

Medicare ePrescribing penalty

Act now to avoid the Medicare ePrescribing penalty that starts January 1, 2012

Background on the Medicare ePrescribing penalty program

The Medicare Improvements for Patients and Providers Act of 2008 established a five-year Medicare incentive program beginning in 2009 to promote the adoption and use of ePrescribing by eligible professionals, including physicians. The law also included a penalty phase beginning in 2012 for physicians who are eligible for the Medicare ePrescribing incentive payments but fail to e-prescribe.

On August 31, 2011, the Centers for Medicare & Medicaid Services (CMS) released the final regulation on the 2012 Medicare ePrescribing penalty program. The American Medical Association (AMA) has tremendous concerns regarding the ePrescribing penalty that is scheduled to begin January 1, 2012. The penalty for **not** successfully participating in the program or **not** filing for an exemption on time is a **1 percent payment reduction** for all Medicare claims based on the 2012 fee schedule amounts during the year. AMA leadership has stressed repeatedly to senior CMS officials of the urgent need to change this policy.

Although we are very disappointed that the final rule does not include an additional reporting period in 2012 as the AMA recommended, it does reflect several significant improvements that were requested by the AMA. The final rule provides more flexibility under the exemption categories, which means more physicians can be eligible and thus avoid the 2012 ePrescribing penalty. Physicians can also apply for more than one exemption. **In addition, CMS extended the deadline in which to apply for an exemption to November 1, 2011. CMS strongly encourages physicians to apply for an exemption as soon as possible to avoid claims reprocessing.**

Avoiding the 2012 Medicare ePrescribing penalty

Physicians and other eligible professionals who meet the following criteria will **not** be subject to the 2012 Medicare ePrescribing penalty. If you meet one of the following criteria, you will automatically be excluded from the penalty and no action is required on your part:

- You are not an MD, DO, podiatrist, nurse practitioner, or physician assistant as of June 30, 2011.
- Office visits and other services listed in the CMS ePrescribing measure specifications represent less than 10 percent of your allowed Medicare Part B charges in the first six months of 2011 (January 1, 2011–June 30, 2011) (Link to CMS' measure specifications at www.cms.gov/ERxIncentive/06_E-Prescribing_Measure.asp#TopOfPage and click on "2011 eRx Measure Specifications, Release Notes and Claims-Based Reporting Principles.")
- Less than 100 of your claims for Medicare Part B patient services contain visit and service codes that fall within the ePrescribing measure specifications for dates of service between January 1, 2011 and June 30, 2011.

In addition, if a physician or eligible professional has already taken one of the actions described below, the 2012 ePrescribing penalty will not apply:

- You do not have prescribing privileges and you reported the G-code, G8644, at least one time on a Medicare Part B claim prior to June 30, 2011.
- Your practice is located in a rural area without high-speed Internet access and you reported the G-code, G8642, on a Medicare Part B claim by June 30, 2011.
- Your practice is located in an area without sufficient available pharmacies for ePrescribing and you reported the G-code, G8643, on a Medicare Part B claim by June 30, 2011.

CMS' announcement of more ways physicians can avoid the 2012 Medicare ePrescribing penalty by applying for a hardship exemption

The final rule expands the number of ways physicians can avoid the ePrescribing penalty that is scheduled to begin on January 1, 2012. Below are the significant hardship exemption categories you can apply for to avoid the penalty:

- Your practice is located in a rural area without high-speed Internet access.
- Your practice is located in an area without sufficient available pharmacies for ePrescribing (CMS clarified by providing more examples including disruption of e-prescriptions between physician offices and pharmacies caused by natural disasters).
- You are registered to participate in the Medicare or Medicaid electronic health record (EHR) Incentive Program and you adopted certified EHR technology by October 1, 2011, and did so prior to requesting an exemption.¹
- You are unable to electronically prescribe due to local, state or federal law or regulation, (CMS clarified that physicians who mainly prescribe narcotics but due to certain limitations cannot submit these prescriptions electronically can apply for this exemption category).
- Limited prescribing (you do not prescribe on a regular basis).
- There were too few opportunities for you to report the ePrescribing measure due to limitations of the measure's denominator (you do e-prescribe but your electronic prescriptions are not related to qualifying visits/services).

Physicians should take steps now to avoid the 2012 Medicare ePrescribing penalty

Step 1: Determine if you meet the criteria that would exclude you from being subject to the ePrescribing penalty.

Step 2: If you do not meet the exclusion criteria, determine if you fall under one or more of the significant hardship exemption categories mentioned above that would exempt you from the 2012 Medicare ePrescribing penalty.

Step 3: If you meet one or more of the exemption categories, file for an exemption that applies to your particular hardship situation by using CMS' Web-based tool. This link takes you directly to the exemption request page on the CMS website: www.qualitynet.org/portal/server.pt/community/communications_support_system/234

Step 4: When you apply online for an exemption, be sure to include the following information in your request:

- Identifying information such as the TIN, individual NPI, name, mailing address and email address of all affected eligible professionals.
- The significant hardship exemption category that applies.
- A justification statement describing how compliance during the reporting period for the 2012 Medicare ePrescribing penalty program resulted in a significant hardship to you.
- An attestation of the accuracy of the information provided.

Important things to note if you are applying for an exemption

Although physicians are required to apply for one exemption category to avoid the penalty, CMS will allow physicians to apply for one exemption and explain in their justification statement all of the exemption categories that apply to their particular hardship. There is no appeal process, so please make sure you apply for an exemption that is applicable to your situation. **If you are not sure whether or not you successfully participated in the ePrescribing program, or you are not sure if you are subject to penalties, you should go ahead and apply online**

¹ In order to register for the Medicare EHR program, you must be enrolled in the Medicare enrollment database known as PECOS. There are three ways to verify that you have an enrollment record in PECOS: (1) Check CMS' list of physicians in PECOS at: <http://www.cms.gov/MedicareProviderSupEnroll/downloads/OrderingReferringReport.pdf>. Please note this file is extremely large and takes several minutes to download, though physician names are alphabetized.; (2) Contact your local Medicare enrollment contractor and ask if you have an enrollment record in PECOS. For a list of Medicare contractor contacts visit: http://www.cms.gov/MedicareProviderSupEnroll/downloads/contact_list.pdf; and (3) Use Internet-based PECOS to look for your PECOS enrollment record. If no record is displayed, you do not have an enrollment record in PECOS. Go to <https://pecos.cms.hhs.gov/pecos/login.do>. If you have trouble accessing your file, visit: <http://www.cms.gov/MedicareProviderSupEnroll/Downloads/ContactInformation.pdf> for assistance.

for any exemption that pertain to your particular hardship as soon as you can.

Individual physicians must apply online via CMS' Web-based tool for an exemption by no later than November 1, 2011, in order to avoid the January 1, 2012, Medicare ePrescribing penalty. Applications cannot be submitted via mail, email or fax. CMS is strongly encouraging physicians to apply for exemption as soon as possible and prior to November 1, 2011, in order to avoid claims reprocessing.

Any questions regarding the use of CMS' Web-based tool should be directed to the Quality Net Help Desk at Qnetsupport@sdps.org or by calling (866) 288-8912. Visit www.cms.gov/ERxIncentive/11_HelpDeskSupport.asp#TopOfPage for additional information on the QualityNet Help Desk.

Group practices: Applying for an exemption

Group practices cannot submit requests online. Group practices already participating in the 2011 ePrescribing group practice reporting option that wish to submit an exemption request must submit their request via a mailed letter containing all of the information necessary for the exemption request. The letter must be postmarked no later than November 1, 2011. More information on how these group practices may request for an exemption via mail, such as the mailing address for submitting this request, is available on CMS' Electronic Prescribing Incentive Program website at: http://www.cms.gov/ERxIncentive/Downloads/2011eRxRule-QRG_09-06-2011F.pdf

CMS information on the recoupment process

CMS currently plans to recoup the 1 percent penalty via a 1 percent reduction in 2012 payment schedule amounts for physicians subject to the penalty. Please review additional operational details at: https://questions.cms.hhs.gov/app/answers/detail/a_id/10560/kw/payment%20adjustment/session/L3NpZC83aDJPM2dFaw%3D%3D.

Additional resources

- AMA website on Medicare enrollment (www.ama-assn.org/go/Medicareenrollment)
- AMA website on health IT incentive programs (www.ama-assn.org/go/hit, select "Incentive Programs")
- CMS website on the Electronic Prescribing Incentive Program (www.cms.gov/erx incentive/)