

# Health Information Compliance Alert

## EHRs: Good News: You Could Get Some Breathing Room For EHR Compliance

**But don't also expect an escape from reimbursement cuts for noncompliance.**

If you're one of the many providers unable to fully demonstrate meaningful use for Stage 1 and Stage 2 by the original deadline, you may now have some extra time to do so.

On May 23, the **Office of the National Coordinator for Health Information Technology** (ONC) and the **Centers for Medicare & Medicaid Services** (CMS) issued a proposed rule to modify the meaningful use Stage 1 and Stage 2 timeline for the Electronic Health Records (EHR) Incentive Programs, among other things.

### Enjoy a Stage 2 Deadline Extension

The proposed rule extends the deadline for providers to meet the Stage 2 criteria for making meaningful use of EHRs, explained Orlando, FL-based partner **Robert Slavkin** in a May 27 posting for **Akerman LLP's** Health Law Rx Blog. "Under Stage 2, providers not only transmit patient records electronically when making referrals, but they also must be capable of sending charts to a physician with a different EHR system."

Stage 2 also requires providers to ensure that patients use EHRs by requiring that at least 5 percent of patients send a message to their physicians using a portal within the EHR system and that 5 percent access their health information online, Slavkin noted.

**Why?** Many providers have been unable to timely acquire, adopt, or fully implement the 2014 Edition certified EHR technology (CEHRT), which CMS requires for successfully demonstrating meaningful use for Stage 1 and Stage 2 in 2014, according to a May 27 analysis from the law firm **Ropes & Gray, LLP**.

### Choose from 3 Compliance Options

"As such, CMS proposes allowing eligible professionals (EPs), eligible hospitals (EHs), and critical access hospitals (CAHs) that have not been able to fully implement 2014 Edition CEHRT for the 2014 reporting year to use the 2011 Edition CEHRT, or a combination of the 2011 and 2014 Edition CEHRT, for the meaningful use reporting periods in 2014," Ropes & Gray reported.

If you use the 2011 Edition only, you must meet the meaningful use objectives and measures for Stage 1 that were applicable for the 2013 payment year, regardless of your current stage of meaningful use, Ropes & Gray explained. If you're using a combination of the 2011 and 2014 Editions, you could choose to meet the 2013 Stage 1 or the 2014 Stage 1 objectives and measures. Or if you are scheduled to begin Stage 2 in 2014, you could choose to meet the Stage 2 objectives and measures.

If you choose the third option — using the 2014 Edition CEHRT only — you could attest to the 2014 Stage 1 objectives and measures for the 2014 meaningful use reporting period, even if you're unable to fully implement all the functions of your 2014 Edition required for Stage 2.

But to take advantage of the delays, you must attest that you were unable to upgrade or fully implement to the 2014 Edition CEHRT because of issues related to availability, wrote attorney **Elana Zana** in a May 21 blog posting for the Seattle-based law firm **Ogden Murphy Wallace Attorneys**.

The proposed rule also makes a formal announcement of CMS' previously announced plans to extend Stage 2 through

2016 and begin Stage 3 in 2017, after provider complaints about the original deadlines, Slavkin said. But even with this extension, beginning in 2015 you will still need to report to CMS using the new technology.

#### **Watch Out: Delay Won't Forgive Noncompliance**

**Warning:** Despite the reprieve on Stage 2, you're still facing penalties for noncompliance. "Beginning in 2015, lack of EHR compliance means penalties for providers in the form of reduced reimbursements," Slavkin warned. "For the first year, Medicare reimbursements will be reduced by 1 percent for providers that don't meet EHR standards. That penalty jumps to 2 percent the following year and 3 percent every year afterward."

**Bottom line:** "While this extension of time to allow compliance with Stage 2 is welcome news, implementation and compliance are still a priority that must stay on all providers' radar screens," Slavkin stressed.

#### **Look for CQM Reporting Changes, Too**

In addition to the timeline delays, the proposed rule also relaxes the requirements related to reporting on clinical quality measures (CQM) in 2014, Zana reported. "Specifically, the method of CQM submission to CMS will depend on the edition of CEHRT deployed by the provider (States will still have discretion for submission requirements)."

But if you're using a combination of the 2011 and 2014 Edition CEHRTs to report on either the 2014 Stage 1 CQMs or Stage 2 measures, or if you're using the 2014 Edition, you should report CQMs as originally indicated in the Stage 2 final rule (submitting electronically), Zana instructed.

**Resource:** To read the proposed rule, go to [www.gpo.gov/fdsys/pkg/FR-2014-05-23/pdf/2014-11944.pdf](http://www.gpo.gov/fdsys/pkg/FR-2014-05-23/pdf/2014-11944.pdf).