

Via online submission

March 12, 2010

Charlene Frizzera
Acting Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
Attn: CMS-0033-P; Mail Stop C4-26-05
7500 Social Security Blvd.
Baltimore, MD 21244-1850

Re: Medicare and Medicaid Programs, Electronic Health Record Incentive Program; Proposed Rule (CMS-0033-P)

Dear Administrator Frizzera:

The American Occupational Therapy Association (AOTA) is a national professional association representing the interests of approximately 140,000 occupational therapists, assistants, and students. The practice of occupational therapy is science-driven, evidence-based, and enables people of all ages to live life to its fullest by helping to promote health and prevent – or minimize the functional effects of – illness, injury, and disability.

In order to ensure the continued quality of occupational therapy services and patient access to care, it will become increasingly important for occupational therapy services to be captured and stored in electronic form, as part of a larger electronic health record system. It is for these reasons that AOTA appreciates the opportunity to provide comments on the Centers for Medicare and Medicaid Services' (CMS) proposed rule regarding the Electronic Health Record Incentive Program, which was published in the Federal Register on January 13, 2010 (75 Fed. Reg. 1844).

I. The Definition of “Eligible Professionals” Must be More Inclusive

As part of the American Recovery and Reinvestment Act of 2009 (Recovery Act), the Health Information Technology for Economic and Clinical Health Act (HITECH Act) authorized the Medicare and Medicaid programs to improve health care quality through health information technology (HIT) by offering incentive payments to “eligible professionals” who are “meaningful users” of electronic health records (EHR).

The definition of “eligible professionals” (EPs) for purposes of the HITECH Act is narrow and includes physicians who provide covered occupational therapy services (either personally or incident to their physician services) yet excludes occupational therapists

themselves.¹ This definition should be expanded by Congress to include therapists, because occupational therapists are health care professionals who utilize HIT, render medically necessary services along the continuum of care, and are well positioned to record information about a patient's improvements and outcomes even after the patient is no longer under physician care.

The inclusion of occupational therapists on the list of eligible professionals would serve the goals of the HITECH Act: improved health care quality, care coordination, and patient outcomes through HIT. Instead, by excluding occupational therapists, Congressional efforts lose a key set of contributors. AOTA will continue its legislative efforts on this front.

II. Occupational Therapy is a Covered Professional Service that Must be Recordable and Exchangeable as “Key Clinical Information” in Order to Meet Meaningful Use Objectives

Although occupational therapists are not currently “eligible professionals” for purposes of incentive payments, occupational therapy services *are* included in the statutory definition of “covered professional services.”² This inclusion indicates that Congress considered therapy services to be a key piece of clinical information in a complete patient record.

In the section regarding incentives for eligible professionals, the HITECH Act defines “covered professional services” as follows:

(A) COVERED PROFESSIONAL SERVICES.—The term ‘covered professional services’ has the meaning given such term in subsection (k)(3).³

The subsection to which this definition refers, 1848(k)(3), states:

(3) Covered professional services and eligible professionals defined.—For purposes of this subsection:

(A) Covered professional services.—The term “covered professional services” means services for which payment is made under, or is based on, the fee schedule established under this section and which are furnished by an eligible professional.

(B) Eligible professional.—The term “eligible professional” means any of the following:

(i) A physician.

(ii) A practitioner described in section 1842(b)(18)(C).

(iii) A physical or occupational therapist or a qualified speech-language pathologist.

(iv) Beginning with 2009, a qualified audiologist (as defined in section 1861(l)(3)(B)).⁴

¹ Social Security Act § 1861(r) (as incorporated in HITECH Act § 4101(a); Social Security Act § 1848(o)(5)(C).

² Social Security Act §§ 1842(b)(18)(C), 1848(k)(3).

³ HITECH Act § 4101(a); Social Security Act § 1848(o)(5)(A).

⁴ Social Security Act § 1848(k)(3).

The additional practitioners referenced in 1842(b)(18)(C) include the following:

- (C) A practitioner described in this subparagraph is any of the following:
 - (i) A physician assistant, nurse practitioner, or clinical nurse specialist (as defined in section 1861(aa)(5)).
 - (ii) A certified registered nurse anesthetist (as defined in section 1861(bb)(2)).
 - (iii) A certified nurse-midwife (as defined in section 1861(gg)(2)).
 - (iv) A clinical social worker (as defined in section 1861(hh)(1)).
 - (v) A clinical psychologist (as defined by the Secretary for purposes of section 1861(ii)).
 - (vi) A registered dietitian or nutrition professional.⁵

Thus, for the purposes of the HITECH Act, the definition of “covered professional services” includes physicians, occupational therapists, and selected other health care professionals.⁶ AOTA consequently believes that the HITECH Act intends for certified EHR to have the capability of capturing all information about relevant covered professional services (as defined by § 1848(k)(3)) for which payment is made under, or is based on, the Medicare fee schedule.

This is a logical conclusion that can be illustrated by the value of including occupational therapy services in EHR in instances where such services were provided. Orders for therapy services, a record of medically necessary therapy services rendered, patient functional status, comorbidities, and outcomes are all pieces of “key clinical information” that constitute a complete patient record and allow for improved coordination of care.

We therefore request that CMS revise the proposed rule to add relevant, setting-specific covered professional services to the examples of “key clinical information” in 42 C.F.R. § 495.6(d)(8)(i) and (e)(5)(i) that must be recordable and exchangeable as a Stage I meaningful use objective for eligible professionals, eligible hospitals, and critical access hospitals.⁷ The revised regulations would read:

(d) Additional Stage 1 criteria for EPs. An EP must meet the following objectives and associated measures:

...

- (8) (i) *Objective*. Capability to exchange key clinical information (**including documentation of relevant covered professional services specific to the setting**) among providers of care and patient authorized entities electronically.
- (ii) *Measure*. Perform at least one test of certified EHR technology’s capacity to electronically exchange key clinical information.

(e) Additional Stage 1 criteria for eligible hospitals or CAHs. Eligible hospitals or CAHs must meet the following objectives and associated measures:

...

⁵ Social Security Act § 1842(b)(18)(C).

⁶ Social Security Act §§ 1842(b)(18)(C), 1848(k)(3) (as incorporated in HITECH Act § 4101(a); Social Security Act § 1848(o)(5)(A)).


⁷ 75 Fed. Reg. 1844, 1857, 1865, 1869, 1994 (January 13, 2010).

- (5) (i) *Objective*. Capability to exchange key clinical information (for example, discharge summary, procedures, problem list, medication list, allergies, **documentation of relevant covered professional services**, and diagnostic test results) among providers of care and patient authorized entities electronically.
- (ii) *Measure*. Performed at least one test of certified EHR technology's capacity to electronically exchange key clinical information.

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AOTA respectfully requests that careful consideration be given to these comments. Should you have any questions, or if you would like additional information, please contact us at (301) 652-6611 ext. 2023 or jhitchon@aota.org. AOTA looks forward to a continuing dialogue with CMS on the nexus between HIT, EHR, and occupational therapy.

Sincerely,



Jennifer Hitchon
Regulatory Counsel

The American Occupational Therapy Association, Inc.