

Health Information Compliance Alert

E-Prescribing Penalty: CMS Finalizes Four New Ways to Avoid 2012 E-Prescribing Payment Penalty

Get your exemption application to CMS no later than Nov. 1 if you want to be considered.

Hoping to avoid a one percent hit to your Part B pay in 2012? CMS just made that a lot easier by issuing a Final Rule that offers four exemptions to the e-prescribing penalty that will kick in next year.

As you are probably aware, starting in 2012, practitioners will be subject to a one percent payment adjustment on your Part B pay if you don't successfully participate in e-prescribing this year. In 2013, that payment adjustment will go up to 1.5 percent, and in 2014 it will rise to two percent. Although CMS previously announced ways that practitioners could avoid the penalty, physician practices complained that the exemptions were too limited and did not cover all of the realistic scenarios. To that end, CMS finalized four additional ways that eligible professionals (EPs) can potentially avoid the adjustment next year, thanks to a Final Rule issued on Aug. 31.

The imminent penalty for physicians who don't e-prescribe "created quite a bit of concern about circumstances where doctors will potentially be penalized, not necessarily because of failure to electronically prescribe, but more so because of some complexities with regard to the measurement," said **Michael Rapp, MD, JD**, director of the quality measurement and health assessment group at CMS, during a CMS open door forum earlier this year.

Previously, physicians could apply for a hardship exemption only if they could prove a lack of access to the internet in their area or limited access to pharmacies that accepted electronic prescribing. But under the newly-finalized regulations, published in the Federal Register, EPs would be eligible to request an exemption from the penalty if they submit their request by Nov. 1 and subsequently receive CMS approval.

"We remain committed to the many benefits that come to patients with successful electronic prescribing, and we continue to encourage health care professionals to adopt this practice," said CMS's **Patrick Conway, MD, MSc**, in an Aug. 31 statement. "However, we also can appreciate and acknowledge that this technology poses challenges to some providers. Changes in the final rule will help doctors and other health care providers in their efforts to become successful e-prescribers, ultimately leading to fewer errors and better care for patients."

You may be eligible to apply for an exemption if you meet one of the following additional four criteria:

1. Registration in the Medicare or Medicaid EHR Incentive Programs With Intended Adoption of Certified EHR Technology

Practitioners who intend to start participating in the EHR Incentive Program might still be getting their technology in place, so they may not have e-prescribed ten times within the first six months of 2011, as is required to avoid the penalty. The new proposal aims to offer those practices a potential exemption.

"Many physicians, we've been informed, intend to participate in that [program] but may not necessarily have gotten the certified EHR that they need to, and since they don't have to begin to participate until Oct. 1 to take advantage of the 2011 program, they may not get their equipment until then," Rapp said during the CMS call. "So one of the hardships that physicians could apply for would be those who register to participate in the Medicare EHR incentive program and intend to participate and have obtained or have access for immediate use to the certified EHR technology," he said.

2. Prescribing Medications That Legally Cannot Be Electronically Transmitted

Many state, local, or federal regulations prohibit EPs from electronically prescribing certain medications, such as narcotics -- but practices that prescribe large quantities of these drugs (for instance, some pain management physicians)

may find that they can't electronically prescribe even if they'd like to participate in the incentive program.

"Many physicians, so we're told, principally prescribe narcotics, and there is no way that they can effectively prescribe narcotics using electronic prescribing in their circumstances, and that would create a hardship for those doctors," Rapp noted during the CMS teleconference.

3. Limited Prescribing Activity

Some practitioners may appear to be eligible for the e-prescribing penalty because they perform enough office visits to meet the threshold, but in reality, those physicians may not prescribe medications for various reasons. CMS reps have gotten calls from doctors who say, "Even though we have those types of visits that I bill for, I don't really prescribe at all," Rapp noted.

4. Insufficient Opportunities to Report the E-Prescribing Measure Due to Limitations in the Measure's Denominator

Issues persist that are inherent to the measure denominator under the program, Rapp acknowledged. "The denominator is limited to certain billing codes, so even though the person electronically prescribes, the physician does it in circumstances other than those that are billed for," Rapp said. For instance, a surgeon may electronically prescribe, but the prescriptions aren't associated with the types of visits included in the e-prescribing measure's denominators.

Heed Nov. 1 Deadline

Under the final rule, EPs have until Nov. 1, 2011 to request a hardship exemption, which should include the following information:

- Identifying information such as the TIN, NPI, name, address, and email address of all affected EPs
- The hardship exemption categories that apply
- A justification statement describing how the e-prescribing requirement would create a significant hardship
- An attestation of the accuracy of the information.

CMS will determine exemptions on a case-by-case basis, and the exemptions only apply to penalties that would be imposed in 2012. The Final Rule indicates that "Individual eligible professionals must submit significant hardship exemption requests using a Web-based tool only. Information on how to access the Web-based tool as well as detailed instructions for applying for a significant hardship exemption will be available on the eRx Incentive Program website at www.cms.gov/erxincentive." However, as of press time, CMS had not yet posted instructions on how to apply for the exemption.

To read the complete final rule, visit www.ofr.gov/OFRUpload/OFRData/2011-22629_PI.pdf.