



A Family Practice Management blog



Notes on Coding & Reimbursement from Kent J. Moore and Cindy Hughes, CPC

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CMS proposes to align eRx and EHR incentive programs

We have previously [posted](#) that even though physicians who are participating in the Centers for Medicare & Medicaid Services (CMS) EHR Incentive Program in 2011 are not eligible to receive an incentive under the CMS eRx Incentive Program, they could be subject to a penalty for not participating in the eRx Incentive Program (1 percent for 2012, 1.5 percent for 2013, and 2 percent for 2014). In a [proposed rule](#) published in the June 1, 2011, *Federal Register*, CMS has noted their desire to better align the two programs. This proposed rule is complex but has key provisions of importance to any physician who may be subject to a penalty for failure to participate in the CMS eRx Incentive Program but who intends to participate in the EHR Incentive Program this year.

CMS proposes that use of an EHR meeting the certification requirements for meaningful use will qualify for a hardship exemption under the CMS eRx Incentive Program. CMS is proposing that the eligible professional must:

1. Have registered for either the Medicare or Medicaid EHR Incentive Program (for instructions on how to register for one of the EHR Incentive Programs, see [the registration page](#) of the EHR Incentive Programs section of the CMS web site); and
2. Provide identifying information as to the certified EHR technology (as defined at 45 CFR 170.102) that has been adopted for use no later than October 1, 2011, for a hardship exemption to be submitted, which then would be reviewed on a case-by-case basis.

In requesting a significant hardship exemption of the type CMS is proposing, physicians would be attesting to having purchased certified EHR technology (as identified by the certification number and/or serial number) or having the specified certified EHR technology

available for immediate use with the intention of using it to qualify for a Medicare or Medicaid EHR incentive payment for 2011.

Because this proposed change would not be finalized before June 30, 2011 (the end of the 2012 eRx payment adjustment reporting period), it would not apply for purposes of reporting the eRx measure for the 2012 eRx payment adjustment. In other words, meeting this new hardship exemption could qualify you for the 1 percent incentive in 2011 and exempt you from the 1.5 percent penalty in 2013, but you will still need to submit 10 claims indicating your use of a qualified eRx system before June 30, 2011 to avoid the off-setting 1 percent penalty for 2012.

In the proposed rule, CMS has suggested additional exemptions for the eRx program. If the rule is implemented, physicians would be able to request consideration for a significant hardship exemption from the 2012 eRx payment adjustment if one of the following circumstances applies:

- The practice is located in a rural area without high speed Internet access.
- The practice is located in an area without sufficient available pharmacies for electronic prescribing.
- The physician has registered to participate in the Medicare or Medicaid EHR Incentive Program and adoption of certified EHR technology.
- The physician lives in an area where a local, state or federal law or regulation prevents e-prescribing (e.g., such as those prohibiting paperless prescriptions for narcotics). (Must cite law/regulation.)
- The physician has limited prescribing activity. (Must submit number of prescriptions written.)
- The physician has insufficient opportunities to report the electronic prescribing measure due to limitations of the measure's denominator.

The proposed rule would require that you provide the following to CMS by Oct. 1, 2011, to request an exemption:

1. Identifying information such as the TIN, NPI, name, mailing address, and e-mail address of all affected eligible professionals.
2. The significant hardship exemption category(ies) above that apply.
3. A justification statement describing how compliance with the requirement for being a successful electronic prescriber for the 2012 eRx payment

adjustment during the reporting period would result in a significant hardship to the eligible professional or group practice.

4. An attestation of the accuracy of the information provided.

CMS proposes to have an online tool for submission of exemptions by Oct. 1, 2011, but should that fail to happen, requests for exemption would need to be submitted by mail and postmarked no later than that date. We will keep you posted on how this works out.

CMS is requesting comments on this proposed rule and particularly on whether the serial number of the EHR product should be required for identification of the certified EHR technology the physician has purchased and adopted to meet the requirements for the EHR incentive program. The AAFP will submit a comment letter about this still overly complex process. You too can provide comments online at www.regulations.gov (enter ID CMS-3248-P to bring up this docket). The rule is open for public comment until July 25, 2011.