

S. 1347 Electronic Health Fairness Act of 2015

Current Law:

The Health Information Technology for Economic and Clinical Health (HITECH) Act of 2009 authorized Medicare and Medicaid incentive payments to promote the use of electronic health record (EHR) technology. Eligible hospitals and physicians qualify for incentive payments under the HITECH Act if they become meaningful users of certified EHR technology (CEHRT). In order to demonstrate meaningful EHR use, providers must attest to using their EHR systems to meet a series of objectives (and associated measures); for example, capturing patient data, electronic prescribing, and exchanging summary of care information with other health care providers.

Eligible physicians who demonstrate meaningful CEHRT use can receive up to \$43,720 in Medicare incentive payments over five years. Beginning in 2015, eligible physicians who do not successfully demonstrate meaningful use will be subject to a payment adjustment that reduces their Part B reimbursement for covered professional services furnished for the year; payment reductions can range from 1 percent to 5 percent. The Medicare payment adjustment terminates at the end of 2018. Thereafter, meaningful use will be used as one of the components of the composite score under the Merit-based Incentive Payment System (MIPS) program established by the Medicare Access and CHIP Reauthorization Act of 2015.

To qualify for Medicare EHR incentive payments, the Secretary determined eligible physicians must furnish at least 50 percent of their patient encounters during the reporting period in locations with CEHRT. HITECH excluded physicians who furnish ‘substantially all’ of their services in an inpatient hospital or hospital emergency department using CEHRT. The Secretary has determined that physician encounters furnished in an ambulatory surgical center (ASC) are included in the total number of encounters of which at least 50 percent have to be furnished in a setting with CEHRT.

HITECH requires physicians (and hospitals) to use certified EHR technology to receive incentive payments and avoid payment reductions. HITECH did not include ASC facilities in the Medicare EHR incentive program, development of EHR products specifically for the ASC setting has not been a priority, nor has it been included in the certification process.

S. 1347, as modified:

The Chairman’s Mark would exclude ASC services from being counted toward the 50 percent meaningful use eligibility threshold until CEHRT applicable to the ASC setting is available. This exclusion would end three years after the Secretary, by rulemaking, determines that CEHRT applicable to the ASC setting is available.