

SAMPLE “MEANINGFUL USE” PROVISION
FOR USE BY RBMA MEMBERS
IN A HOSPITAL/RADIOLOGY GROUP
PROFESSIONAL SERVICES AGREEMENT*

Introduction

The EHR Incentive Program final rule implements provisions of the American Recovery and Reinvestment Act (ARRA) of 2009, more commonly known as the Stimulus Bill, and provides incentive payments to eligible professionals (“EPs”), eligible hospitals (“EHs”), and critical access hospitals for adopting and successfully demonstrating meaningful use of certified EHR technology. The vast majority of radiologists are defined as EPs under the Medicare and Medicaid EHR Incentive Programs resulting from the change in definition of a “hospital-based” EP in the final rule. The final rule defines a hospital-based EP as one who provides 90 percent or more of his/her services in the hospital inpatient (POS 21) and emergency room (POS 23) settings only.

Purpose

One potential strategy for hospital-based radiologists to qualify for and participate in the EHR Incentive Program is to modify their hospital(s) professional services agreement with the requirement that the hospital(s) provide them with access to certified Ambulatory EHR technology consistent with the ARRA.

Sample Provision

Note: This sample language below may be included in the section describing the hospital’s obligations to provide technology, support, services, etc. or in a separate section regarding technology, software, electronic health records:

Hospital shall provide qualified and certified electronic health record (“EHR”) technology designed for an ambulatory setting in accordance with 45 CFR 170.302 and 45 CFR 170.304 and shall permit Radiology Group and its Radiologists access to and use of such EHR technology in order for each Radiologist to demonstrate meaningful use of EHR for purposes of the Medicare and Medicaid Electronic Health Record Incentive Programs under the American Recovery and Reinvestment Act of 2009 (“ARRA”) and applicable regulations promulgated thereunder.

RBMA’s Federal Affairs Committee is grateful to Cynthia Alcantara, JD, and Tom Greeson, JD, of Reed Smith LLP for the above sample “Meaningful Use” provision for a hospital/radiology group professional services agreement.

* Provision of sample language does not constitute legal advice. A radiology group should consult with its legal counsel regarding drafting and review of specific contract language.