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ARCHIVES DIVISION
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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 410
OREGON HEALTH AUTHORITY
HEALTH SYSTEMS DIVISION: MEDICAL ASSISTANCE PROGRAMS

FILED
12/15/2017 7:59 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Update Rules Governing Payment for the Medicaid EHR Incentive Program

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 02/17/2018 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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500 Summer St. NE
Salem, OR 97301

Filed By:
Sandy Cafourek
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 02/15/2018

TIME: 10:30 AM - 11:30 AM

OFFICER: Sandy Cafourek

ADDRESS: Human Services Building
500 Summer St. NE, Room 137A
Salem, OR 97301

SPECIAL INSTRUCTIONS:

Send comments to
hsd.rules@dhsosha.state.or.us

NEED FOR THE RULE(S):

The Division needs to amend these rules as new federal legislation from the Centers for Medicare and Medicaid Services (CMS) and updates to Oregon's Medicaid State Plan Amendment affects how providers are eligible for the Medicaid EHR Incentive Program. These rules include changes for the 90-day EHR reporting period in 2018-2019.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Federal Register Vol 77 October 23, 2012 – <http://www.gpo.gov/fdsys/pkg/FR-2012-10-23/pdf/FR-2012-10-23.pdf>
Federal Register Vol 77 September 4, 2012 - <http://www.gpo.gov/fdsys/pkg/FR-2012-09-04/pdf/2012-21050.pdf>
Federal Register Vol 75 July 28, 2010- <http://www.gpoaccess.gov/fr/index.html>.
Federal Register Vol 75 December 29, 2010- <http://www.gpoaccess.gov/fr/index.html>.
CMS State Medicaid Director letter SMD #10-016- <http://www.cms.gov/SMDL/SMD/list.asp#TopOfPage>

FISCAL AND ECONOMIC IMPACT:

No impact.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) Amending these rules will have no fiscal impact on the Authority, other state agencies, units of local government, the public, or businesses, including small businesses. (2)(a) The Division has approximately 63,000 enrolled providers. These enrolled providers range from large hospital affiliates, national Durable Medical Equipment or Pharmacy chains to individually owned physician offices. The Division does not know the percentage of providers that are small businesses eligible for the Medicaid EHR Incentive Program. The program is voluntary, and if the provider is eligible and qualifies, the program entitles them to incentive payments. (b) There may be additional activities to determine eligibility. However, this program is a voluntary program, and if the provider is eligible and qualifies, the program entitles them to incentive payments. (c) There is a requirement to obtain and use a certified EHR system in order to participate in the Medicaid EHR Incentive Program. This requirement has not changed. However, there may be additional labor, supplies, and administrative costs and activities to assist providers in determining their eligibility for the program. This is a voluntary program, and if the provider is eligible and qualifies, the program entitles them to incentive payments.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Sending out a summary of changes to our email list to make sure that providers are aware of the updates to our rules, which are based on updates to federal rule changes.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

We are updating the rules to follow changes to the federal rule.

RULES PROPOSED:

410-165-0000, 410-165-0080

AMEND: 410-165-0000

RULE SUMMARY: The Division needs to amend these rules as new federal legislation from the Centers for Medicare and Medicaid Services (CMS) and updates to Oregon's Medicaid State Plan Amendment affects how providers are eligible for the Medicaid EHR Incentive Program. These rules include changes for the 90-day EHR reporting period in 2018-2019.

CHANGES TO RULE:

410-165-0000

Basis and Purpose ¶

(1) These rules (OAR chapter 410, division 165) govern the Oregon Health Authority (Authority), Health Systems Division; (Division), Medicaid Electronic Health Record (EHR) Incentive Program. The Medicaid EHR Incentive Program provides incentive payments consistent with federal law concerning such payments to eligible providers participating in the Medicaid program who adopt, implement, upgrade, or successfully demonstrate meaningful use of certified EHR technology and who are qualified by the program. ¶

(2) The Medicaid EHR Incentive Program is implemented pursuant to: ¶

(a) The American Reinvestment and Recovery Act of 2009, Pub. L. No. 111-5, section 4201; ¶

(b) The Centers for Medicare and Medicaid Services (CMS) federal regulation 42 CFR Part 495 (2010, 2012, 2014, and 2015) pursuant to the Social Security Act sections 1903(a)(3)(F) and 1903(t); ¶

(c) The Division's General Rules program, OAR chapter 410, division 120; ¶

(d) The Authority's Provider Rules, OAR chapter 943, division 120. ¶

(3) The following retroactive effective dates apply to these rules: ¶

(a) For all sections in these rules that refer to pediatric optometrists, the effective date is July 1, 2016; ¶

(b) For rule 410-165-0080 that refers to: ¶

(A) CMS federal regulation 42 CFR Part 495 (2016), the effective date is January 1, 2017; ¶

(B) CMS federal regulation 42 CFR Part 495 (2017), the effective date is October 1, 2017. ¶

(c) For all sections in these rules that refer to naturopathic physicians, the effective date is May 2, 2017; ¶

(d) For eligible hospitals, except for sections and references in these rules applicable under section (3)(a) or (b) above, the effective date is October 1, 2013, which is also the start date for program year 2014; ¶

(e) For eligible professionals, except for sections and references in these rules applicable under section (3)(a) or (b) above, the effective date is January 1, 2014, which is also the start date for program year 2014.

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 413.042, 414.033

AMEND: 410-165-0080

RULE SUMMARY: The Division needs to amend these rules as new federal legislation from the Centers for Medicare and Medicaid Services (CMS) and updates to Oregon's Medicaid State Plan Amendment affects how providers are eligible for the Medicaid EHR Incentive Program. These rules include changes for the 90-day EHR reporting period in 2018-2019.

CHANGES TO RULE:

410-165-0080

Meaningful Use ¶¶

(1) An eligible provider shall demonstrate being a meaningful EHR user as prescribed by 42 CFR 495.4 (2010, 2012, 2015, and 2016), 42 CFR 495.6 (2010, 2012, and 2014), 42 CFR 495.8 (2010, 2012, and 2014), 42 CFR 495.20 (2015), 42 CFR 495.22 (2015 and 2016), 42 CFR 495.24 (2015 and 2016), and 42 CFR 495.40 (2015 and 2016): ¶¶

(a) For eligible providers demonstrating meaningful use under the Pprogram in Stage 1 prior to December 15, 2015, to comply with 42 CFR 495.8, the State of Oregon requires the eligible provider to satisfy the objective "Capability to submit electronic data to immunization registries or immunization information systems and actual submission in accordance with applicable law and practice;" ¶¶

(b) For eligible hospitals: ¶¶

(A) If CMS deems an eligible hospital to be a meaningful EHR user for the Medicare EHR Incentive Program for a program year, the eligible hospital is automatically deemed to be a meaningful EHR user for the Pprogram for the same program year; ¶¶

(B) An eligible hospital deemed to be a meaningful EHR user by CMS for a program year does not have to meet the requirements specified in section (1)(a) for the Pprogram for the same program year. ¶¶

(2) As prescribed by 42 CFR 495.4 (2010, 2012, ~~2015, and 2016~~), the following meaningful use EHR reporting periods shall be used by eligible providers that are demonstrating meaningful use to the Pprogram for: ¶¶

(a) Program years 2011, 2012, and 2013: ¶¶

(A) Eligible professionals: ¶¶

(i) For the first time, either: ¶¶

(I) Any continuous 90-day period in the calendar year; or ¶¶

(II) The calendar year. ¶¶

(ii) For a subsequent time: the calendar year. ¶¶

(B) Eligible hospitals: ¶¶

(i) For the first time, either: ¶¶

(I) Any continuous 90-day period in the federal fiscal year; or ¶¶

(II) The federal fiscal year. ¶¶

(ii) For a subsequent time, the federal fiscal year. ¶¶

(b) Program year 2014: ¶¶

(A) Eligible professionals, either: ¶¶

(i) Any continuous 90-day period in calendar year 2014; or ¶¶

(ii) Any of the following 3-month periods: ¶¶

(I) January 1, 2014 through March 31, 2014; ¶¶

(II) April 1, 2014 through June 30, 2014; ¶¶

(III) July 1, 2014 through September 30, 2014; or ¶¶

(IV) October 1, 2014 through December 31, 2014. ¶¶

(B) Eligible hospitals, either: ¶¶

(i) Any continuous 90-day period in federal fiscal year 2014; or ¶¶

(ii) Any of the following 3-month periods: ¶¶

(I) October 1, 2013 through December 31, 2013; ¶¶

(II) January 1, 2014 through March 31, 2014; ¶

(III) April 1, 2014 through June 30, 2014; or ¶

(IV) July 1, 2014 through September 30, 2014. ¶

(€3) As prescribed by 42 CFR 495.4 (2015, 2016), the following meaningful use EHR reporting periods shall be used by eligible providers that are demonstrating meaningful use to the program for: ¶

¶

(a) Program year 2015, prior to December 15, 2015: ¶

(A) Eligible professionals attesting for the first year, either: ¶

(i) Any continuous 90-day period in the calendar year; or ¶

(ii) The calendar year. ¶

(B) Eligible professionals attesting for a subsequent year, the calendar year; ¶

(C) Eligible hospitals attesting for the first year, either: ¶

(i) Any continuous 90-day period in the federal fiscal year; or ¶

(ii) The federal fiscal year. ¶

(D) Eligible hospitals attesting for a subsequent year, the federal fiscal year. ¶

(€b) Program year 2015, on or after December 15, 2015, any continuous 90-day period in the calendar year; ¶

(ec) Program year 2016 before January 1, 2017: ¶

(A) The first year, either: ¶

(i) Any continuous 90-day period in the calendar year; or ¶

(ii) The calendar year. ¶

(B) A subsequent year, the calendar year. ¶

(€d) Program year 2016 after January 1, 2017: ¶

(A) Any continuous 90-day period in the calendar year; or ¶

(B) The calendar year. ¶

(g) ~~Program year 2017:~~ 4) As prescribed by 42 CFR 495.4 (2017), the following meaningful use EHR reporting periods shall be used by eligible providers that are demonstrating meaningful use to the program for: ¶

(a) Program year 2017 before October 1, 2017: ¶

(A) The first year, either: ¶

(i) Any continuous 90-day period in the calendar year; or ¶

(ii) The calendar year. ¶

(B) A subsequent year: ¶

(i) Any continuous 90-day period in the calendar year; or ¶

(ii) The calendar year for meaningful use objectives; and ¶

(iii) A calendar year for the Clinical Quality Measures. ¶

(h) ~~Program year 2018 and subsequent program years:~~ b) Program year 2017 on or after October 1, 2017: ¶

(A) Any continuous 90-day period in the calendar year; or ¶

(B) The calendar year. ¶

(c) Program year 2018: ¶

(A) The first year, either: ¶

(i) Any continuous 90-day period in the calendar year; or ¶

(ii) The calendar year. ¶

(B) A subsequent year: ¶

(i) Any continuous 90-day period in the calendar year; or ¶

(ii) The calendar year for meaningful use objectives; and ¶

(iii) A calendar year for the Clinical Quality Measures. ¶

(d) Program year 2019: ¶

(A) The first year, either: ¶

(i) Any continuous 90-day period in the calendar year; or ¶

(ii) The calendar year. ¶

(B) A subsequent year, the calendar year.

Statutory/Other Authority: ~~ORS~~ 413.042

Statutes/Other Implemented: ~~ORS~~ 413.042, 414.033