

January 13, 2009

DHHS Releases New Rules Regarding Incentives for Electronic Health Records

In today's Federal Register, the Department of Health and Human Services (DHHS) published two related rules setting forth certification standards for electronic health records (EHRs) and the requirements for "meaningful use" of EHRs. These rules are important because they provide for significant incentive payments to eligible professionals and eligible hospitals who are meaningful users of health information technology. Eligible professionals may receive up to \$44,000 over a five year period and eligible hospitals may receive several million dollars depending on their discharge volume and other criteria. These rules also establish payment penalties under Medicare for eligible professionals and hospitals who are not meaningful users of health information technology by 2015.

Meaningful Use Rule. The Centers for Medicare & Medicaid Services (CMS) issued a proposed rule that outlines how eligible professionals and eligible hospitals can demonstrate meaningful use of EHRs and receive incentive payments under the Medicare and/or Medicaid programs. Generally, eligible professionals and eligible hospitals must: (i) demonstrate meaningful use of a certified EHR; (ii) demonstrate that their certified EHR is connected in a manner that provides for the electronic exchange of health information to improve quality of health care care; and (iii) submit information to DHHS on clinical quality measures or other measures specified by DHHS. Most incentive payments will begin in 2011 and continue to 2015.

Certified EHR Technology Rule. The Office of the National Coordinator of Health Information Technology (ONC), an agency of DHHS, issued an interim final rule that sets forth standards and technical specifications that EHRs must meet in order to be considered "certified EHR technology." Providers may only participate in the Medicare and Medicaid incentive programs if they demonstrate meaningful use of certified EHR technology. The ONC rule lists certain capabilities that EHRs must have in order to be certified and establishes standards in the following four areas: (i) transport exchange; (ii) content exchange; (iii) vocabulary and (iv) privacy and security. While the ONC rule establishes criteria for EHR certification, ONC intends to release additional regulations in the near future governing the EHR certification process (e.g., who will certify EHR technology, what the certification process entails, etc.).

Both the ONC rule and CMS rule are subject to a sixty day comment period with final rules expected in the late spring of 2010.

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These new rules raise important issues that you should be aware of when purchasing health information technology. Garfunkel Wild, P.C. can assist you in complying with these rules, so that you can benefit from these significant incentive programs. Please contact Andrew Blustein, Peter Mancino, Terence Russo or any other attorney at Garfunkel Wild, P.C. for more information on these important new rules and how they may impact on your use of health information technology.

About Garfunkel Wild, P.C.

Garfunkel Wild, P.C. was founded in 1980 with a single purpose in mind: to become a pre-eminent health care law firm attending to the unique business and legal needs of its clients. Since then, the firm has grown to over 80 attorneys devoted to addressing the complex legal, regulatory, business and financial needs of its diverse clients.

If you have any questions regarding this Legal Alert, please contact Patrick J. Monahan II, Esq. at (203) 316-0483.

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