Medicare and Medicaid EHR Incentives Paid to Eligible Professionals, Eligible Hospitals and Critical Access Hospitals

Medicare EHR Incentive Payments

The EHR incentives paid to eligible professionals (EPs), eligible hospitals and critical access hospitals (CAHs) under the Medicare EHR Incentive program do not constitute Federal awards or Federal financial assistance subject to the single audit requirements in OMB Circular A-133. The Single Audit Act at 31 U.S.C. § 7501(a)(5) exempts from the definition of "Federal financial assistance" amounts "received as reimbursement for services rendered to individuals in accordance with guidance issued by the Director [of the Office of Management and Budget (OMB)]." The definitions in Circular A-133 at § ____.105 recognize this exception by also excluding from the definition of "Federal financial assistance" "amounts received as reimbursement for services rendered to individuals as described in §___.205(h) and §___.205(i)." Sections ____.205(h) and (i), in turn, state as follows:

> (h) Medicare. Medicare payments to a non-Federal entity for providing patient care services to Medicare eligible individuals are not considered Federal awards expended under this part.
>
> (i) Medicaid. Medicaid payments to a subrecipient for providing patient care services to Medicaid eligible individuals are not considered Federal awards expended under this part unless a State requires the funds to be treated as Federal awards expended because reimbursement is on a cost-reimbursement basis.

The Medicare EHR incentive payments are intended to be incentives for adopting and meaningfully using certified EHR technology, and are not necessarily direct payment for treatment of patients, they are best treated, within the context of Circular A-133, as reimbursement under Medicare. The Medicare EHR incentives payments are included in the reimbursement provisions of the Medicare statute (at sections 1848 [42 U.S.C. § 1395w-4] and 1886 [42 U.S.C. § 1395ww] of the Social Security Act). These two sections are entitled "Payment for Physicians' Services," and "Payment to Hospitals for Inpatient Hospital Services," respectively. The sections contain detailed payment formulas for how physicians and hospitals are paid under Medicare fee schedules and prospective payment systems respectively. For hospitals, the Medicare EHR incentive payments are based upon figures reported on the Medicare cost report, including figures such as inpatient hospital discharges.[1] Payments to EPs are based upon the allowed charges for covered professional services during the year.[2] In both cases, if the providers

[1] See § 1886(n)(2)(C).
[2] See § 1848(o)(1)(A)(i).

do not meaningfully use certified EHR technology for an applicable reporting period, beginning with 2015, fee schedule payments for EPs and the market basket update to the IPPS payment rate for hospitals will be reduced by increasing percentages.[3] Given that the EHR incentive payments (and payment adjustments beginning with Federal fiscal year 2015 for eligible hospitals and CAHs, and calendar years 2015 for EPs) are woven into the reimbursement formulas laid out in the Social Security Act for EPs, eligible hospitals and CAHs, we believe they are best viewed as similar to other pieces of hospital and physician reimbursement – which also are not subject to single audit under Circular A-133. Such additional reimbursements would include, for example, amounts paid for direct graduate medical education under section 1886(h) of the Social Security Act or additional payments for serving a significantly disproportionate number of low-income patients under section 1886(d)(5)(F) of such Act.

Medicaid EHR Incentives Payments

For the Medicaid EHR Incentive Program, which is established under section 1903(t) of the Social Security Act [42 U.S.C. § 1396b(t)], the incentive payments made by the States to EPs and eligible hospitals do not constitute the kinds of subawards or subgrants governed by Circular A-133. OMB has traditionally considered the amounts paid by State Medicaid programs to participating providers contract payments and not subawards: "Most Medicaid arrangements between the States and providers are contracts for services and not Federal assistance; therefore, they would not be covered by the Act." 52 Fed. Reg. 43712, 43713 (Nov. 13, 1987). Although this statement predates the Single Audit Amendments of 1996, it remains indicative of the view of Medicaid payments. In addition §___.210 of Circular A-133 provides guidance on distinguishing between a subrecipient and a vendor. The services provided by EPs and eligible hospitals under the Medicaid EHR Incentive Program are more like the goods and services provided during normal business operations. For example, the EP or eligible hospital does not have responsibility on programmatic decision-making, or for enforcing the requirements of the Medicaid EHR Incentive Program. States must enforce the Federal requirements for the program, and determine who is eligible to receive an incentive and the ultimate amount of the incentive (in accordance with Federal requirements). Therefore, the EHR incentives provided by States to eligible Medicaid providers are more like the other payments States make to such providers under Medicaid, and would not trigger a Circular A-133 audit of the EP or eligible hospital.

Refer to the Medicaid Cluster (4-93.778) in OMB Circular A-133 Compliance Supplement (http://www.whitehouse.gov/omb/circulars) for Medicaid EHR incentive payments to States.

[3] See §§ 1848(a)(7) and 1886(b)(3)(B)(ix).