



U.S. Department of Health and Human Services
Assistant Secretary for Planning and Evaluation
Office of Disability, Aging and Long-Term Care Policy



REPORT TO CONGRESS ON THE APPLICATION OF EHR PAYMENT INCENTIVES FOR PROVIDERS NOT RECEIVING EHR INCENTIVE PAYMENTS

July 2010

Office of the Assistant Secretary for Planning and Evaluation

The Office of the Assistant Secretary for Planning and Evaluation (ASPE) is the principal advisor to the Secretary of the Department of Health and Human Services (HHS) on policy development issues, and is responsible for major activities in the areas of legislative and budget development, strategic planning, policy research and evaluation, and economic analysis.

ASPE develops or reviews issues from the viewpoint of the Secretary, providing a perspective that is broader in scope than the specific focus of the various operating agencies. ASPE also works closely with the HHS operating divisions. It assists these agencies in developing policies, and planning policy research, evaluation and data collection within broad HHS and administration initiatives. ASPE often serves a coordinating role for crosscutting policy and administrative activities.

ASPE plans and conducts evaluations and research--both in-house and through support of projects by external researchers--of current and proposed programs and topics of particular interest to the Secretary, the Administration and the Congress.

Office of Disability, Aging and Long-Term Care Policy

The Office of Disability, Aging and Long-Term Care Policy (DALTCP), within ASPE, is responsible for the development, coordination, analysis, research and evaluation of HHS policies and programs which support the independence, health and long-term care of persons with disabilities--children, working aging adults, and older persons. DALTCP is also responsible for policy coordination and research to promote the economic and social well-being of the elderly.

In particular, DALTCP addresses policies concerning: nursing home and community-based services, informal caregiving, the integration of acute and long-term care, Medicare post-acute services and home care, managed care for people with disabilities, long-term rehabilitation services, children's disability, and linkages between employment and health policies. These activities are carried out through policy planning, policy and program analysis, regulatory reviews, formulation of legislative proposals, policy research, evaluation and data planning.

This report was prepared under contract between HHS's ASPE/DALTCP and the National Opinion Research Services. Additional funds were provided by the HHS Centers for Medicare and Medicaid Services. For additional information about this subject, you can visit the DALTCP home page at http://aspe.hhs.gov/_/office_specific/daltcp.cfm or contact the ASPE Project Officer, Jennie Harvell, at HHS/ASPE/DALTCP, Room 424E, H.H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201. Her e-mail address is: Jennie.Harvell@hhs.gov.

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

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(Pub. L. 111-5, Subtitle A, Section 4104(a))

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I. BACKGROUND

This interim report is being submitted in response to a requirement in the Health Information Technology for Economic and Clinical Health Act (HITECH Act) of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. 111-5). Title IV of Division B of ARRA directs the Secretary of Health and Human Services (HHS) to conduct several studies and produce reports to Congress including the following language in Section 4104(a):

The Secretary of Health and Human Services shall conduct a study to determine the extent to which and manner in which payment incentives (such as under title XVIII or XIX of the Social Security Act) and other funding for purposes of implementing and using certified EHR technology (as defined in section 1848(o)(4) of the Social Security Act, as added by section 4101(a)) should be made available to health care providers who are receiving minimal or no payment incentives or other funding under this Act, under title XIII of division A, under title XVIII or XIX or such Act, or otherwise, for such purposes.

(B) DETAILS OF STUDY.--Such study shall include an examination of--

- (i) the adoption rates of certified EHR technology by such health care providers;*
- (ii) the clinical utility of such technology by such health care providers;*
- (iii) whether the services furnished by such health care providers are appropriate for or would benefit from the use of such technology;*
- (iv) the extent to which such health care providers work in settings that might otherwise receive an incentive payment or other funding under this Act, under title XIII of division A, under title XVIII or XIX of the Social Security Act, or otherwise;*
- (v) the potential costs and the potential benefits of making payment incentives and other funding available to such health care providers; and*
- (vi) any other issues the Secretary deems to be appropriate.*

(2) REPORT.--Not later than June 30, 2010, the Secretary shall submit to Congress a report on the findings and conclusions of the study conducted under paragraph (1).

The HITECH Act defined health care providers to include: hospitals, skilled nursing facilities, nursing facilities, home health entities or other long-term care (LTC) facilities, health care clinics, community mental health centers, renal dialysis facilities, blood centers, ambulatory surgical centers, emergency medical services providers, Federally qualified health centers, group practices, pharmacists, pharmacies, laboratories, physicians, practitioners, Indian Health Service providers, rural health clinics, therapists, and any other category of health care facility, entity, practitioner, or clinician determined appropriate by the Secretary.

In addition, HITECH provided incentives and other funding assistance for implementing and using certified EHR technology. Such incentives included Medicare

and Medicaid payment incentives for the “meaningful use of certified EHR technologies” by certain “eligible professionals” and “eligible hospitals.” Health care providers who do not meet the statutory definition of “eligible professionals” and “eligible hospitals” do not qualify, under current law, for Medicare and Medicaid EHR incentive payments. The types of providers who, under current law, are categorically ineligible for EHR incentive payments are referred to as “Other Providers.”

As discussed below, this interim report is submitted to respond to the statutory requirement that a report be submitted to Congress by June 30, 2010. The final report on findings and conclusions of the study required in Section 4014(a) is expected to be submitted to Congress in December 2010.

II. OVERVIEW

The HITECH Act included many provisions to advance the implementation of a nationwide health information technology infrastructure that fosters the electronic use and exchange of health information in the United States for a variety of purposes including: improving quality; reducing medical errors; reducing health care costs that arise from inefficiencies, errors, inappropriate and/or duplicative care, and incomplete information; and improving coordination of care among health care professionals and facilities through secure and authorized health information exchange. Title IV of HITECH “Medicare and Medicaid Health Information Technology; Miscellaneous Medicare Provisions of the HITECH Act” provides for Medicare and Medicaid payment incentives to eligible professionals and hospitals for meaningful use of certified EHR technology. Implementation of the HITECH legislation has focused primarily on supporting the adoption of certified EHR technology by eligible professionals and hospitals.

Section 4104(a) of Title IV, as added by the Recovery Act, directs the Secretary of HHS to conduct a study to determine the extent to which and manner in which payment incentives (such as under Medicare and Medicaid) and other funding for purposes of implementing and using certified EHR technology (as defined through HITECH) should be made available to health care providers who are receiving minimal or no payment incentives or other funding under HITECH for such purposes. The statute requires that the study examine several questions including adoption rates of certified EHR technologies, the clinical utility of such technology, and potential costs and benefits of making incentive payments available to Other Providers.

The Centers for Medicare & Medicaid Services (CMS) made available ARRA/HITECH funds to the Office of the Assistant Secretary for Planning and Evaluation (ASPE) in the HHS Office of the Secretary to direct and manage this study.

III. CONTRACT AWARD INFORMATION

On April 26, 2010, a competitive contract award was made to the National Opinion Research Center (NORC) in the amount of \$561,632 to conduct a Study and Report on Application of EHR Payment Incentive for Providers Not Receiving Other Incentive Payments. The period of performance for this task order is six months, with a contract end date of October 19, 2010.

The study will address all the questions required in Section 4104(a) and will also consider the extent to which incentive payments or disincentives could be productively applied to Other Providers for their “meaningful use of certified EHR technology” (as they are now applied to eligible professionals and hospitals). In addition, the study will estimate the costs and benefits to the Medicare and Medicaid programs of: (i) implementing EHR payment incentives for Other Providers and (ii) not implementing EHR incentive payments for Other Providers. Finally, the study will examine whether and how the Affordable Care Act may impact the application of EHR payment incentives for the use of certified EHR technology by Other Providers.

NORC is required to produce several written deliverables including documents that:

- Describe the: (i) payment incentives and funding assistance under HITECH; (ii) health information technology used by Other Providers; (iii) relative roles of Medicare and Medicaid financing and cost trends for each of the Other Provider types; (iv) usability and availability of certified EHR technology by Other Providers; (v) clinical complexity of patient populations treated by the Other Provider types, including the frequency of transitions in care by patients receiving services by the Other Providers; and (vi) considers whether the availability of Medicare and Medicaid payment incentives would be expected to increase the use of certified EHR technology (including “meaningful use” of such technology) by the Other Provider types.
- Describe key incentive/disincentive payments and other funding assistance for the use (including “meaningful use”) of certified EHR technology for those Other Providers for whom it is determined that such assistance would likely to have a near-term positive impact on: (i) the use of certified EHR technology to support: e-prescribing, electronic exchange of health information to improve quality of care (such as promoting care coordination), and reporting quality measures specified by the Secretary; (ii) the adoption and meaningful use of certified EHRs; (iii) the patient populations for whom use of certified EHR would likely create significant clinical and other benefits; and (iv) the success of eligible professionals and hospitals in meeting the 2013 Meaningful Use goals, objectives, and measures recommended by the Health IT Policy Committee.
- Describes for these Other Providers how Medicare and Medicaid payment incentive/disincentive methods and other funding assistance could be applied,

and estimates of the potential costs and benefits to public payers and the Other Provider types of making available such payment incentives and other funding assistance.

To produce these documents, NORC will gather data using a variety of sources including: a literature review; assessments of the most promising health information technology products for Other Providers; the meaningful use criteria for eligible professionals and hospitals; key informant interviews; and a limited number of site visits.

NORC will deliver to ASPE a final report, integrating the earlier deliverables, entitled "Findings and Conclusions on the Study of the Application of EHR Payment Incentives for Providers Not Receiving Other Payment Incentives." The Department will then draft the final report to Congress using the information collected and analyzed in the deliverables from NORC.

Other Activities

In recognition of the short timeline provided in the statute to conduct the study and produce a report to Congress on the application of EHR payment incentives for Other Providers, ASPE awarded two professional services purchase orders that required a description of the:

- Federal and state payment methods and sources of payments for certain post-acute and long-term care providers, and the status of EHR certification criteria for these providers.
- Federal and state payment methods and sources of payments for certain behavioral health providers, the status of EHR certification criteria for these providers, and the extent to which any of these behavioral health providers could qualify for payment incentives under the recently published CMS EHR Incentive Program.

The work under the two purchase orders has been completed and made available to NORC to use in conducting the study required under HITECH.

IV. CONCLUSION

The final report containing the findings and conclusions of the study described above will be reviewed for completeness to ensure it meets the listed requirements. The Secretary will then submit the final report to Congress as required in Section 4104(a) of the HITECH ACT and described above. This final report is expected to be submitted to Congress in December 2010.

To obtain a printed copy of this report, send the full report title and your mailing information to:

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