

## Small Entity Compliance Guide

### Medicare and Medicaid Programs; Electronic Health Record (EHR) Incentive Program; Final Rule

*Federal Register*, Vol. 75, No. 144, Page 44314, July 28, 2010

45 CFR Parts 412, 413, 422, and 495

CMS-0033-F, RIN 0938–AP78

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/EHRIncentivePrograms/60\\_RegulationsNotices.asp#TopOfPage](http://www.cms.gov/EHRIncentivePrograms/60_RegulationsNotices.asp#TopOfPage).

This final rule implements the provisions of the American Recovery and Reinvestment Act of 2009 (ARRA) that provide incentive payments to providers for the meaningful use of certified Electronic Health Record (EHR) technology. The Medicare EHR Incentive Program will provide incentive payments to eligible professionals (EPs), eligible hospitals, and critical access hospitals (CAHs) that successfully demonstrate meaningful use of certified EHR technology. The Medicaid EHR incentive program, in the initial year, will provide incentive payments to eligible professionals and hospitals for efforts to adopt, implement, upgrade or successfully demonstrate meaningful use of certified EHR technology. This final rule is one of three coordinated rulemakings undertaken to implement the goals and objectives of the Health Information Technology for Economic and Clinical Health Act related to the adoption and meaningful use of certified EHR technology. The other two are Health and Human Services final rules establishing certification criteria, standards, and implementation specifications for certification of EHR systems, and HHS' final rule on EHR certification programs.

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 one 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 chiropractor. Additionally, eligible non-physicians (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 Congressional Budget Office.

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>.