



Meaningful Use 2014 - Changing Rules Creates Uncertainty

By John Netti

In a year that has been anticipated as one fraught with challenges for meaningful users attempting to adopt new Stage 2 rules for electronic health records systems (EHR), 2014 has not disappointed. As it turns out however, the greatest challenge has come from announcements of changes by the rule makers themselves.

This was to be the year of new Stage 2 measures and an industry-wide requirement to upgrade to 2014 Certified EHR software. And it still is... maybe. That's the problem. Based on a recent announcement by the Centers for Medicare and Medicaid Services (CMS), no one knows for sure. In May, CMS released an announcement stating possible changes to the meaningful use rules which would give greater flexibility to eligible professionals in 2014. The most important aspect of the announcement however, is that the "flexibility changes" are only a possibility and are not definite.

The CMS announcement on May 23rd is what is considered a "notice of proposed rulemaking" (NPRM). A NPRM allows sixty days for public commentary. Once completed, there will be another period of time for the final ruling to be announced. Based on knowledgeable sources, the estimated time frame for a final determination is sometime this Fall.

The proposed "flexibility rule" is most likely a response to delays in the availability of 2014 Certified EHR software. The original goal was for vendors to have their products certified at the 2014 level by January 1, 2014. But the entire process of certification, which includes an interactive period between the EHR companies and the government's certification agency, became seriously delayed, stretching out delivery to practices well into 2014.

The rule proposes changes that may allow some medical organizations to reach meaningful use this year that otherwise would not because of the delays. There are three scenarios that it addresses: 1) practices that have only a 2011 EHR version, 2) a combination of 2011 and 2014 certified versions 2) and those using a complete 2014 certified system. In each of these scenarios there is relief offered regarding the software version required in 2014, as well as the meaningful use rules that can be applied. In each case, practices will have to attest to their respective scenario.

According to the proposed rule, in 2014 medical practices in Stages 1 and 2 that only have 2011 certified software at the beginning of their reporting period, must use the 2013 Stage 1 meaningful use rules. This would eliminate the need to implement a patient portal for example, which is a considerable task. Practices that have a combination of 2011 and 2014 certified software would have the option of using

the 2014 Stage 1 or the 2014 Stage 2 meaningful use measures. In this case, both would require the use of a portal, although those meeting the Stage 1 2014 measures would only need to meet a portion of the patient access requirement.

Finally, practices that have the 2014 Certified software at the beginning of their reporting period and are in Stage 2 can make a case that because they received their 2014 certified product so late in the year, they were unable to “fully implement” it. If accepted, they would be able to abide by the 2014 Stage 1 measures, and avoid having to meet the hefty Stage 2 measures. Noticeably missing in the Federal Register discussion is a clear indication of what those practices in their first year of meaningful use (Stage1) that have the 2014 certified software must do. These practices have a shorter period of time to reach meaningful use in 2014 and any other group – they must start their reporting periods by July 1st. At first blush it appears that these practices, which need relief most, will not receive any.

The biggest problem created by the announcement of the “flexibility rule”, is the timing of knowing whether or not it will be confirmed later in the year. As a result, practices may not be able to properly direct their resources. Regardless of which set of rules are in play, weeks of planning, workflow changes and other efforts that are required to achieve the meaningful use goal. With no clear direction, many practices may spend their time going down the wrong road.

The best way to keep out of trouble is to “stay the course” if at all possible as though the flexibility rule was never announced. Another wise move might be to apply for the recently announced hardship exemption. This will mitigate the danger of incurring the Medicare reimbursement penalty slated to begin in January 2015 for not meeting meaningful use. This exemption would eliminate the penalty if a practice can reasonably make a case that it was unable to reach meaningful use this year because of delays in getting their 2014 certified software. You are not locked into the hardship exemption and can therefore still try achieve meaningful use. The hardship exemption applications must be submitted by July 1st, 2014 and can be found at the CMS website.

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