



Meaningful Use Still Involves Uncertainty as We Approach the Final Stretch of 2014

By John Netti

In the final stretch of the year, if the ground feels like it's moving because of uncertainty related to meaningful use, it's because it is. Things have not gone as planned with the program and the rules are still in a state of flux. Each practice has to come to grips with its electronic health record (EHR) situation based on how the new proposed "flexibility rule" affects it. The decisions that practices are making vary widely. Some say, "full steam ahead to Stage 2 meaningful use", while others decide to give up on the program entirely, believing it's simply not worth it. But the meaningful use initiative is not going away. It has far reaching implications and the course of action a practice takes in the final stretch of 2014 should be carefully considered.

The Centers of Medicare and Medicaid Services (CMS) recognized that the required industry-wide upgrade to the 2014 version of certified EHR technology was going to put a strain on practices. That is why it built into the rules - for 2014 only - that all practices, regardless of which stage of meaningful use they are in, would only have a 90-day reporting period. However the pressure on practices continued to mount as the year progressed due to delays in getting their certified 2014 EHRs from vendors. Many products did not reach practices until the May/June timeframe, significantly shortening the window to be installed, provide staff training and make workflow changes needed to meet new measures.

In an effort to ease the pain of this time crunch, CMS announced two significant rulings; a new hardship exemption and the "flexibility rule", both related to delays in getting the certified software. The hardship exemption focuses on delaying the Medicare reimbursement penalty, and the flexibility rule makes it easier to reach meaningful use and still attain the incentive payment.

There are two circumstances in which an EP might incur a Medicare reimbursement penalty in 2015 for not attaining meaningful use. The first applies to those who did not attain meaningful use in 2013. The second involves EPs who have never met meaningful use in the past and who do not meet meaningful use by September 30th of this year (this does providers that are just beginning to practice medicine). In both cases the EP will receive a 1% payment adjustment on Medicare allowable charges in 2015.

Penalties graduate by 1% each year a provider is not at meaningful use and could reach as high as 5%. Adjustments are tied to a two year "look back" which means for example, that EPs who do not attain meaningful use in 2014 would be hit with the penalty in 2016. After the penalty has been incurred, it

can be eliminated by meeting the meaningful use goal in a given year. Providers were given an opportunity to avoid the penalty for 2015 by submitting a hardship exemption application by July 1st, 2014. Submitting the application does not preclude an EP from attaining meaningful use, and therefore was a good way to hedge the meaningful use bet this year.

The flexibility rule will, under certain circumstances, allows a practice to use the 2011 certified version of EHR software (rather than the 2014 version) to reach meaningful use this year as well as use the 2013 measures versus 2014. This will significantly lower the overall impact that meaningful use could have on a practice making it easier to attain the goal. However there is still a great deal of uncertainty surrounding the flexibility rule. For example, it is in a public commentary period and is therefore not officially “the rule” yet. It may not become be finalized for several weeks, if at all (although there are several indications that it will pass).

Part of the confusion of the flexibility rule involves who it applies to. If a practice has the 2014 certified version at the start of its reporting period, the rule cannot be applied. If it has the 2011 version or a combination of 2011 and 2014 certified software at the start of a reporting period, it will be allowed to use the lower standard to reach meaningful use this year.

Practices considering using the flexibility rule this year need to be cautious about waiting an inordinate period of time to upgrade to the 2014 software just to take advantage of the easier road to meaningful use. If it appears a practice is intentionally delaying the upgrade in order to take advantage of the flexibility rule, it may not fare well if it should undergo a CMS audit review. The best thing to do is to document the circumstances and the reasoning for taking the flexibility rule. Save correspondences with vendors about product availability and explain why the practice could not reasonably get to meaningful use due to the product delay. All information should be compiled in an audit book for future reference if needed.

Regardless of hardship exemptions and rule bending being offered by CMS in 2014, practices will be well advised to begin preparing for Stage 2 as soon as they get their 2014 upgrade. After two years at Stage 1, practices will be expected to be meeting Stage 2 measures beginning January 1st, 2015. The changes from Stage 1 to Stage 2 are significant, involving much more than simply higher percentage thresholds.

If the hardship exemption and/or the flexibility rule provide a sigh of relief, enjoy it only for a short time. Don't let it lead to a sense of complacency because January 1st, 2015 is right around the corner.

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