



Department of Health and Human Services
MaineCare Services
11 State House Station
Augusta, Maine 04333-0011
Tel: (207) 287-9368; Fax: (207) 287-9369
TTY: 1-800-606-0215

Paul R. LePage

Mary C. Mayhew

TO: Interested Parties

FROM: Patricia Dushuttle, Director, Policy Division, Office of MaineCare Services

SUBJECT: Proposed Rule: MaineCare Benefits Manual, Chapter I, Section 2, State Medicaid Health Information Technology

DATE: August 10, 2011

This letter gives notice of a proposed rule and new section to MaineCare Benefits Manual, Chapter I entitled: Section 2, State Medicaid Health Information Technology.

The proposed rule establishes the program by which qualified providers may apply for and receive incentive payments for the adoption, implementation, or upgrading of Electronic Health Records (EHR) technology, or demonstration of meaningful use of EHR. The American Recovery and Reinvestment Act offers significant monetary incentive payments to Eligible Professionals (EPs) and Eligible Hospitals (EHs) for implementing EHR that meet certain standards. For EPs, MaineCare will distribute incentive payments annually for up to six (6) years. A qualifying EP receives a first year incentive payment of \$21,250 and \$8,500 for each of the next five payment years. The total amount of the EHR incentive payments for Eligible Professionals over the six payment years is \$63,700. The new biennium budget includes funding for the HIT project. The General Fund provides \$219,382 for FY 2011-12 and \$164,382 for FY 2012-13.

Qualifying Eligible Hospitals (EHs) receive incentive payments over a three year period. EHs receive 50% of the total incentive payment amount in the first year, 40% in the second year and 10% in the third year.

Under the proposed rule MaineCare will not only manage and administer the EHR Incentive Program for Medicaid providers, but also pursue initiatives that encourage the adoption of certified EHR technology and promote quality health care outcomes and data sharing. Members should benefit from improved health outcomes, increased patient safety, care coordination, increased efficiency and lower health care costs through the adoption and meaningful use of EHR technology.

Rules and related rulemaking documents may be reviewed and printed from the Office of MaineCare Services website at http://www.maine.gov/dhhs/oms/rules/provider_rules_policies.html or for a fee, interested parties may request a paper copy of rules by calling 207-287-9368. For those who are deaf or hard of hearing and have a TTY machine, the TTY number is 1-800-606-0215.

A public hearing is being held on September 6, 2011. The deadline for comments is September 16, 2011.

A concise summary of the proposed rule is provided in the Notice of Agency Rule-making Proposal. This notice also provides information regarding the rule-making process. Please address all comments to the agency contact person identified in the Notice of Agency Rule-making Proposal.

Notice of Agency Rule-making Proposal

AGENCY: Department of Health and Human Services, Office of MaineCare Services

RULE TITLE OR SUBJECT: MaineCare Benefits Manual, Chapter I, Section 2, State Medicaid Health Information Technology.

PROPOSED RULE NUMBER:

CONCISE SUMMARY: The proposed rule implements federal regulations under which MaineCare will manage and administer the Electronic Health Records (EHR) Incentive Program for qualifying Medicaid providers. The Department will pursue initiatives that encourage the adoption of certified EHR technology and promote quality health care outcomes and data sharing. Under the American Recovery and Reinvestment Act significant monetary incentive payments are offered to Eligible Professionals and Eligible Hospitals for implementing EHR that meet certain standards. The proposed rule establishes the program by which qualified providers may apply for and receive significant incentive payments for the adoption, implementation or upgrading EHR technology, or demonstration of meaningful use of EHR. Members should benefit from improved health outcomes, increased patient safety, care coordination, increased efficiency and lower health care costs through the adoption and meaningful use of EHR technology. The proposed rule will create a new section to MaineCare Benefits Manual, Chapter I: Section 2, State Medicaid Health Information Technology.

SEE http://www.maine.gov/dhhs/oms/rules/provider_rules_policies.html for rules and related rulemaking documents.

THIS RULE WILL WILL NOT X HAVE A FISCAL IMPACT ON MUNICIPALITIES.

STATUTORY AUTHORITY: 22 M.R.S.A. §§ 42, 3173.

PUBLIC HEARING: Date: September 6, 2011 at 9 am.
Location: Conference Room 3
Department of Health and Human Services
Office of MaineCare Services
442 Civic Center Drive
Augusta, ME 04333-0011

The Department requests that any interested party requiring special arrangements to attend the hearing contact the agency person listed below before September 1, 2011.

DEADLINE FOR COMMENTS: Comments must be received by midnight, September 16, 2011.

AGENCY CONTACT PERSON: Michael J. Dostie, Comprehensive Health Planner
AGENCY NAME: Office of MaineCare Services
ADDRESS: 442 Civic Center Drive
11 State House Station
Augusta, Maine 04333-0011

TELEPHONE: 207-287-6124 FAX: (207) 287-9369
TTY: 1-800-606-0215 or 207-287-1828 (Deaf or Hard of Hearing)

1.01 INTRODUCTION AND STATUTORY AUTHORITY

This Rule establishes policies for the Medicaid Health Information Technology (HIT) electronic health record (EHR) incentive payment program (Program) for Medicaid professionals and hospitals overseen by the Office of MaineCare Services (OMS). To be eligible, a professional or hospital must: 1) Be of a certain type of professional or hospital and meet Medicaid or needy individual patient thresholds established for that type of professional or hospital as shown in Sections 1.04 and 1.05; 2) Adopt, implement or upgrade certified electronic health records before being approved for the first payment; and 3) Meaningfully use the EHR before being approved for subsequent payments.

An Eligible Professional may receive \$63,750 in total Medicaid incentive payments. An Eligible Hospital's total Medicaid incentive payment is hospital-specific based on the number of hospital in-patient days, revenues, costs, and other factors.

The authority for implementing this Program derives from Section 4201 of the American Reinvestment and Recovery Act of 2009 and Sections 1903(a)(3)(F) and 1903(t) of the Social Security Act (42 U.S.C. § 1396(b)) and 22 M.R.S.A. §§ 42 and 3173. States are also required to submit a State Medicaid Health Plan (SMHP) and receive Center for Medicare and Medicaid Services (CMS) approval of the SMHP prior to implementing the incentive payment Program. Maine's approved SMHP can be found at http://www.maine.gov/dhhs/oms/HIT/ehr_incent.htm#ehr_benes

OMS rules supplement federal law and rules, as amended, in areas where federal law and rules delegate authority to states.

1.02 DEFINITIONS

“Acute Care Hospital” is defined 42 C.F.R. § 495.302.

“Adopt, Implement or Upgrade” is defined in 42 C.F.R. § 495.302.

“Cancer Hospital” is defined in 42 C.F.R. § 495.302.

“Certified Electronic Health Record” is defined in 42 C.F.R. § 170.102.

“Children’s Hospital” is defined in 42 C.F.R. § 495.302.

“Critical Access Hospital” is defined in 42 C.F.R. § 495.4.

“Eligible Hospital” means a Critical Access Hospital, Acute Care Hospital, Children’s Hospital or Cancer Hospital that meets the requirements of this rule.

“Eligible Professional” means a health care professional as defined in 42 C.F.R. § 495.304 (b) who has a current Medicaid provider agreement; who performs at least 10% of his or her services not in a hospital emergency room or as hospital inpatient services, or who practices predominantly in an FQHC or RHC, and who meets the requirements of this rule.

1.02 DEFINITIONS (cont)

“Encounter Method” is the method used to calculate patient encounters described in 42 C.F.R. § 495.306(c).

“Federal Financial Participation (FFP)” is the federal government’s share of the State’s expenditures under the Medicaid program.

“Federally Qualified Health Center” (FQHC) means a facility or program as defined in the MaineCare Benefits Manual, Chapter II, Section 31.01-3.

“Meaningful Use” means the requirements that an Eligible Professional (EP) or Eligible Hospital (EH) must meet to receive an incentive payment as required by CMS under applicable Stage 1, Stage 2, and Stage 3 rules to be issued and implemented by CMS.

“Needy Individual” is defined in 42 C.F.R. § 495.302.

“Payment Year” is defined in 42 C.F.R. § 495.200.

“Pediatrician” is defined as a medical doctor who diagnoses, treats, examines, and prevents diseases and injuries in children and possesses a valid, unrestricted medical license and board certification in Pediatrics through the American Board of Pediatrics (ABP) or the American Osteopathic Board of Pediatrics (AOBP).

“Practices Predominantly” is defined in 42 C.F.R. 495.302.

“Professional” is an individual who is a health care provider and who has a current Medicaid provider agreement.

“Provider” is defined in MaineCare Benefits Manual, Chapter 1 § 1.02-4 (F).

“Rural Health Clinic” (RHC) means a primary health care clinic as defined in the MaineCare Benefits Manual, Chapter II, Section 103.01-5.

1.03 REQUIREMENTS FOR EHR INCENTIVE PAYMENT PROGRAM

A provider may apply as an Eligible Professional or an Eligible Hospital, but not both. See 42 C.F.R. § 495.310 (c).

The incentive payment program process and requirements for EPs are those described in 42C.F.R. §§ 495.310 (a) through (e), 495.314 and 495.312 (b).

The incentive payment program process and requirements for EHs are those described in 42 C.F.R. §§ 495.310 (e) through (j), 495.314 and 495.312 (b).

1.04 ELIGIBLE PROFESSIONAL

- A. An Eligible Professional must meet the requirements established in 42 C.F.R. §495.304(c) unless exempt under 42 C.F.R. 495.304 (d). Title 42 C.F.R. §495.310(a) through (e) governs payments to EPs.
- B. Medicaid or Needy Individual threshold requirements.

Table 1 lists the minimum percentage of Medicaid or Needy Individual encounters for each type of Professional for this Program. See Title 42 C.F.R. 495.304(c).

<u>Types of Professionals that may apply for the incentive payment program</u>	<u>Minimum Medicaid or Needy Individual encounters</u>
Physician, certified nurse-midwife, nurse practitioner, dentist	30% Medicaid encounters
Pediatrician	20% Medicaid encounters
Physician, certified nurse-midwife, nurse practitioner, or a dentist who practices predominantly in an FQHC or RHC	30% Needy Individual encounters
Physician assistant who practices predominantly in an FQHC or RHC that is led by a physician assistant	30% Needy Individual Encounters

- C. Application Process for EPs
 - 1. A Professional must register with CMS through the CMS National Level Repository (NLR) system.
 - 2. After a Professional registers, CMS notifies OMS of the registration.
 - 3. Using the contact information from the NLR registration, OMS will contact the Professional to begin the application process.
 - 4. A Professional must establish that he or she is an EP and meet the following requirements:
 - a. Using the encounter method, establish that he or she has met the minimum Medicaid patient volume required under 42 C.F.R. § 495.304(c) (1), or practices predominantly in a Federally Qualified Health Center (FQHC) or in a Rural Health Clinic (RHC) and has met the minimum Needy Individual volume under 42 C.F.R. § 495.304 (c); and
 - b. Attest that he or she has adopted, implemented or upgraded electronic health records to be eligible for the first payment year, or that he or she has met Meaningful Use requirements to be eligible for subsequent payment years; and

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1.04 ELIGIBLE PROFESSIONAL (cont)

- c. Demonstrate that he or she uses an EHR that is included on the list of certified EHRs maintained by CMS; and
 - d. Attest that he or she has not received an incentive payment for that year from another state; and
 - e. Attest that he or she has not received an incentive payment under the Medicare incentive payment program for that year; and
 - f. Satisfactorily complete the application process; and
 - g. Meet the meaningful use reporting requirement set forth under 42 C.F.R. by 495.312(b).
5. After confirming that the Professional meets the above requirements enumerated in this section 1.04 (C), MaineCare will notify CMS that a payment is being issued, and will issue a payment to the EP according to the requirements of 42 C.F.R. § 495.312(e)(1).
6. If the Department determines that a Professional has not met the requirements of this Section 1.04, it will notify the Professional in writing within two (2) business days of making that determination.

D. Payment Amounts and Schedule

A Professional who meets EP status requirements for all six years is eligible to receive a total of \$63,750 in payments issued as follows:

- 1. A first year payment of \$21,250; except that a pediatrician who has between 20% and 30% Medicaid encounters is limited to a maximum first year payment of \$14,167.
- 2. For years two through six, a payment of \$8,500 for each year that the EP meets the requirements for that year; except that a pediatrician who has between 20% and 30% Medicaid encounters is limited for years two through six to a payment of \$5,667.
- 3. A payment will be issued to the EP unless the EP reassigns his or her incentive payment pursuant to 42 C.F.R § 495.310 (k) (1).

E. Attestation and Meaningful Use Documentation

A Professional must have written or electronic documentation that the Professional meets all of the EP requirements for the Program and the incentive payment(s).

1.04 ELIGIBLE PROFESSIONAL (cont)

1. As proof of adopting, implementing or upgrading a certified electronic health record, the EP must have at least one of the following properly executed documents:
 - a. Receipt;
 - b. Invoice;
 - c. Contract;
 - d. License Agreement;
 - e. Purchase Order; or
 - f. User Agreement.

2. In accord with 42 C.F.R. § 495.8 (c) (2), any records used to provide information for registration, application or incentive payments, including attestation that the Professional has adopted, implemented or upgraded EHR, and meaningful use, must be kept for six years, unless Federal or State law requires a longer retention period.

1.04-1 COMBATING FRAUD AND ABUSE

- A. An EP must submit an electronic or paper statement supplied by the Department in satisfaction of the requirements of 42 C.F.R. § 495.368 (b).

- B. If an overpayment is owed the Department, the EP shall repay the entire overpayment within thirty (30) days of the date of the Department’s notice to the EP of the overpayment.

- C. EPs are subject to the provisions of the MaineCare Benefits Manual, Chapter 1, Sections 1.12, 1.19 and 1.20 in regard to incentive payments

- D. The Division of Audit or duly authorized Agents appointed by the Department shall have the authority to monitor incentive payments to any EP by an audit or post-payment review under Chapter 1, Section 1, § 1.16.

1.04-2 HEARINGS AND APPEALS

- A. An EP may appeal the following issues:
 1. A determination that the Professional is not eligible for the HIT Incentive Payment Program;

 2. A determination that the Professional did not meet attestations of adopting implementing, or upgrading certified EHRs or Meaningful Use of EHR requirements;

 3. An overpayment amount or recoupment as determined by the Department or CMS; and

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1.04-2 HEARINGS AND APPEALS (cont)

4. Audit findings of any of the above.

B. Appeal rights and processes are governed by MaineCare Benefits Manual, Chapter 1, Section 1, § 1.21-1.

1.05 ELIGIBLE HOSPITAL

A. To be an Eligible Hospital, an Acute Care Hospital, Critical Access Hospital or Cancer Hospital must have at least a 10% Medicaid patient volume. An Eligible Hospital shall calculate its patient volume in accord with 42 C.F.R. § 495.306 (c) (2). Children's Hospitals are exempt from meeting a Medicaid patient volume threshold.

B. Application process for EHs:

1. A hospital must register with CMS through the CMS National Level Repository (NLR) system.

2. After a hospital registers, OMS is notified by CMS of the registration.

3. Using the contact information from the NLR registration, OMS will contact the hospital to begin the application process.

4. A hospital must establish that it is an Eligible Hospital and must meet the following requirements:

a. Consistent with 42 C.F.R. § 495.314, attest that it has adopted, implemented or upgraded electronic health records to be eligible for the first payment year, or has met meaningful use requirements to be eligible for subsequent payment years; and

b. Demonstrate that it uses an EHR that is included on the list of certified EHRs maintained by CMS; and

c. Attest that it has not received an incentive payment for that year from another state; and

d. Meet all other requirements under 42 C.F.R. § 495.314.;

e. Satisfactorily complete the application process; and

f. Meet the meaningful use reporting requirement set forth by 495.312(b).

5. After confirming that the hospital meets the above requirements, MaineCare will calculate the total incentive payment for the EH in accord with 42 C.F.R. § 495.310 (e), (f) and (g). See for example, Hospital Calculation at: <http://www.maine.gov/dhhs/oms/HIT> . If data from the hospital is

1.05 ELIGIBLE HOSPITAL (cont)

non-existent, the Department shall deem an amount in accordance with 42 C.F.R. § 495.310(i).

6. OMS will notify CMS that a payment is being issued, and will issue a payment to the EH according to the requirements of 42 C.F.R. § 495.312 (e) (2).
7. If the Department determines that a hospital has not met the requirements of this Section 1.04, it will notify the hospital in writing within two (2) business days of making that determination.

C. Payment Amounts and Schedule

1. A hospital may receive incentive payments from both Medicare and Medicaid if it meets all eligibility criteria in the payment year.
2. Maine will issue an EHR incentive payment annually for three (3) years:
 - a. To receive an EHR incentive payment in the first payment year, an EH shall meet the requirements established in 42 C.F.R. § 495.314 (a). The first year payment amount will be 50% of the total payment amount.
 - b. To receive EHR incentive payments for the remaining two years, an EH shall meet the requirements established in 42 C.F.R. § 495.314 (b). The second payment will be 40% of the total incentive payment amount. The third payment will be 10% of the total incentive payment amount.
3. A hospital must submit data on charity care as part of the incentive payment calculation. If the Department determines that an Eligible Hospital's data on charity care is not available from the hospital, the Department shall determine an appropriate proxy for charitable care in compliance with 42 C.F.R. § 495.310 (h).

D. Attestation and Meaningful Use Documentation

An EH must have written or electronic documentation that the hospital meets all of the EH requirements for the Program.

1. As proof of adopting, implementing or upgrading a certified electronic health record, the EH must have at least one of the following properly executed documents:
 - a. Receipt;
 - b. Invoice;
 - c. Contract;
 - d. License Agreement;

1.05 ELIGIBLE HOSPITAL (cont)

- e. Purchase Order; or
- f. User Agreement.

2. In accordance with 42 C.F.R. § 495.8 (c) (2), for purposes of the MaineCare HIT Incentive Payment Program, any records used to provide information for registration, application and incentive payments, including attestation that the provider has adopted, implemented or upgraded EHR, and meaningful use, must be kept for six years, unless Federal or State law requires a longer retention period.

1.05-1 COMBATING FRAUD AND ABUSE

- A. A hospital must submit an electronic or paper statement supplied by the Department in satisfaction of the requirements of 42 C.F.R. § 495.368 (b).
- B. If an overpayment is owed the Department, the EH shall repay the entire overpayment within thirty (30) days of the date of the Department’s notice to the EH of the overpayment.
- C. EHs shall also be subject to the provisions of the MaineCare Benefits Manual, Chapter 1, Section 1, §§ 1.19 and 1.20.
- D. The Division of Audit or duly authorized Agents appointed by the Department shall have the authority to monitor payments to any EH by an audit or post-payment review under Chapter 1, Section 1, § 1.16.

1.05-2 HEARINGS AND APPEALS

- A. An EH may appeal the following issues:
 - 1. A determination that the EH is not eligible for the HIT Incentive Payment Program;
 - 2. A determination that the EH did not meet attestations of adopting, implementing, or upgrading certified EHRs requirements;
 - 3. An overpayment amount or recoupment as determined by the Department or CMS;
 - 4. The amount of the incentive payment(s); and
 - 5. Audit findings of any of the above.
- B. Appeal rights and processes are governed by MaineCare Benefits Manual, Chapter I, Section 1, § 1.21-1.

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1.06 FEDERAL FINANCIAL PARTICIPATION

A policy established in this rule shall be null and void if CMS denies federal financial participation for this policy or disapproves the policy.