



## WHAT'S NEXT FOR Meaningful Use Participants

BY CAT VASKO

**On February 26, the Department of Health and Human Services (HHS) published an update to its meaningful use timeline via the Federal Register.** The communiqué deals with a voluntary update to the program's criteria for electronic health records (EHRs) that will address problems with the 2014 criteria as well as enhance the emphasis on interoperability: "They reference newer standards and implementation specifications that reflect our commitment to promoting innovation and enhancing interoperability."

The next day at the 2014 meeting of the Health Information Management Systems Society (HIMSS), Centers for Medicare and Medicaid Services (CMS) administrator Marilyn Tavenner gave a keynote address in which she pledged increased flexibility when it comes to hardship exceptions for program participation. That promise was kept on March 10, when CMS officially expanded its definition of hardship to include problems with vendors.

Both of these developments were good news for radiology practices that have held off on meaningful use participation out of mistrust for the federal program. Not only do these changes indicate deepened concern regarding ease of participation for providers, but they also signal CMS' willingness to update requirements on the fly; in fact, "improving regulatory clarity" is the first stated goal of the recent HHS publication. This is an especially critical

concern now that stage 3 of the program has been delayed to 2017. A lot can change in the health IT world in three years, and the agency is demonstrating that it will listen to its constituents and adapt as needed between stages.

### What to Expect From Stage 1

For practices that have begun or are considering beginning meaningful use participation in 2014, there is still the potential to capitalize on some of the federal incentives, even if the numbers have decreased over time. Radiology practices that get going on their attestation this year can receive up to \$12,000 per eligible professional (EP) in 2014, \$8,000 per EP in 2015, and \$4,000 per EP in 2016 for a total of \$24,000 possible per EP.

An eligible professional is defined by the program requirements as any physician that provides more than 90% of his or her total services outside the inpatient or ED settings. It is estimated by radiologyMU.org that more than 90% of U.S. radiologists are EPs by this definition.

In order to complete Stage 1 attestation, a practice's EPs need to report on a total of 25 objectives. Fifteen of these are drawn from the program's "core set"; five come from the "menu set"; and another nine should be drawn from the 64 clinical quality measures specified by HHS. Although some of the measures can be excluded for radiologists, practices must still demonstrate that they can measure them. For this, they will need MU-certified RIS/PACS or EHR technology.

It should be noted that 2014 is the last year practices can receive incentive dollars. Beginning in 2015, non-participating EPs that have not qualified for the hardship exception will see their Medicare payments docked 1% each year.

### What to Expect From Stage 2

Practices currently in Stage 2 of the program have more time to complete attestation than they did in Stage 1; if they began participating in 2011 or 2012, they have through 2015 to finish, whereas if they began last year, they have through 2016.

In Stage 2, the program's focus on interoperability and usability of certified technology deepens, and the additional goal of patient engagement and access to information is introduced. For instance, one of the core measures is providing more than half of the EP's patients with "the ability to view online, download, and transmit their health information within 4 business days of the information being available to the EP."

### What to Expect From Stage 3

Stage 3 requirements have yet to be released, but in February the Health IT Policy Committee published a fresh set of draft recommendations that give an indication of where the program is headed in the years to come. It is at this stage that radiologists can expect to see much of the feedback provided by the American College of Radiology and other groups finally come to fruition.

For instance, the new draft recommendations suggest, as a menu item, the ability for EPs and hospital-based providers to access images inside the EHR. Another recommendation is expanding the role of clinical decision support, a big area of focus for the imaging community, with the goal of reducing the amount of inappropriate radiology and lab tests ordered by referring physicians.

MU timelines have been known to change, but at the moment, CMS anticipates that EPs who began MU participation in 2011 or 2012 will start Stage 3 attestation in 2016; EPs who began participation last year will start Stage 3 attestation in 2017; and EPs that have yet to begin participation will have two years to complete each stage.

### Hardship Exception

At RSNA 2013, Raymond Geis, MD, of Advanced Medical Imaging Consultants (Fort Collins, Colo.) raised another point worth considering. In a session entitled "Meaningful Use: Experience From Private Radiology Practices," Geis noted that his group plans to hold off on adopting MU-certified technology until 2019, when it anticipates that the dust will have settled and the process will be easier. While the group will miss out on the incentives, it will also avoid the penalties by taking the hardship exception, under which penalties don't kick in until 2020.

Per CMS, EPs can apply for the hardship exception under the following circumstances:

- If they can demonstrate that their area lacks sufficient internet/broadband access;
- If they are newly practicing;
- If a natural disaster or other unforeseen event that affects the operation of their practice occurs;
- If they practice at multiple locations and can't control the availability of certified technology for more than half of their patient encounters; or
- If they lack face-to-face or telemedicine-based interaction with patients. This area may be of particular interest to radiologists, for obvious reasons.

Following the March 10 update, EPs can also qualify for the hardship exception if their EHR vendor was unable to

obtain 2014 certification. Practices should be aware that hardship exceptions are re-evaluated by CMS each year.

## Potential Hazards

Radiology practices participating in the program should also be aware of regulatory hazards on the path to certification. For instance, in March of this year the chief financial officer of Shelby Regional Medical Center in Texas was arrested for health fraud related to \$785,655 that his hospital had received in meaningful use incentive payments. The CFO allegedly altered data to receive the payments, triggering a government investigation. Practices should be aware that meaningful use participation is audited by an outside company that contracts with CMS, and that the accuracy of the data provided during attestation is stringently evaluated.

At the RBMA's recent Building Better Radiology Marketing Programs meeting held in Long Beach, California from March 9-11, attendees also raised the question of whether providing interfaces for referring physicians for the purposes of meaningful use participation could be considered a form of remuneration. Attorney Clinton Mikel, Esq., of The Health Law Partners advised that while CMS and OIG opinions indicate that as long as the inter-

faces are used for a dedicated purpose and are offered to all referrers regardless of the status of their relationships with the radiology practice, the hookups would not be considered remuneration under Stark laws.

With that in mind, however, Mikel added that if there are monthly fees associated with the interfaces, radiology practices should not offer to pay those for their referring offices. "If you take a cost off their hands, like a monthly fee, then that is problematic," he said.

A variety of resources for radiology practices participating or considering participation in the meaningful use program are available at [radiologyMU.org](http://radiologyMU.org), including a Radiology Practice Analyzer that helps determine eligibility for the program, projects its financial impact, recommends measures for attestation, and more. 

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