Questions and Answers addressing the HITECH Act Provisions
(as they pertain to health care providers)

MEDICARE

The qualification criteria for incentives (i.e., meeting specified HIT standards, policies, implementation specifications, timeframes, and certification requirements) are still in development, and will be defined through federal regulation and additional guidance materials. However, the HITECH Act does describe the types of Medicare providers (eligible professionals and certain hospitals) that will be eligible for incentives and what is generally expected of them. Eligible providers must be meaningful users of a certified Electronic Health Record (EHR) technology during an EHR reporting period.

Q: Who is an "eligible professional"?

A: The HITECH Act defines an eligible professional using the definition of "physician" from Section 1861(r) of the Social Security Act. An eligible professional is:

1. a doctor of medicine or osteopathy
2. a doctor of dental surgery or dental medicine
3. a doctor of podiatric medicine
4. a doctor of optometry
5. a chiropractor

All of which must be legally authorized to practice by the State in which they perform such functions and acting within the scope of their license when such functions are performed.

Incentive payments may not be made to hospital-based eligible professionals, like pathologists or anesthesiologists, who furnish substantially all such services in a hospital setting.

Q: What are covered professional services?

A: Covered professional services are defined as any service for which payment is made under, or is based on, the Physician Fee Schedule (PFS) published each year by the Centers for Medicare & Medicaid Services and which are furnished by an eligible professional.

Q: What hospitals are eligible?

A: The HITECH Act defines an eligible hospital using the definition from Section 1886(d) of the Social Security Act. An eligible hospital is essentially an acute care hospital. Hospitals such as psychiatric, rehabilitation, children's, and a hospital whose patients' average length of stay is more than 25 days are not eligible hospitals. Critical access hospitals also may qualify for incentives.

Q: What qualifies a user as a "meaningful EHR user"?

A: There are three general requirements an eligible professional must meet to qualify as a meaningful EHR user. The first is that the eligible professional demonstrates, to the satisfaction of the Secretary of the United States Department of Health and Human Services (Secretary), that they are using a certified EHR in a meaningful manner, which shall include the use of electronic prescribing as determined by the Secretary.

The second requirement is that the professional can demonstrate that the certified EHR technology is connected in a manner that provides for the electronic exchange of health information to improve the quality of health care such as promoting care coordination. The demonstration of these two requirements may require the professional to provide:

- an attestation
- the submission of claims with appropriate coding (such as a code indicating that a patient encounter was documented by using a certified EHR technology)
- a survey response
- and any other measures specified by the Secretary

The final requirement is that the professional report on such clinical quality measures and such other measures as selected by the Secretary. All measures shall be published in the Federal Register for public comment prior to the Secretary's selection.

Q: How is an electronic health record identified as a certified EHR?

A: "Certified EHR technology" means a qualified electronic health record that is certified through a program recognized by the Office of the National Coordinator for Health Information Technology, in consultation with the Director of the National Institute of Standards and Technology. The certification program will include standards adopted through the new federal process.

Q: How much are the incentives for eligible professionals?

A: This program is designed as a carrot through the incentive payments but also as a stick for eligible professionals through a downward adjustment to their reimbursement for covered professional services. The incentives and adjustments are based on when a professional becomes a "meaningful user" of a certified EHR technology. If the professional becomes a meaningful user before 2015 they are eligible for some level of incentive payment. If the professional doesn't become a meaningful user prior to the year 2015 they will be subject to a downward adjustment in their reimbursement from Medicare.

The payment schedule below illustrates the standard incentive schedule for eligible professionals. The incentive payments are paid out over three to five payment years. In the first payment year the professional is eligible for up to $15,000, unless the first payment year is either 2011 or 2012 when the professional is eligible for $18,000, to reward early adopters of certified EHR technologies. The subsequent four payment years work as follows:

- Second payment year – $12,000
- Third payment year – $8,000
- Fourth payment year – $4,000
- Fifth payment year – $2,000

If the professional's first payment year is after 2013 then the initial payment decreases to the second year payment of $12,000. The incentives are also limited so that any professional who adopts after 2014 will not be eligible for an incentive. The legislation also specifies that incentive payments will not be paid out after 2016. The payment schedule below illustrates how the incentive payments will work.

		Payment Schedule			
		Eligible Year			
		2011	2012	2013	2014
Payment Year	2011	$18,000.00			
	2012	$12,000.00	$18,000.00		
	2013	$8,000.00	$12,000.00	$15,000.00	
	2014	$4,000.00	$8,000.00	$12,000.00	$12,000.00
	2015	$2,000.00	$4,000.00	$8,000.00	$8,000.00
	2016	-	$2,000.00	$4,000.00	$4,000.00
	Total	**$44,000.00**	**$44,000.00**	**$39,000.00**	**$24,000.00**

Division B, Title IV, Subtitle A, Sec 4101(a)

In the case of an eligible professional who provides covered professional services in an area designated by the Secretary as a health professional shortage area, the amount of their incentive shall be increased by 10 percent. The payment schedule below helps to illustrate this additional Medicare incentive.

		Payment Schedule (Professional Shortage Area)			
		Eligible Year			
		2011	2012	2013	2014
Payment Year	2011	$19,800.00			
	2012	$13,200.00	$19,800.00		
	2013	$8,800.00	$13,200.00	$16,500.00	
	2014	$4,400.00	$8,800.00	$13,200.00	$13,200.00
	2015	$2,200.00	$4,400.00	$8,800.00	$8,800.00
	2016	-	$2,200.00	$4,400.00	$4,400.00
	Total	$48,400.00	$48,400.00	$42,900.00	$26,400.00

Division B, Title IV, Subtitle A, Sec 4101(a)

Q: What are the penalties associated with not using a certified EHR technology in a "meaningful" way?

A: Fee schedule payments to eligible professionals for covered professional services will be adjusted downward if the professional is not a meaningful user of a certified EHR technology prior to 2015. The professional's fee schedule amount will be reduced to 99 percent in 2015, 98 percent in 2016, and 97 percent in 2017 and in each subsequent year for all covered professional services. For 2018 and each subsequent year, if the Secretary finds that the proportion of eligible professionals who are meaningful EHR users is less than 75 percent, the applicable fee schedule amount will be decreased by one percentage point from the applicable percent in the preceding year, but in no case will the applicable percent be less than 95 percent.

The Secretary, on a case-by-case basis, may exempt professionals from the payment adjustment if the requirements to be a meaningful user pose a significant hardship on the professional. An example would be in the case of an eligible professional who practices in a rural area without sufficient internet access. Exemptions are subject to annual renewal and will not be granted for more than five years.

MEDICAID

The qualification criteria for incentives (i.e., meeting specified HIT standards, policies, implementation specifications, timeframes, and certification requirements) are still in development, and will be defined through federal regulation and additional guidance materials. However, the HITECH Act does describe the types of Medicaid providers (eligible professionals and certain hospitals) that will be eligible for incentives and what is generally expected of them. Eligible providers must be meaningful users of a certified Electronic Health Record (EHR) technology during an EHR reporting period and must demonstrate costs associated with the purchase, implementation or use of a certified EHR technology.

Q: Who is an "eligible professional"?

A: An eligible professional is a:

- Physician
- Dentist
- Certified nurse mid-wife
- Nurse practitioner
- Physician assistant practicing in a rural health clinic or Federally Qualified Health Center (FQHC).

In order to qualify for Medicaid incentive payments, an eligible professional must fall into one of the following categories:

1. A non-hospital-based professional with at least 30 percent of patient volume attributable to individuals receiving Medicaid Assistance.
2. A non-hospital-based pediatrician with at least 20 percent of patient volume attributable to individuals receiving Medicaid assistance.
3. A non-hospital-based professional practicing predominately in a FQHC or rural health clinic with at least 30 percent of patient volume attributable to needy individuals.

Q: What hospitals are eligible?

A: All Children's hospitals are eligible of any patient volume. Acute-care hospitals are required to have at least 10% of patient volume attributable to individuals receiving Medicaid assistance.

Q: What are the average allowable costs for the Medicaid incentive?

A: The average allowable costs are broken into two categories which are associated to the years of payment. The first category is linked to the first year of payment for a provider. In the first year of payment the average allowable costs are the costs associated with the purchase and initial implementation or upgrade of a certified EHR technology (and support services including training that is for the adoption and initial operation of, such technology).

The second category is tied to each subsequent year after the first year of payment. In each subsequent year the average allowable costs are the costs relating to the operation, maintenance, and use of a certified EHR technology.

Q: How are needy individuals defined?

A: A needy individual with respect to the Medicaid Incentive Program is one:

- Who is receiving assistance under Medicaid
- Who is receiving assistance under title XXI
- Who is furnished uncompensated care by a provider, or
- For whom charges are reduced by the provider on a sliding scale basis based on an individual's ability to pay.

Q: How is "meaningful use" defined for the Medicaid Program?

A: Meaningful use under the Medicaid Incentive Program is demonstrated through a means that is approved by the State and accepted by the Secretary. The approved method the State selects needs to be consistent with the requirements outlined in the Medicare meaningful use section.

Q: How is an electronic health record identified as a certified EHR?

A: "Certified EHR technology" means a qualified electronic health record that is certified through a program recognized by the Office of the National Coordinator for Health Information Technology, in consultation with the Director of the National Institute of Standards and Technology. The certification program will include standards adopted through the new federal process.

Q: How much are the incentives?

A: The incentive program for Medicaid authorizes each state program to make payment to providers due to this the program is not as clearly defined as the Medicare Incentive Program. The incentives will likely begin starting in 2011 but there is not a clear indication of that in the legislation, so this may change pending further regulation from the Secretary and is dependent upon each state where a provider would be practicing. This program is also designed to aid in the adoption and use of EHRs and doesn't provide a disincentive to a provider for not becoming a "meaningful user."

The program authorizes the State to make payment to Medicaid providers totaling no more than 85 percent of net average allowable costs for the purchase, upgrade, implementation or use of a certified EHR technology. The incentive is capped at 85 percent of $25,000 on a per provider basis in the first year of payment which may not be later than 2016. Each subsequent year after the first payment year is capped at 85 percent of $10,000 per provider and cannot be paid over a period longer than five years.

No provider qualifying for the program after 2016 may receive payment and that all incentives end in 2021. The incentive schedule is also adjusted for non-hospital-based pediatrician with at least 20 percent of patient volume attributable to individuals receiving Medicaid assistance. For these providers their maximum allowable incentive is capped at two-thirds of the other amounts.