

Small Entity Compliance Guide

Medicare and Medicaid Programs; Electronic Health Record (EHR) Incentive Program—
Stage 2; Final Rule

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45 CFR Parts 412, 413, and 495

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The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA, P.L. 104-121, as amended by P.L. 110-28, May 25, 2007) contains requirements for issuance of “small entity compliance guides.” Guides are to explain what actions affected entities must take to comply with agency rules. Such guides must be prepared when agencies issue final rules for which agencies were required to prepare a final regulatory flexibility analysis under the Regulatory Flexibility Act (RFA).

The complete text of this final rule can be found on the Centers for Medicare & Medicaid Services (CMS) Web site at <http://www.cms.gov/Regulations-and-Guidance/Legislation/EHRIncentivePrograms/EducationalMaterials.html>. This final rule specifies the Stage 2 criteria that eligible professionals (EPs), eligible hospitals, and critical access hospitals (CAHs) must meet in order to qualify for Medicare and/or Medicaid electronic health record (EHR) incentive payments. In addition, it specifies payment adjustments under Medicare for covered professional services and hospital services provided by EPs, eligible hospitals, and CAHs failing to demonstrate meaningful use of certified EHR technology (CEHRT) and other program participation requirements. This final rule revises certain Stage 1 criteria, as finalized in the July 28, 2010 final rule, as well as criteria that apply regardless of Stage.

We estimate that small hospitals and most eligible professionals are small entities, either by being nonprofit status or by qualifying as small businesses under the Small Business Administration’s (SBA’s) size standards (having revenues of \$7.0 million to \$34.5 million in any 1 year). We estimate that there are approximately 624,000 healthcare organizations (EPs, eligible hospitals, or CAHs) that will be affected by the incentive program. These include hospitals and physician practices as well as doctors of medicine or osteopathy, dental surgery or

dental medicine, podiatric medicine, optometry or a chiropractors. Additionally, as many as 47,000 nonphysicians (such as certified nurse-midwives, etc.) will be eligible to receive the Medicaid incentive payments. Of the 624,000 healthcare organizations we estimate will be affected by the incentive program, we estimate that 94.71 percent will be EPs, 0.8 percent will be hospitals, and 4.47 percent will be Medicare Advantage Organization (MAO) physicians or hospitals. We further estimate that EPs will spend approximately \$54,000 to purchase and implement a certified EHR and \$10,000 annually for ongoing maintenance according to the CBO.

While the program is voluntary, in the first 5 years it carries substantial positive incentives that will make it attractive to virtually all eligible entities. Furthermore, entities that do not demonstrate meaningful use of EHR technology will be subject to significant Medicare payment reductions after the fifth year. The anticipation of these Medicare payment adjustments will also motivate EPs, eligible hospitals, and CAHs to adopt and meaningfully use certified EHR technology. In order to assist small healthcare entities in understanding this program and successfully demonstrating meaningful use of certified EHR technology, we have developed a Web page that includes substantial downloadable explanatory materials at <http://www.cms.gov/EHRIncentivePrograms>.