

Oklahoma Health Care Authority

The Oklahoma Health Care Authority (OHCA) values your feedback and input. It is very important that you provide your comments regarding the proposed rule change by the comment due date. Comments can be submitted on the OHCA's [Proposed Changes Blog](#).

OHCA COMMENT DUE DATE: January 16, 2019

The proposed policy is a Permanent Rule. The proposed policy was presented at the November 6, 2018 Tribal Consultation. Additionally, this proposed change will be presented at a Public Hearing scheduled for January 16, 2019. This proposal is scheduled to be presented to the Medical Advisory Committee on January 17, 2019 and to the OHCA Board of Directors on February 14, 2019.

Reference: APA WF 18-10

SUMMARY:

Update Oklahoma Electronic Health Records (EHR) Incentive Program Policy – The proposed revisions amend the Oklahoma EHR Incentive Program policy by changing policy regarding the required SoonerCare patient volume criteria and about documentation to support or correct the provider's EHR attestation.

LEGAL AUTHORITY

The Oklahoma Health Care Authority Act, Section 5007 (F)(1) and (3) of Title 63 of Oklahoma Statutes; Section 5003 through 5016 of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board

RULE IMPACT STATEMENT:

STATE OF OKLAHOMA OKLAHOMA HEALTH CARE AUTHORITY

TO: Ivoria Holt
Federal and State Policy

FROM: Harvey Reynolds
Federal and State Authorities

SUBJECT: Rule Impact Statement
APA WF # 18-10

A. Brief description of the purpose of the rule:

The proposed revisions amend policy about how to qualify for the Oklahoma Electronic Health Records (EHR) Incentive Program by changing the timeframe in which hospitals must meet SoonerCare patient volume criteria for a continuous 90-day period from the preceding calendar year to the preceding federal fiscal year. The proposed revisions also add a 30-day time limit for eligible providers to submit documentation or make corrections to avoid denial of their EHR attestation.

- B. A description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the cost of the proposed rule, and any information on cost impacts received by the agency from any private or public entities:

No classes of persons will be affected by the proposed rule. This rule should not place any cost burden on private or public entities. No information on any cost impacts were received from any entity.

- C. A description of the classes of persons who will benefit from the proposed rule:

No classes of person will benefit from this rule change.

- D. A description of the probable economic impact of the proposed rule upon the affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change:

There is no probable economic impact and there are no fee changes associated with the rule change for the above classes of persons or any political subdivision.

- E. The probable costs and benefits to the agency and to any other agency of the implementation and enforcement of the proposed rule, the source of revenue to be used for implementation and enforcement of the proposed rule, and any anticipated affect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the agency:

Agency staff has determined that the proposed rule is budget neutral.

- F. A determination of whether implementation of the proposed rule will have an economic impact on any political subdivisions or

require their cooperation in implementing or enforcing the rule:

The proposed rule will not have an economic impact on any political subdivision or require their cooperation in implementing or enforcing the rule.

- G. A determination of whether implementation of the proposed rule will have an adverse effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act:

The agency does not anticipate that the proposed rule will have an adverse effect on small businesses.

- H. An explanation of the measures the agency has taken to minimize compliance costs and a determination of whether there are less costly or non-regulatory methods or less intrusive methods for achieving the purpose of the proposed rule:

The agency has taken measures to determine that there are no other legal methods to achieve the purpose of the proposed rule. Measures included a formal public comment period and tribal consultation.

- I. A determination of the effect of the proposed rule on the public health, safety and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk:

The proposed rule should not have any effect on the public health, safety or environment. The proposed rule is not designed to reduce significant risks to the public health, safety or environment.

- J. A determination of any detrimental effect on the public health, safety and environment if the proposed rule is not implemented:

The agency does not anticipate any detrimental effect on the public health, safety or environment if the proposed rule is not implemented.

- K. The date the rule impact statement was prepared and if modified, the date modified:

Prepared date: August 31, 2018

RULE TEXT:

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE
SUBCHAPTER 3. GENERAL PROVIDER POLICIES**

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-28. Oklahoma Electronic Health Records Incentive Program

(a) **Program.** The Oklahoma Electronic Health Records (EHR) Incentive Program is authorized by the American Recovery and Reinvestment Act of 2009. Under this program, SoonerCare providers may qualify for incentive payments if they meet the eligibility guidelines in this section and demonstrate they are engaged in efforts to adopt, implement, upgrade, or meaningfully use certified ~~electronic health records (EHR)~~EHR technology. The ~~Oklahoma EHR incentive program~~Incentive Program is governed by the policy in this section and the Electronic Health Records Program Final Rule issued by the ~~CMS~~Center for Medicare and Medicaid Services (CMS) in CMS-0033-F and ~~45 CFR 170~~Section 170 of Title 45 of the Code of Federal Regulations (C.F.R.). Providers should also use the EHR program manual as a reference for additional program details.

(b) **Eligible providers.** To qualify for incentive payments, a provider must be an "eligible professional" or an "eligible hospital." Providers who receive incentive payments must have an existing Provider Agreement with ~~the OHCA~~the Oklahoma Health Care Authority (OHCA).

(1) **Eligible professionals.** An eligible professional is defined as a physician, a physician assistant practicing in a Federally Qualified Health Center (FQHC) or Rural Health Center (RHC) led by a physician assistant, a board certified pediatrician, a nurse practitioner, a certified nurse midwife, or a dentist. OHCA will determine eligibility based on the provider type, specialty associated with the provider in the ~~MMIS system~~Medicaid Management Information System, and documentation.

(A) Eligible professionals may not be hospital-based, unless they practice predominantly at an FQHC or RHC as defined by the CMS Final Rule. A "hospital-based" professional furnishes ninety percent (90%) or more of their SoonerCare-covered professional services during the relevant EHR reporting period in a hospital setting, whether inpatient or Emergency Room, through the use of the facilities and equipment of the hospital. Specific exclusions to the "hospital-based" definition may be allowed by federal law and are detailed in the Oklahoma EHR Incentive Program provider manual.

(B) Eligible professionals may not participate in both the Medicaid and Medicare EHR incentive payment program during the same payment year.

(2) **Eligible hospitals.** Eligible hospitals are Children's Hospitals or Acute Care Hospitals, including Critical Access Hospitals and cancer hospitals. An Acute Care Hospital is defined as a health care facility where the average length of patient stay is twenty-five (25) days or fewer and that has a CMS certification number that has the last four (4) digits in the series 0001-0879 and 1300-1399. A Children's Hospital is defined as a separately certified children's hospital, either freestanding or hospital-within-hospital, that predominantly treats individuals under ~~21~~twenty-one (21) years of age and has a CMS certification number with the last ~~4~~four (4) digits in the series 3300-3399 or, if it does not have a CMS certification number, has been provided an alternative number by CMS for purposes of enrollment in the Medicaid EHR ~~incentive program~~Incentive Program. Hospitals that do not meet either of the preceding definitions are not eligible for incentive payments.

(c) **Patient volume.** Eligible professionals and eligible hospitals must meet SoonerCare patient volume criteria to qualify for incentive payments. Patient volume criteria compliance will be verified by the OHCA through claims data and provider audits. When calculating SoonerCare patient volume, all SoonerCare populations may be counted. To calculate patient volume, the provider's total SoonerCare patient encounters in the specified reporting period must be divided by the provider's total patient encounters in the same reporting period.

(1) **Eligible professionals.** Eligible professionals must meet a ~~30%~~thirty percent (30%) SoonerCare patient volume threshold over a continuous ~~90-day~~ninety-day (90-day) period in the preceding calendar year or the preceding ~~12-month~~twelve-month (12-month) period from the date of attestation. The only exception is for pediatricians, as discussed in ~~OAC~~Oklahoma Administrative Code (OAC) 317:30-3-28(c)(5).

(2) **Eligible hospitals.** With the exception of children's hospitals, which have no patient volume requirement, eligible hospitals must meet a ~~10%~~ten percent (10%) SoonerCare patient volume threshold over a continuous ~~90-day~~ninety-day (90-day) period in the preceding ~~calendar year~~federal fiscal year or over the ~~most recent continuous 12-month period~~preceding twelve-month (12-month) period from the date of attestation for which data are available prior to the payment year.

(3) **FQHC or RHC patient volume.** Eligible professionals practicing predominantly in ~~an~~a FQHC or RHC may be evaluated according to their "needy individual" patient volume. To

qualify as a "needy individual," patients must meet one (1) of the following criteria:

- (A) Received medical assistance from SoonerCare;
- (B) Were furnished uncompensated care by the provider; or
- (C) Were furnished services at either no cost or reduced cost based on a sliding scale determined by the individual's ability to pay.

(4) **Clinics and group practices.** Clinics or group practices may calculate patient volume using the clinic's or group's SoonerCare patient volume under the following conditions:

- (A) The clinic or group practice's patient volume is appropriate as a patient volume methodology calculation for the eligible professional;
- (B) There is an auditable data source to support the patient volume determination;
- (C) All eligible professionals in the clinic or group practice use the same methodology for the payment year;
- (D) The clinic or group practice uses the entire practice's patient volume and does not limit patient volume in any way; and
- (E) If an eligible professional works inside and outside of the clinic or practice, the patient volume calculation includes only those encounters associated with the clinic or group practice, and not the eligible professional's outside encounters.

(5) **Pediatricians.** Pediatricians may qualify for 2/3 incentive payments if their SoonerCare patient volume is 20-29% ~~twenty to twenty-nine percent (20-29%)~~. A pediatrician is defined as a medical doctor who diagnoses, treats, examines, and prevents diseases and injuries in children and possesses a valid, unrestricted medical license and board certification in Pediatrics through either the American Board of Pediatrics (ABP) or the American Osteopathic Board of Pediatrics (AOBP). To qualify as a pediatrician for the purpose of receiving a 2/3 payment under the incentive program, the provider must provide OHCA with a copy of their pediatric licenses and board certification.

(6) ~~Out-of-state patients~~ **Out-of-state patients.** For eligible professionals and eligible hospitals using ~~out-of-state~~ out-of-state Medicaid recipients for patient volume requirement purposes, the provider must retain proof of the encounter for the ~~out-of-state~~ out-of-state patient.

(d) **Attestation.** Eligible professionals and eligible hospitals must execute an amendment to their SoonerCare Provider Agreement to attest to meeting program criteria through the Electronic Provider Enrollment (EPE) system in order to qualify for incentive

payments. Registration in the CMS EHR Incentive Payment Registration and Attestation system is a pre-requisite to EPE attestation. All required/supporting documentation, additional documentation requests, and/or attestation corrections must be submitted or completed within thirty (30) days of notification to avoid denial of the EHR attestation.

(e) **Adoption/ Implementation/ Upgrade (A/I/U).** Eligible professionals or eligible hospitals in their first participation year under the Oklahoma EHR Incentive ~~Payment~~ Program may choose to attest to adopting, implementing, or upgrading certified EHR technology. Proof of A/I/U must be submitted to OHCA in order to receive payment.

(f) **Meaningful use.** Eligible professionals in their second through sixth participation year and eligible hospitals in their second through third participation year must attest to meaningful use of certified EHR technology. Eligible hospitals must attest to meaningful use if they are participating in both the Medicare and Oklahoma EHR Incentive Programs in their first participation year. The definition of "meaningful use" is outlined in, and determined by, the Electronic Health Records Program Final Rule CMS-0033-F.

(g) **Payment.** Eligible professionals may receive a maximum of \$63,750 in incentive payments over six (6) years. Providers must begin their participation by 2016 to be eligible for payments. Payments will be made one (1) time per year per provider and will be available through 2021. Eligible hospitals cannot initiate payments after 2016 and payment years must be consecutive after 2016.

(1) Eligible professionals and eligible hospitals must use a Taxpayer Identification Number (TIN) to assign a valid entity as the incentive payments recipient. Valid entities may be the individual provider or a group with which the provider is associated. The assigned payee must have a current Provider Agreement with OHCA.

(2) The provider is responsible for repayment of any identified overpayment. In the event OHCA determines monies have been paid inappropriately, OHCA will recoup the funds by reducing any future payments owed to the provider.

(h) **Administrative appeals.** Administrative appeals of decisions related to the Oklahoma ~~Electronic Health Records~~ EHR Incentive Program will be handled under the procedures described in OAC ~~317:2-1-2(b)~~ 317:2-1-2(c). The only exception to this section is when CMS conducts meaningful use audits. Results of any adverse CMS audits are subject to the CMS administrative appeals process and not the state appeal process.