

Government Issues New “Hardship Exemptions” Under Medicare’s Electronic Prescribing Program and Extends Deadline to Avoid Penalties

On September 6, 2011, CMS published its final rule establishing changes to the Medicare Electronic Prescribing (eRx) Incentive Program, including the creation of additional hardship exemptions to avoid unfairly penalizing healthcare providers who, for a variety of reasons, are unable to meet the requirements of the incentive program. Providers who demonstrate that they fall into one of the new hardship exemption categories will be exempt from the 1% penalty to be imposed in 2012 on those who did not engage in electronic prescribing at least 10 times between January 1, 2011 and June 30, 2011.

Certain other providers are automatically exempt from the 2012 penalty. These include providers who had fewer than 100 Medicare patient visits between January 1, 2011 and June 30, 2011 and providers with 90% of their services coded using a CPT code other than the ones included in the incentive program.

Providers who did not begin e-prescribing and who had more than 100 cases during the first six months of 2011 may still be able to avoid the 1% penalty in 2012 if they are eligible for one of the new hardship exemptions listed below.

NEW HARDSHIP EXEMPTIONS

1. Inability to Electronically Prescribe due to local, State or Federal law or regulation: This hardship exemption may apply to New York physicians who prescribe controlled substances, but who are unable to engage in electronic prescribing because New York State Department of Health regulations currently prohibit physicians from electronically prescribing controlled substances. (DOH has announced that it is working to revise its regulations to permit electronic prescribing of controlled substances).
2. Limited Prescribing Activity: This exemption will apply to physicians who prescribed fewer than **10** prescriptions between January 1, 2011 and June 30, 2011, regardless of whether the prescriptions were sent electronically or on paper.
3. Insufficient Opportunities to Report the Electronic Prescribing Measure Due to Limitations of the Measure’s Denominator: This exemption will apply to physicians who engage in electronic prescribing and who submit claims for the eligible CPT codes, but do not customarily write prescriptions associated with any of the eligible CPT codes.

In addition to these three new hardship exemptions, another exemption has been established for those providers who (i) register for the Medicare or Medicaid EHR Incentive Program and (ii) have certified EHR technology available for use by October 1, 2011.

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In order to ensure that physicians are fully informed of the changes to the eRx Incentive Program, CMS has extended the deadline to submit exemption requests to **November 1, 2011**. CMS has created a web-

based tool for providers to submit their requests via the Internet. **All providers seeking to request a hardship exemption MUST utilize the web-based tool. Exemption requests will NOT be accepted via U.S. mail or electronic mail.** The web-based tool can be accessed by going to <http://www.cms.gov/erx incentive/>.

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For more information on this or other electronic prescribing issues, please contact your attorney contact at our firm.