

ARRA, HITECH, and EHRs

The American Recovery and Reinvestment Act of 2009 (Recovery Act) was signed into law by President Obama on February 17, 2009. The law includes the Health Information Technology for Economic and Clinical Health Act, or the "HITECH Act," which established programs under Medicare and Medicaid to provide incentive payments for the "meaningful use" of certified electronic health records (EHR) technology.

In order to receive incentive payments, a health care provider or organization **MUST** submit claims to Medicare or Medicaid and demonstrate "meaningful use" of certified EHR technology. To receive Medicaid incentive payments, a provider must meet patient volume thresholds (as measured by a methodology selected by the state). The minimum Medicaid patient volume threshold is 30%; however, different minimum thresholds apply to certain providers, including eligible professionals practicing at Federally Qualified Health Centers or Rural Health Centers.

There is **no federal deadline for adoption of Electronic Health Records (EHRs) by dentists who do not submit claims to Medicare.** However, Medicare eligible professionals and certain hospitals will have a payment adjustment in their Medicare reimbursement for failure to implement "meaningful use" of EHRs starting in 2015. Eligible professionals may begin participating in the Medicare EHR incentive program as early as 2011, and the program ends in 2016.

Dentists who participate in the Medicaid EHR incentive program may, or may not, face deadlines as determined by their states. States may or may not adjust Medicaid reimbursement based on use of EHRs. Medicaid eligible professionals must begin receiving incentive payments by 2016, and the program ends in 2021.

The Medicare and Medicaid program aspects of HITECH may not affect most dentists because of the limited¹ availability of certified EHR technology for dentistry, and because many dentists do not provide Medicare-covered services or meet the Medicaid incentive program patient-volume threshold. However, dentists should not ignore other aspects of HITECH, especially those parts concerning Privacy, Security, and the Breach Notification Rule. See below for more on these critical issues.

Implementation of the EHR Incentive Programs

Under the HITECH Act, the Medicare Electronic Health Record (EHR) incentive programs provide incentive payments to eligible professionals (EPs), eligible hospitals, and critical access hospitals (CAHs) that are meaningful users of certified EHRs. Incentive payments would be made to qualifying Medicare Advantage (MA) organizations for the meaningful use of certified EHR technology by their affiliated eligible professionals. The Medicaid EHR incentive program provides incentive payments to eligible professionals and hospitals for efforts to adopt, implement or upgrade certified EHR technology or for meaningful use in the first year, and for meaningful use for up to another five years.

Under the HITECH Act, the Center for Medicare and Medicaid Services (CMS) administers the EHR incentive programs for Medicare and Medicaid. CMS prepared a notification of proposed rulemaking (NPRM) on the EHR incentive programs for public comment that was published on January 13, 2010. The ADA joined with Association of State and Territorial Dental Directors (ASTDD), the Medicaid/SCHIP Dental Association (MSDA), the National Network for Oral Health Access (NNOHA), and the American Association for Dental Research (AADR) to provide joint comments. The final rule was published July 28, 2010. This final rule specified the initial criteria eligible providers, eligible hospitals, and critical access hospitals (CAHs) must meet in order to qualify for an incentive payment; calculation of the incentive payment amounts; payment adjustments under Medicare for covered professional services and inpatient hospital services provided by EPs, eligible hospitals and CAHs failing to demonstrate meaningful use of certified EHR technology; and other program participation requirements. The effective date for these regulations was September 27, 2010 and is found in the [Final Rule](#).

Establishment of EHR Technology Standards and Certification Requirements

Under the HITECH Act, the U.S. Department of Health and Human Services (“HHS”) has responsibility for developing standards, implementation specifications, and certification criteria for EHR technology. HHS and the Office of the National Coordinator (ONC) released an interim final rule (IFR) on December 30, 2009. Again, the ADA joined with Association of State and Territorial Dental Directors (ASTDD), the Medicaid/SCHIP Dental Association (MSDA), the National Network for Oral Health Access (NNOHA), and the American Association for Dental Research (AADR) to provide joint comments.

A Final Rule on an initial set of standards, implementation specifications, and certification criteria for adoption by the HHS Secretary was published on July 28, 2010. This Final Rule represents the first step in an incremental approach to adopting standards, implementation specifications, and certification criteria to enhance the interoperability, functionality, utility, and security of health IT and to support its meaningful use. The certification criteria adopted in this initial set established the required capabilities and related standards and implementation specifications that certified electronic health record (EHR) technology will need to include in order to, at a minimum, support the achievement of meaningful use Stage 1 (beginning in 2011) by eligible professionals and eligible hospitals under the Medicare and Medicaid EHR incentive programs. The effective date for these regulations was August 27, 2010. ONC has provided detailed information regarding the [Final Rule](#).

HHS Certification Program

The Office of the National Coordinator for Health Information Technology has established a two-tiered process for the Certification of electronic health record systems – a Temporary Certification Program and a Permanent Program. ONC has released the [Final Rule for the Temporary Certification Program](#). The Temporary Certification establishes Authorized Testing and Certification Bodies (ATCBs) to test and certify Complete EHRs and/or EHR Modules. The Temporary Program is scheduled to conclude on December 31, 2011 unless the National Coordinator determines the Permanent Certification program is fully functional at an earlier date. EHR technology that has been certified under the Temporary Certification program will remain certified even after Permanent Certification takes effect. The [Certification Commission for Health IT](#) (CCHIT), Chicago, IL, [ICSA Labs](#) of Mechanicsburg, Pennsylvania, [InfoGard Laboratories, Inc.](#) of San Luis Obispo, California, [SLI Global Solutions](#) of Denver, Colorado, and the [Drummond Group, Inc.](#) (DGI), Austin, TX are the first ONC-Authorized Testing and

Certification Bodies named by ONC under the temporary electronic health record certification program.

Intended Benefits of Meaningful Use

- Improve quality, safety, efficiency, and reduce health disparities
 - Provide access to comprehensive patient health data;
 - Provide clinical decision support at the point of care;
- Improve care coordination
 - Provide meaningful exchange of care information among health care providers
- Improve population and public health
 - Provide immunization and public health data to appropriate agencies
- Ensure privacy and security of personal health information
 - Provide protection of confidential information through
 - Policies
 - Technology
 - Procedures
- Engage patient in their personal care
 - Provide transparency of health care information
 - Provide access to tools and data to make informed decisions
 - Provide lists of patients needing care for mutual outreach

The Achievement of Meaningful Use Stages

Stage 1 (starting in 2011): Data Capture – electronic capture of health care information in a standardized format.

Stage 2 (starting in 2013): Data Aggregation – electronic exchange of collected information to improve quality of care.

Stage 3 (starting in 2015): Data Use for Outcome Impact – improvements in quality, safety and efficiency through clinical decision support and patient management tools.

Additional Privacy Provisions

While the use of a certified EHR does not change HIPAA privacy or security requirements, there are some additional privacy provisions established through the ARRA:

- Privacy and security provisions extended to business associates directly and by contract;
- Breach notification requirements;
- Health information privacy education;
- Requirement to honor withholding of protected health information from a health plan when patient pays for treatment out of pocket;
- Authorizes patients to request an audit trail;
- Prohibits sale of protected health information;
- Patient authorization required for marketing and fundraising-related activities.

Not Eligible to participate in Meaningful Use but still a HIPAA Covered Dentist?

Dentists who are HIPAA covered health care providers, but ineligible for either the Medicare or Medicaid incentive payments programs, will still need to comply with HIPAA Privacy & Security

Rules and the HITECH Breach Notification Rule. Significant changes have occurred as a result of ARRA and many dental offices need to review and update their Security and Privacy policies as a result. Find out about these regulations and their ongoing process of change at www.ada.org/goto/hipaa. (Note that HHS has not yet issued a final rule to implement the HITECH changes to HIPAA. With the exception of the Breach Notification Rule, the material on ada.org is based on pre-HITECH HIPAA compliance.)

Additional Links:

- [Authorized Testing and Certification Bodies](#)
- [HITECH Programs](#)
- [Certification Programs](#)
- [Privacy & Security](#)
- [Meaningful Use](#)
- [HIT Policy Committee](#)
- [HIT Standards Committee](#)

The purpose of this article is to promote awareness of issues that may affect dentists and dental practices. It is not intended to provide either legal or professional advice. Dentists should consult directly with a qualified attorney or professional for appropriate legal or professional advice.

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¹At least one EHR for dentists has been certified at the time of this revision (March 2011).