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Stanford University Medical Center

WHY AMBULATORY HOSPITAL-BASED PHYSICIANS SHOULD RECEIVE PART B INCENTIVE PAYMENTS UNDER ARRA

Executive Summary

Under the health information technology ("HIT") provisions of the American Recovery and Reinvestment Act of 2009 ("ARRA"), physicians who are "meaningful users" of certified electronic medical records ("EMR") are eligible for incentive payments under Part B Medicare. However, on its face, ARRA appears to exclude all "hospital-based" physicians from receiving these incentives, but cites as examples of "hospital-based" physicians emergency room physicians, anesthesiologists, and pathologists – physicians who are truly based in hospitals and utilize hospital EMRs. It may also exclude physicians treating patients in outpatient centers and clinics, which deprive them of incentive payments merely because their office or clinic is located in a facility owned by a hospital.

Since the purposes of the HIT provisions of the ARRA are to increase quality of care and efficiency and decrease health care costs, especially in physician outpatient settings, excluding these physicians would be contrary to the legislation's objective.

Stanford University Medical Center ("SUMC") believes that the apparent breadth of this exclusion may have been unintentional, and that the intent may have been only to exclude the practices cited in the example, e.g. emergency medicine physicians, etc. SUMC's proposed interpretation is supported by language in the Conference Report, but the report is not conclusive. SUMC therefore believes the definition of "hospital-based" physicians should be interpreted to allow physicians in ambulatory settings to obtain these incentive payments under Medicare Part B and thus encourage HIT adoption in these important outpatient settings.

Background Information on Stanford University Medical Center

SUMC, located on the Stanford University (the "University") campus in Palo Alto, California, is known worldwide for advanced patient care provided by its physicians and staff. All physicians working at SUMC ambulatory clinics are faculty physicians employed by the University. SUMC is comprised of both a hospital (the "Hospital"), which provides both urgent care and inpatient services, and the clinics (the "Clinics"), which provide outpatient services in an ambulatory setting. The Clinics are the group practices for most faculty physicians of the University. Their areas of expertise range from primary care to the most advanced medical and surgical specialties. The Clinics offer more than 100 specialty and subspecialty service areas.

Treatment of "Hospital-Based" Physicians under ARRA

Under ARRA, a "hospital-based eligible professional" is defined as "an eligible professional, such as a pathologist, anesthesiologist, or emergency physician, who furnishes substantially all of such services in a hospital setting (whether inpatient or outpatient) and through the use of the facilities and equipment, including qualified electronic health records, of the hospital. The determination of whether an eligible professional is a hospital-based eligible

professional shall be made on the basis of site of service and without regard to any employment or billing arrangement between the eligible professional and any other provider." These hospital-based physicians are ineligible to receive HIT incentive payments.

The underlying intent of the incentives under ARRA is to increase HIT adoption and thus to improve quality and efficiency, and decrease costs. The apparent intent of the "hospital-based eligible professional" language is to prevent "double-dipping" by hospitals whose physicians work primarily in an inpatient hospital and utilize the hospital's EMR system. However, physicians practicing in outpatient ambulatory centers do not typically utilize hospital inpatient HIT systems and thus would not be "double dipping."

SUMC believes that the definition should be interpreted to include physicians working in ambulatory settings in the incentive payments. This interpretation is supported by the following language from the ARRA Conference Report:

> "The conference agreement, like the House and Senate-passed bills, prohibits payments to hospital-based professionals (because such professionals are generally expected to use the EHR system of that hospital). This policy does not disqualify otherwise eligible professionals merely on the basis of some association or business relationship with a hospital. Common examples of such arrangements include professionals who are employed by a hospital to work in an ambulatory care clinic or billing arrangements in which physicians submit claims to Medicare together with hospitals or other entities. The change in the conference agreement clarifies that this test will be based on the setting in which a provider furnishes services rather than any billing or employment arrangement between a provider and hospital or other entity."

Although the intent of the language in the ARRA Conference Report is consistent with SUMC's objective, technically it does not address Stanford's particular circumstances because SUMC does not employ the physicians practicing in its ambulatory centers (they are employed by the School of Medicine at the University), and this interpretation could be regarded as inconsistent with a literal interpretation of the statutory language itself.

Why SUMC Physicians Should Receive Incentive Payments Under Medicare Part B

Most patient care in the United States occurs in ambulatory settings, and many patients across the country are seen in clinics on an outpatient basis at academic medical centers such as SUMC. Though employed by the University, and not by the Hospital (due to state corporate practice of medicine limitations, such as that in California), the Clinic physicians practice in facilities located on Hospital property and use Hospital equipment. However, the Hospital and Clinic physicians will be using separate (yet interoperable) components of an EMR system.

A. Two Separate EMR Modules, and Two Separate Areas of Care

The Hospital has fully adopted an EMR for inpatient use by Hospital physicians and staff. While the inpatient module has proven to be effective, it was very expensive to purchase and difficult to implement. It is configured for inpatient use and is therefore not intended for use by Clinic physicians for outpatient care.

Due to the cost and challenges of implementing a fully functional EMR, the SUMC Clinics have not yet fully implemented an outpatient EMR module and require an entirely different EMR module from that used for Hospital inpatient care due to the inherent differences in ambulatory settings. Because of these differences, the Clinics' EMR module, must be interoperable with the Hospital EMR, but distinct from the Hospital's inpatient EMR module. SUMC patients would benefit from prompt completion of the implementation of an outpatient EMR module for use by its Clinic physicians and staff.

Many Hospital patients are also treated in the Clinics, and would benefit from interoperable EMR modules between the two facilities. However, many of the physicians who treat them in the Clinics never practice in the Hospital, do not provide inpatient care and thus, never fully use the Hospital EMR module. Further, while some physicians occasionally see patients on an inpatient basis in the Hospital, their primary practice is within the Clinics. They use the Hospital EMR module while seeing patients in the Hospital, but do not use an EMR when they see patients at the Clinics.

B. Promoting HIT in Ambulatory Settings Serves ARRA's Goals

Improving efficiency and quality in outpatient settings and consistent treatment for patients who receive both ambulatory and inpatient care would be achieved by allowing physicians in outpatient settings, such as the Clinics, to obtain incentive payments under Medicare Part B.

Just as EMRs benefit patients in the inpatient setting in many ways, they are equally beneficial in outpatient settings. For example, chronic patients can be more closely monitored with an EMR system. By having easy access to an individual's EMR, which will include medical history, physicians can encourage preventive measures and keep a patient's health from deteriorating. Further, utilizing an EMR in an outpatient setting will allow for Clinic staff to easily send patient reminders with respect to appointments and prescriptions. All of these benefits produce improved quality of care, increased efficiency, a reduction in medical errors, and better preventive care – all serving ARRA's purposes. Further, because most patient care in the United States occurs on an outpatient basis, allowing these physicians access to HIT incentive payments will result in an increase in cost savings for the entire system, including Medicare. Introducing EMR in clinics at leading teaching institutions such as SUMC, not only benefits SUMC patients, but patients throughout the country, since physicians who use an EMR during medical school and residency will bring that knowledge to the hospitals, clinics and communities in which they practice after leaving SUMC.

Conclusion

SUMC encourages an interpretation by DHHS of the definition of "hospital-based eligible professional" that would allow physicians in ambulatory settings, such as SUMC, to obtain HIT incentive payments under Medicare Part B. This interpretation, as expressed in the ARRA conference report, would strengthen the foundation of the HIT provisions of ARRA by increasing the adoption of EMRs as well as the rate of adoption. Increased adoption of EMRs leads to increased quality of care and efficiency, as well as improved cost savings.

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