



# Health Law Alert

Legal and political developments  
affecting the health care industry

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## Recommended qualifications that define “meaningful use” of health information technology for providers to obtain stimulus funding issued by ONC HIT Policy Committee

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As anticipated and promised, on July 16, 2009, the Office of the National Coordinator for Health Information Technology Health IT Policy Committee voted on recommendations from workgroups, including a matrix of the qualifications that define “meaningful use” of health information technology (“HIT”) in order for providers to obtain incentive payments from federal stimulus funds. The incentive payments will begin in 2011 and be paid through 2016, with penalties commencing in 2017 if providers have not implemented an electronic medical record that qualifies under the definition of “meaningful use.”

The Policy Committee recommended that incentives be paid according to an “adoption year” rather than a calendar year. Accordingly, in order to qualify for the first year incentive payment, an eligible provider must meet the established 2011 measures, including the ability to report quality measures to CMS relating to diabetes, hypertension, cholesterol, smoking cessation, and obesity, as well as reporting on the percentage of orders entered directly by physicians through computer physician order entry (CPOE) and various screening measures. To view the complete matrix accepted by the HIT Policy Committee [click here](#).

The matrix measures to be adopted in order to be considered a “meaningful user” of HIT correspond with the HIT Policy Committee Health Outcomes Policy Priority Objectives. The 2011 and 2013 Objectives Goal is to “electronically capture in coded format and to report health information and use that information to track key clinical conditions.” The 2015 Objectives Goal is to “achieve and improve performance and support care processes and on key health system outcomes.”

The matrix outlines “meaningful use” requirements for both providers and hospitals. The criteria required in 2011 include the following:

- using CPOE for all orders (computer-based entry required by 2011, but electronic interfaces are not required by 2011);
- implementing drug-to-drug, drug-to-allergy, and drug-to-formulary checks;

- maintain up-to-date problem list of current and active diagnoses based on ICD-9 or SNOMED;
- e-prescribing capability;
- maintain active medication lists;
- maintain active medication allergy list;
- record demographics;
- record advance directives;
- record vital signs;
- record smoking status;
- incorporate lab test results;
- generate lists of patients by specific conditions to use for quality improvement;
- report ambulatory quality measures to CMS;
- send reminders to patients for follow-up care;
- implement one clinical decision rule;
- document a progress note for each encounter;
- check insurance eligibility;
- submit claims electronically to payers;
- provide patients with an electronic copy of their health record;
- provide patients with electronic access to health information;
- provide access to patient-specific education resources;
- provide clinical summaries for patients for each encounter;
- ability to exchange key clinical information (this will be further specified by the Health Information Exchange Workgroup of the HIT Policy Committee);
- perform medication reconciliation;
- capability to send electronic data to immunization registries;
- capability to provide electronic syndromic surveillance data to public health agencies;
- compliance with HIPAA privacy and security rules; and
- compliance with fair data sharing practices set forth in the Nationwide Privacy and Security Framework.

Compliance with the HIPAA Privacy and Security Rules includes compliance with the Health Information Technology for Economic and Clinical Act (“HITECH”). For more information concerning the privacy and security requirements set forth in the HITECH Act, please see Nixon Peabody’s [HITECH Act Health Law Alert](#) and also, Nixon Peabody’s [HITECH PowerPoint presentation](#).

The HIT Policy Committee recommended that CMS withhold incentive payments to any entity until any “confirmed HIPAA privacy and security violation has been resolved.” This

is a departure from the Policy Committee's recommendation in the draft plan released June 16, 2009, which would have prohibited incentive payments made to any providers under investigation for HIPAA violations. The HIT Policy Committee also recommended that state Medicaid administrators withhold incentive payments to entities until "any confirmed state privacy or security violation has been resolved."

The release of the HIT Policy Committee's recommendation and criteria required to receive incentive payment provides guidance to physicians and hospitals to evaluate and enhance HIT systems in place or to be purchased. In order to qualify for the maximum amount available, providers should strategize and plan now to implement qualified HIT systems by 2011.

The HIT Policy Committee's recommendations must be approved by the National Coordinator for Health IT and the Center for Medicare and Medicaid Services ("CMS"). It is anticipated that CMS will issue a notice of proposed rulemaking this fall with a final rule to be issued in the spring of 2010. It is further anticipated that an interim final rule will go into effect January 1, 2010.

Nixon Peabody's Health Information Technology team will keep you apprised of the proposed rule making when it is issued by CMS as well as other news affecting the HIT industry. If you have any questions, contact Linn Foster Freedman at (401) 454-1108 or [lfreedman@nixonpeabody.com](mailto:lfreedman@nixonpeabody.com).