

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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CENTER FOR MEDICARE

DATE: July 24, 2014

TO: All Medicare Advantage Organizations

FROM: Cheri Rice /s/
Director, Medicare Plan Payment Group

SUBJECT: **Electronic Health Record Incentive Program Adjustments and Update on Software Flexibility**

Beginning in 2015, the Centers for Medicare & Medicaid Services (CMS) will begin adjusting the monthly prospective payments made to a Medicare Advantage Organization (MAO) pursuant to sections 1853(l)(4) and 1853(m)(4) of the Social Security Act if the MAO is a qualifying participant in the Electronic Health Record (EHR) Incentive Program and its qualifying eligible providers (EPs) and/or Medicare Advantage (MA) affiliated eligible hospitals are not meaningful users of certified EHR technology.

In accordance with 42 CFR § 495.211(a) of the regulations, CMS will make these penalty adjustments to an MAO's prospective payment only if it previously received an EHR incentive payment for a qualifying EP and/or MA affiliated eligible hospital and CMS subsequently determines that, for a particular year, the EP or hospital was not a meaningful user. If an MAO has not received EHR incentive payments, it will not incur the penalty discussed in this memorandum.

CMS will rely on the audit results that are reported to us annually to determine which providers and/or hospitals have failed meaningful use. If a provider and/or hospital fails an audit, CMS will contact the affected MAO to discuss the findings and give the organization an opportunity to submit a corrective action plan to resolve the issue that would result in a penalty.

How Penalty Adjustments Will Be Calculated:

The penalty adjustment amount will be calculated in accordance with the methodology specified in 42 CFR § 495.211 of the regulations.

Penalties will be calculated separately for EPs and hospitals, and will be added together for each contract number. The adjustments will be made two or three years after the year in which the MAO received the incentive payment, but CMS will base the adjustment on the Part C payment that was made in the year the audit occurred.

The regulation also requires MAOs to self-report data used to calculate the adjustment amount. CMS is assuming that each MAO has reported to CMS all of the physicians and hospitals that are eligible. Therefore, we are deeming the self-reporting requirement met. MAOs will not need to submit additional data to meet the self-reporting requirement unless requested by CMS.

The law allows an MAO to request a hardship exception when a penalty is assessed. However, since we are giving MAOs the opportunity to correct any issue that would result in a penalty, we believe there should not be a need to request one.

When Penalty Adjustments Will Be Deducted from Prospective Payments:

Audits will be conducted two years after the payment year (e.g., CMS will audit the 2012 payment year in 2014), and the adjustments will be made about six months after the MAO is notified of the results. If a plan is required to complete a corrective plan, it must be completed within that six month period.

If any penalties are assessed by CMS, they will continue as long as:

- A provider that has been claimed for payment is still eligible as defined at 42 CFR § 495.200 and has failed the meaningful use audit;
- The hospital that has been claimed for payment is eligible as defined at 42 CFR § 495.200 and has failed a meaningful use audit; or
- A corrective action plan has not been successfully completed within the applicable time period for all meaningful use violations.

For example, if an MAO had one eligible provider that was not a meaningful user in 2015 but that eligible provider is no longer employed by the MAO starting January 1, 2016, the organization would be assessed a penalty adjustment for 2015 if a corrective action plan is not submitted to CMS and successfully completed prior to the self-reporting deadline for the 2015 payment year.

If an MAO divests or otherwise is no longer associated with an eligible hospital that failed a meaningful use audit and did not successfully complete a corrective action plan, the penalty adjustments will end in the first year when the hospital is no longer affiliated with the MAO.

Additional Information:

Please note that if an EP is identified in the Health Plan Management System (HPMS) as an eligible meaningful use provider, she or he will not be assessed a penalty for any Fee-for-Service claims filed under that National Provider Identification (NPI). However, any physician that is not recorded in HPMS as an MA-EP will be subject to Fee-for-Service penalty provisions for Fee-for-Service claims.

Update on EHR Software Flexibility:

We recently surveyed all MAOs that received EHR incentive payments to determine if they would be able to meet the 2014 EHR software requirements, and concluded that we should allow the same flexibility options to participating MAOs that will be offered to Fee-for-Service providers for 2014. That means an MAO will be able to use the 2011 edition CEHRT or a combination of the 2011 and 2014 edition CEHRT for the EHR reporting period in 2014 so long as it is unable to fully implement the 2014 edition CEHRT due to issues related to 2014 edition CEHRT availability delays.

Beginning in 2015, all eligible professionals and hospitals will be required to report using the 2014 edition CEHRT.

If you have any questions about the information contained in this document, please contact Mary Stojak at: mary.stojak@cms.hhs.gov.