal/server.pt/gateway/PTARGS_0_12083_913657_0_0_18/2010-06-25-policy-transcript.pdf; see also David Blumenthal, testimony before the House Committee on Energy and Commerce, Subcommittee on Health, July 27; available at http://energycom merce.house.gov/documents/20100727/Blumenthal.Testimony.07.27.2010.pdf.

8. Trenkle, testimony.