



Center for Medicaid and State Operations

SMD # 09-006
ARRA HIT # 1

September 1, 2009

Dear State Medicaid Director:

The purpose of this letter is to provide initial guidance on section 4201 of the American Recovery and Reinvestment Act of 2009 (Recovery Act), Pub. L. 111-5 which establishes a program for payment to providers who adopt and become meaningful users of electronic health records. This letter, including the enclosures, will provide preliminary guidance on State expenses related to activities in support of the administration of incentive payments to providers. More information will be forthcoming through guidance and rulemaking regarding State administrative expenses and provider incentive payments. We intend to publish proposed regulations to address the steps outlined in this letter by the end of the year.

The Recovery Act amends the Medicaid statute to provide for a 100 percent Federal financial participation (FFP) match for State expenditures for provider incentive payments to encourage Medicaid health care providers to purchase, implement, and operate certified electronic health record (EHR) technology. These payments, while not direct reimbursement for certified EHR technology, can be paid at up to 85 percent of the federally-determined “net average allowable costs” of such EHR technology, including support and training for staff, up to statutory limits. The legislation also establishes a 90 percent FFP match for State expenses for administration of the incentive payments authorized by section 4201.

Although this letter focuses on Medicaid, we recognize that the Recovery Act provides both Medicaid and Medicare provider health information technology (HIT) incentives, and believe it will be a priority for these incentives to be coordinated in order to reduce confusion, improve administration, and maximize the ability to advance HIT across the health system. The key takeaway points from this letter are:

- States may immediately request 90% FFP match for administrative planning activities and should submit and receive approval of a HIT Planning Advance Planning Document prior to initiating planning activities and expending funds;
- States should contact their CMS regional office for further guidance and continue with on-going communication while initiating planning activities;
- States should view Medicaid planning activities as part of the larger evolving Statewide HIT efforts; and

- Planning activities are for the purposes of administering the incentive payments to providers, ensuring their proper payments, and auditing and monitoring of such payments, and participating in Statewide efforts to promote interoperability and meaningful use of electronic health records.

While there are many aspects of section 4201 for State Medicaid agencies to be cognizant of, we want to draw your attention to five specific topics:

1. Purpose of Recovery Act HIT Incentives

The purpose of the 100 percent FFP provider incentive payments to certain eligible Medicaid providers is to encourage the adoption and meaningful use of certified EHR technology.

While the Recovery Act HIT incentive payments are expected to be used for certified EHR technology and support services, including maintenance and training necessary for the adoption and operation of such technology, the incentive payments are not direct reimbursement for such activities. Rather, they are intended to serve as an incentive for eligible providers to adopt and meaningfully use certified EHR technology.

2. Incentive Payments Implementation Timeline

Before States can begin making payments to providers, a range of regulatory, policy and planning activities must take place. For example:

- Section 4201 of the Recovery Act requires that incentive payments be used for the adoption and use of “certified EHR technology,” which (pursuant to section 1903(t)(3)(A) of the Social Security Act (the Act) and by definition) must be certified as meeting standards adopted under section 3004 of the Public Health Service (PHS) Act. Section 3004(b)(1) of the PHS Act requires the Secretary to adopt, which may be through an interim-final rule, an initial set of standards, implementation specifications, and certification criteria.
- The statute establishes payment limits on the average allowable costs to be determined appropriate for reimbursement of certified EHR technology, to be determined by the Secretary of Health and Human Services. CMS will also need to establish State responsibilities to track “meaningful use” of certified EHR technology by providers, and States will need to engage in planning to ensure that they are able to track such use, consistent with the federal rules.
- Providers using certified EHR technology are not eligible for incentive payments, unless – to the extent specified by the Secretary under section 1903(t)(6)(D) of the Act – the certified EHR technology is compatible with State or Federal administrative management systems. Therefore, States risk making unallowable incentive payments prior to receiving guidance on how to make these systems compatible.

CMS will provide additional guidance during this initial planning and implementation period regarding State planning and administrative expenses for provider incentive payments, and will work with States to determine when each State is ready to begin making payments. A proposed rule for implementing section 4201 is expected by the end of this year.

3. Criteria to Receive the 90 Percent FFP Match for Initial Planning Activities

While the 100 percent match for provider incentive payments will not be available immediately, States can begin to receive the 90 percent FFP match for some initial planning activities related to the administration of the incentive payments (see Enclosure E). In order to qualify for the 90 percent FFP administrative match, the law requires (at section 1903(t)(9) of the Act) a State to demonstrate, to the satisfaction of the Secretary, compliance with three specific criteria:

- (A) The State uses the funds for purposes of administering the incentive payments, including the tracking of meaningful use of certified EHR technology by Medicaid providers;
- (B) The State conducts adequate oversight of the incentive program, including routine tracking of meaningful use attestations and reporting mechanisms; and
- (C) The State pursues initiatives to encourage adoption of certified EHR technology to promote health care quality and the exchange of health care information under Medicaid, subject to applicable laws and regulations governing such exchange, while ensuring privacy and security of data provided to its data exchange partners.

To ensure compliance with the above criteria for receiving the 90 percent FFP match from CMS, CMS expects states to (a) receive prior approval of any initial planning activities eligible for the 90 percent FFP match and (b) develop a State Medicaid HIT Plan (SMHP) describing the State's Medicaid incentive program and how it will integrate current and planned Medicaid HIT assets and fit within the larger State HIT/HIE roadmap. As discussed below, the 90 percent FFP is available as states are developing their SMHP. Guidance for each of these two activities is discussed in more detail under topic four below, and in Enclosures A and B. The SMHP should be consistent and integrated with the State plan developed under section 3013 of the PHS Act. Both the section 3013 plan and SMHP will provide States with the opportunity to analyze and plan for how EHR technology, over time, can be used to enhance quality and health care outcomes, reduce overall health care costs, and how those uses can be integrated with existing resources to achieve these goals.

As they plan their State Medicaid HIT activities States are encouraged to work collaboratively with other stakeholders involved with HIT adoption. Our review of SMHPs will also be coordinated at the federal level. All SMHPs will be reviewed by CMS regional and central offices and the Office of the National Coordinator for Health Information Technology (ONC) to ensure a coordinated strategy for planning activities. Guidance will be issued in the near future concerning the review process.

Enclosure C provides initial guidelines regarding roles and responsibilities for both States and CMSO in achieving successful initiatives. Enclosure D discusses CMS coordination with ONC.

4. CMS Oversight and Funding For Initial Planning Activities

Section 4201 of the Recovery Act amends section 1903(a)(3) of the Act, to allow for enhanced matching rates for Recovery Act HIT administration expenses. Current law also allows States to receive enhanced matching rates for State Medicaid claims processing and automated retrieval systems commonly referred to as the Medicaid Management Information System (MMIS). As States begin the process of developing their SMHPs, they also can begin to receive the 90 percent FFP match for initial Recovery Act HIT planning activities, after obtaining prior approval from CMS. For example, initial planning regarding the design and development of the anticipated SMHP may be eligible for the 90 percent FFP match as an expense related to the administration of the incentive payments under section 4201. Three specific activities regarding CMS oversight and funding for planning activities are as follows:

Prior Approval from CMS

Similar to the process used in order to claim the higher match rate for MMIS, States are requested to obtain prior approval from CMS for claiming a higher match rate for initial HIT planning, through submission and approval of a Recovery Act HIT Planning – Advance Planning Document (HIT P-APD). Such prior approval will ensure that States are complying with section 1903(t)(9) of the Act that they demonstrate to the “satisfaction of the Secretary” that they are using the funds in the manner anticipated by the law. States should work closely with their CMS regional office, ONC, State officials responsible for coordinating HIT, and State designated entities (as described under Section 3013 of the PHS Act) throughout the planning process to reduce any delays in implementing a State’s Medicaid HIT Plan. This collaborative process will assist States in understanding all of the requirements and will help CMS understand States’ strategies and plans for a more effective implementation. The deliverable for this planning activity is the “plan” to undertake the implementation activities, not the implementation itself. Until definitions of key criteria have been defined in future guidance and rulemaking from CMS, States should not embark on implementation activities. Enclosure E describes HIT administrative activities that are potentially eligible for the 90 percent HIT administrative match. Future guidance will clarify what types of implementation activities may be eligible for the Recovery Act HIT 90 percent FFP match.

Planning Documentation

There are several noteworthy differences between the Recovery Act HIT P-APD and an MMIS P-APD, the document submitted to CMS requesting project funds prior to initiating activities as described in 45 CFR Part 95, Subpart F. All eligible HIT administrative activities described in Enclosure E are potentially eligible for the 90 percent HIT administrative match, whereas various rates apply in the case of the MMIS.

More importantly, the purpose of the MMIS P-APD is to receive Federal financial support that will enable States to prepare for the development of a new MMIS system (or enhancements to an existing one.) The purpose of the Recovery Act provision, on the other hand, is to encourage the adoption and meaningful use of certified EHR technology, with the ultimate goal of promoting health care quality and health information exchange. Consequently, CMS regional and central offices will want to ensure that your funding requests are directly tied to these two goals — promotion of health care quality and health information exchange through the use of certified EHR technology. As a result, the CMS Regional and Federal Office HIT Review Teams will be multidisciplinary and comprised of members with a wide range of expertise, including health care quality, Medicaid Transformation Grants, State plan and waiver experience, as well as Medicaid information systems. In addition, plans will be reviewed by representatives from ONC so as not to duplicate efforts under section 3013 grants and to ensure support of a unified approach to information exchange. We expect States to take a similar multidisciplinary approach when developing their SMHPs.

Draft documentation including the State Medicaid HIT Plan Preprint, and the HIT Planning Advance Planning Document resides with CMS' regional offices (RO). Please contact your RO for additional information. CMS is in the process of obtaining the required Office of Management and Budget (OMB) approval for these draft documents via the Paperwork Reduction Act (PRA) process. Only after CMS obtains a valid OMB number will States be required to complete the document templates. While States are not currently required to use these templates, we believe they will expedite your ability to communicate effectively with our RO. Hence, we strongly suggest contacting your RO for assistance prior to commencing with your efforts in this regard.

Expenditure Reporting

As important as the administrative match and incentive payments are to achieving your HIT vision, putting safeguards in place to ensure only appropriate use of approved funding is a primary consideration with regard to CMS' oversight responsibilities.

To assist States in properly reporting expenditures using the Medicaid and Children's Health Insurance Program Budget and Expenditure System, the CMS-64.10 report will include a new category for reporting 90 percent FFP match for State administrative expenses associated with HIT. The new category will be called: Health Information Technology Administration. This category is to be completed for potentially eligible activities that are listed in Enclosure E and should not be used for MMIS 90 percent expenditures.

5. Resources

On August 20th the White House announced the availability of two grant programs which are intended to assist in creating and encouraging interoperable health information exchange and adoption of electronic health records. These grant programs are described in Enclosure D.

Additional information pertaining to the HITECH Priority Grants Program can be found at: http://www.whitehouse.gov/briefing_room/PressReleases/.

Another resource currently available for States is the National Resource Center for Health Information Technology, established by the Agency for Healthcare Research and Quality (AHRQ). It is a partnership of organizations with expertise in health IT and is a central national source of information and assistance, including a central repository of lessons learned from AHRQ's health IT initiative. The AHRQ Health IT web site can be accessed at <http://healthit.ahrq.gov>. Enclosure F lists other helpful HIT online resources.

Ultimately, the Recovery Act provisions are not solely about information systems or information technology, but about improving health care quality and leveraging a wide range of stakeholders and resources, existing and projected, to achieve this goal through the exchange of health information. For further information or clarification on this letter, please contact your CMS regional office or Mr. Rick Friedman, who may be reached at 410-786-4451 or Richard.Friedman@cms.hhs.gov.

Sincerely,

/s/

Cindy Mann
Director

Enclosures:

- A: State Medicaid HIT Plan
- B: Relationship between MMIS, MITA, and HIT Adoption
- C: Roles and Responsibilities
- D: CMS Coordination with the Office of the National Coordinator and Section 3013
- E: Medicaid HIT Planning Activities Eligible for 90 Percent Administrative HIT FFP
- F: HIT Resources

cc:

CMS Regional Administrators

CMS Associate Regional Administrations
Division of Medicaid and Children's Health

Ann C. Kohler
NASMD Executive Director
American Public Human Services Association

Joy Wilson
Director, Health Committee
National Conference of State Legislatures

Matt Salo
Director of Health Legislation
National Governors Association

Debra Miller
Director for Health Policy
Council of State Governments

Christine Evans, M.P.H.
Director, Government Relations
Association of State and Territorial Health Officials

Alan R. Weil, J.D., M.P.P.
Executive Director
National Academy for State Health Policy