



MACRA for Health IT Vendors – New Rule Presents New Opportunities

Andrew B. Flake and Sean T. Sullivan

The Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) and the corresponding proposed rule, published on May 9 and going into effect on January 1, 2017, will directly impact health IT vendors. Most significantly, Meaning Use for Electronic Health Records (EHRs) is going away, to be replaced by something called Advancing Care Information. This change, which some commentators have called “transformational,” will challenge smaller practices, but in this challenge lies tremendous opportunity for health IT vendors to innovate while complying with the new rule. Further, the MACRA rule’s data capture and reporting requirements will also present opportunities for healthcare analytics. Finally, the expansive certification, monitoring, and surveillance obligations will most likely strengthen relationships between healthcare providers and health IT vendors.

Background Information

The MACRA proposed rule is complex, and although this article is not intended to summarize all of them, the following are some key provisions to keep in mind.

First, MACRA only applies directly to Medicare clinicians. It does not apply to hospitals, nor does it apply to Medicaid providers or those who rely exclusively on private insurance. However, any provider or health IT vendor working with EHRs should be familiar with the key provisions regarding the Meaningful Use program for EHRs.

Second, the proposed rule significantly pushes forward value-based reimbursement. Under its provisions, Medicare doctors will be reimbursed through either MIPS (Merit-based Incentive Payment System) (which consolidates previous existing programs) or Advanced APMs (Alternative Payment Models). MIPS, which consolidates aspects of existing programs, allows doctors to be reimbursed by showing success in four categories: quality, cost, Advancing Care Information (EHRs and technology use), and clinical practice improvement activities. MACRA and the proposed rule, however, incentivize clinicians to embrace Advanced APMs, which include bundled payments under existing programs,¹ and allows for future Advanced APMs developed by Medicare as well as by Medicaid programs or commercial payers. If clinicians can participate in Advanced APMs to a sufficient extent, then they will qualify for incentive payments and ultimately be able to cease reporting the MIPS data.

From Meaningful Use to Advancing Care Information

As the CMS Administrator suggested back in January, the proposed MACRA rule replaces Meaningful Use with a category in MIPS called Advancing Care Information, which requires clinicians to use Certified EHR technology. The Office of the National Coordinator for Health Information Technology (ONC) provides the certification, and by 2018, the Certified EHR technology must comply with the ONC’s 2015 Edition Health IT Certification Criteria, which aligns with the new Advancing Care Information measures.

¹ Comprehensive End-Stage Renal Disease Care Model (Large Dialysis Organization arrangement), the Comprehensive Primary Care Plus (CPC+), the MSSP—Track 2, the MSSP—Track 3, the Next Generation Accountable Care Organization Model, and the Oncology Care Model Two-Sided Risk Arrangement (which will be available in 2018).

The Advancing Care Information category reduces the reporting measures to 11 (from the previous 18 under Meaningful Use), and claims to provide more flexibility for clinicians, be customizable, operate more smoothly with Medicare's other reporting programs, and reduce criticized, redundant reporting obligations. The new measurement system does not necessarily mean that EHR systems need to change, but a clinician's use of them will be measured differently. Health IT vendors need to ensure, though, that their EHR technology is certified under the 2015 Criteria as soon as possible.

Opportunities for Health IT Vendors for Making Certified EHRs Available to Small Operators and Assisting with Advanced APMs

As reflected in comments already posted on the proposed rule that overwhelmingly decry it, many solo, small, and medium-sized clinicians groups are troubled by the seemingly heavy burden that the new MACRA imposes on them. While purportedly an effort to "simplify" care quality monitoring programs, the new rule penalizes clinicians for not using Certified EHRs – and strongly incentivizes them to revamp their entire care models and billing procedures to take advantage of Advanced APMs, a change they mostly view as onerous.

Some small operators, in fact, have indicated that they may not be able to continue operating given the potentially enormous cost to collect and report all of this data, transition to Certified EHRs, or face "adjusted" payments under MIPS. They complain that, while removing Meaningful Use, the proposed rule presents a "whole new set of complications."

For health IT vendors, though, this may be an enormous opportunity to show the healthcare industry, and in particular, these small, concerned clinical groups, how to leverage technology to alleviate their concerns. There are, in fact, cost-efficient Certified EHR solutions that can help collect and report this data. Now that small practices are clamoring for a solution or threatening to close shop, the challenge for health IT companies will be to help them through this transition, with an ultimate goal of participating in Advanced APMs to a sufficient extent that MIPS data does not even have to be reported and clinicians receive incentive payments rather than MIPS-based "adjustments."

Move Towards More Data Capture and Reporting Promises Benefits to Big Data

Incentives for greater interoperability, security, and patient access, as well as more comprehensive reporting and surveillance, should enable technology to capture a broader array of data. This more robust and varied set of data, in turn, stands to greatly benefit predictive analytics and population health research solutions. Smart health IT companies will thus embrace the new 2015 Criteria and move towards implementations, with small and large providers alike, that responsibly and securely collect data to advance predictive medicine and population health.

ONC More Directly Involved in Monitoring and Surveillance

Under the proposed rule, the ONC, with its web presence at healthIT.gov, will be taking on a much more active and expanded role in monitoring the certification program. Under the proposed rule, ONC-authorized certification bodies, which provide the testing and certification for EHR technology, will also conduct surveillance to check on the use and capabilities of Certified EHR systems while they are being used by clinicians "in the field." Further, the proposed rule gives the ONC the ability to directly review and evaluate the performance for Certified EHR technology itself and intervene if there are "potential systemic or widespread issues, or in response to problems or issues that could pose a risk to public health or safety, compromise the security or privacy of patients' health information, or give rise to other exigencies."

This "in the field" surveillance, possibly directly by the ONC itself, raises a concern that the ONC could revoke certification status of previously Certified EHRs and other health IT if not meeting "applicable standards, implementation specifications, and certification criteria" on an ongoing basis. Comments to the proposed rule have already raised concerns that the ONC would be overstepping its authority and potentially abusing its surveillance power. On the other hand, if implemented, the rule may also work to encourage health IT vendors and clinicians to build and continue strong support relationships well after implementation of any technology. We will continue to monitor the status of the proposed rule and, should it become active, its impact on providers and health IT companies.

Authors and Contributors

Andrew B. Flake

Partner, Atlanta Office
404.873.7026
andrew.flake@agg.com

Sean T. Sullivan

Associate, Atlanta Office
404.873.8510
sean.sullivan@agg.com

not *if*, but *how*.[®]

About Arnall Golden Gregory LLP

Arnall Golden Gregory, a law firm with more than 150 attorneys in Atlanta and Washington, DC, employs a “business sensibility” approach, developing a deep understanding of each client’s industry and situation in order to find a customized, cost-sensitive solution, and then continuing to help them stay one step ahead. Selected for The National Law Journal’s prestigious 2013 Midsize Hot List, the firm offers corporate, litigation and regulatory services for numerous industries, including healthcare, life sciences, global logistics and transportation, real estate, food distribution, financial services, franchising, consumer products and services, information services, energy and manufacturing. AGG subscribes to the belief “not if, but how.” Visit www.agg.com.

Atlanta Office

171 17th Street, NW
Suite 2100
Atlanta, GA 30363

Washington, DC Office

1775 Pennsylvania Avenue, NW
Suite 1000
Washington, DC 20006

To subscribe to future alerts, insights and newsletters: <http://www.agg.com/subscribe/>

©2016. Arnall Golden Gregory LLP. This legal insight provides a general summary of recent legal developments. It is not intended to be, and should not be relied upon as, legal advice. Under professional rules, this communication may be considered advertising material.