

July 18, 2011

## THE PHYSICIAN E-PRESCRIBING INCENTIVE PROGRAM: PROPOSED RULE

### AT A GLANCE

#### **The Issue:**

On June 1, the Centers for Medicare & Medicaid Services (CMS) published in the *Federal Register* a [proposed rule](#) with changes to the physician electronic prescribing (e-Prescribing) Incentive Program. The rule would:

- Modify the 2011 e-prescribing measure to recognize adoption of certified electronic health record (EHR) technology as a “qualified” system under the e-Prescribing Program, to take effect beginning with the 2013 e-prescribing payment adjustment;
- Provide four additional hardship exemption categories to allow qualifying eligible professionals (EPs), including physicians and group practices, to avoid the 2012 e-prescribing payment adjustment, including an exemption category for those EPs who intend to participate in the EHR Incentive Program by October 1, 2011; and
- Extend until October 1, 2011 the deadline for all exemption requests – including the two exemption categories adopted in the calendar year (CY) 2011 Medicare physician fee schedule (PFS) final rule last November.

Comments on the proposed rule are due to CMS by July 25.

#### **Our Take:**

We are pleased CMS has acknowledged that there are inconsistencies between its e-Prescribing and EHR Incentive Programs and proposes steps to align the technological requirements between the two programs. The AHA supports the agency’s proposal to expand its hardship exemption categories to include one that would exempt qualifying EPs from the negative 1.0 percent e-prescribing payment adjustment in 2012 if they indicate that they will participate in the EHR incentive program by October 1, 2011. We will encourage CMS to determine the 2012 e-prescribing payment adjustment based on a full year (rather than six months) of 2011 data, which will allow more EPs to meet the requirement.

#### **What You Can Do:**

- √ Share this advisory with your chief medical officer, chief information officer, chief financial officer and other members of your senior management team.
- √ Determine whether you qualify for a hardship exemption, and submit a request for consideration by October 1.
- √ Consider submitting comments on the proposed rule by July 25.

#### **Further Questions:**

Please contact Ashley Thompson, AHA director of policy, at (202) 626-2688 or [athompson@aha.org](mailto:athompson@aha.org).

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On June 1, the Centers for Medicare & Medicaid Services (CMS) published in the *Federal Register* a proposed rule with changes to the physician electronic prescribing (e-Prescribing) Incentive Program. The proposed rule is available at <http://www.gpo.gov/fdsys/pkg/FR-2011-06-01/pdf/2011-13463.pdf>. Comments on the rule are due to CMS by July 25.

### **BACKGROUND**

The *Medicare Improvements for Patients and Providers Act of 2008* authorized the Secretary of the Department of Health and Human Services to create a program to encourage the adoption and use of e-prescribing technology. Eligible professionals (EPs), including qualifying physicians and group practices participating in the e-prescribing group practice reporting option (GPRO), have been eligible to receive financial incentives since 2009 if they are successful electronic prescribers or generate and transmit prescriptions and prescription-related information electronically.

EPs who are successful e-prescribers in calendar years (CYs) 2011 and 2012 may earn an incentive payment of 1.0 percent of estimated charges for Medicare Part B physician fee schedule (PFS) services provided during the reporting period. This incentive payment drops to 0.5 percent in 2013. A 1.0 percent payment penalty for nonparticipation in the e-prescribing program begins in 2012. This penalty increases to 1.5 percent in 2013 and 2.0 percent in 2014. To avoid the 2012 e-prescribing penalty, CMS has required that an EP report on 10 e-prescribing events between January 1 and June 30, 2011. The AHA supports basing the 2012 payment adjustment on a full year (rather than six months) of 2011 data, which would allow EPs more time to meet the e-prescribing requirement.

In addition, the Medicare and Medicaid Electronic Health Record (EHR) Incentive Programs created by Congress in the 2009 *American Recovery and Reinvestment Act* provide financial incentives and penalties to physicians and hospitals that are “meaningful users” of certified EHRs. Under the EHR Incentive Program, EPs are required to adopt certified EHR technology, which must

include the capability to perform certain e-prescribing functions that are similar to – but not the same as – those required for the e-Prescribing Incentive Program. Currently, participants can earn an incentive payment under either the e-prescribing program or the EHR program, but not both.

### **AT ISSUE**

A February report from the Government Accountability Office (GAO) on *Electronic Prescribing* encouraged CMS to address a number of inconsistencies between its e-Prescribing and EHR Incentive Programs. The requirements under these two programs are often confusing, conflicting and duplicative. In this proposed rule, CMS responds to the GAO report and proposes provisions to more closely align the two programs.

#### ***Proposed Modification to the CY 2011 e-Prescribing Measure***

In order to meet the current requirements of the e-Prescribing Incentive Program, EPs must have a “qualified” e-prescribing system that:

- Generates a complete active medication list, incorporating data received from applicable pharmacies and pharmacy benefit managers;
- Allows EPs to select medications, print prescriptions, electronically transmit prescriptions and conduct alerts (such as drug-drug interactions);
- Provides information related to lower cost, therapeutically appropriate alternatives if they exist; and
- Provides information on formulary or tiered formulary medications, patient eligibility and authorization requirements received electronically from the patient’s drug plan.

CMS proposes to revise the 2011 measure to allow EPs to meet the requirements for a qualified e-prescribing system if the e-prescribing component is part of a certified EHR. Thus, for the 2013 payment adjustment, CMS proposes to expand its definition of a qualified e-prescribing system to one that either performs the four functionalities above or is part of a certified EHR. In its proposal, CMS specifically indicates that EHR technology would be recognized as a qualified system under the revised e-prescribing quality measure, regardless of whether the certified EHR technology has all four of the above functionalities.

If adopted, the proposed change would not be effective until the final rule is published later in 2011. It would not be applied retrospectively.

#### ***Proposed Modification to the Significant Hardship Exemption Categories***

Since CMS cannot release a final rule before the end of the 2012 e-prescribing payment adjustment reporting period (June 30, 2011), the agency proposes to allow EPs to request consideration for “significant hardship exemptions” associated with the 2012 e-prescribing payment adjustment.

In its November 2011 PFS final rule, CMS allowed providers to apply for a significant hardship exemption if the EP was in a rural area with limited high-speed Internet access or if the EP was in an area with limited pharmacies for e-prescribing. In this proposed rule, CMS presents four additional hardship exemption categories for the 2012 e-prescribing payment adjustment:

1. **EPs who register to participate in the Medicare or Medicaid EHR Incentive Programs and adopt certified EHR technology.** Specifically, CMS proposes that EPs who register for either the Medicare or Medicaid EHR Incentive Program and provide identifying information for the certified EHR technology that has been adopted for use by October 1, 2011, may be exempt from the 2012 e-prescribing penalty, even if they have not yet reported 10 e-prescribing events. This identifying information would consist of the certification number that is assigned to the EHR technology from the Office of the National Coordinator for Health Information Technology's Certified HIT Products List. In addition, CMS is considering requiring EPs to provide a serial number for their specific product, and the agency is requesting comments about the feasibility of requiring providers to do so.
2. **EPs who demonstrate an inability to electronically prescribe due to local, state or federal law or regulation.** This would include, for example, EPs who prescribe a large volume of narcotics, which may not be electronically prescribed in some states, or EPs who practice in a state that prohibits the transmission of electronic prescriptions via a third party network such as Surescripts.
3. **EPs who have limited prescribing activity.** This would include, for example, EPs who prescribed fewer than 10 prescriptions between January 1 and June 30 (regardless of whether the prescriptions were electronically prescribed), or a nurse practitioner who may not write prescriptions under her or his own National Provider Identifier.
4. **EPs who have insufficient opportunities to report the e-prescribing measure due to limitations of the measure's denominator.** This would include, for example, an EP that has denominator-eligible visits but does not normally write prescriptions associated with any of the types of visits included in the e-prescribing measure's denominator (i.e., surgeons).

To request a hardship exemption, CMS proposes that providers submit an application (possibly using a web-based tool or interface) to the agency by October 1, 2011. The application would include:

- Identifying information such as the tax identification number, National Provider Identifier, name, mailing address and email addresses of all affected EPs;

- The significant hardship exemption category/categories that apply;
- A justification statement describing how compliance with the requirement would result in a significant hardship; and
- An attestation to the accuracy of the information provided.

CMS would review the information submitted and make decisions on a case-by-case basis.

CMS also proposes to extend the deadline to October 1, 2011, for submitting hardship exemption requests for EPs practicing in an area with limited high-speed Internet access or in areas with limited available pharmacies for e-prescribing.

### **NEXT STEPS**

The AHA encourages you to submit comments on the proposed regulation if you determine the changes will benefit the physicians in your hospital or health system. Comments are due to CMS by July 25 and may be submitted electronically at <http://www.regulations.gov>. Follow the instructions for “submitting a comment.”

CMS also accepts written comments via regular or overnight/express mail.

#### **Via regular mail**

Centers for Medicare & Medicaid Services  
Dept. of Health and Human Services  
Attention: CMS-3248-P  
P.O. Box 8013  
Baltimore, MD 21244-8013

#### **Via overnight or express mail**

Centers for Medicare & Medicaid Services  
Dept. of Health and Human Services  
Attention: CMS-3248-P  
Mailstop: C4-26-05  
7500 Security Boulevard  
Baltimore, MD 21244-1850