

November 1, 2011

## Physician E-Prescribing Exemption Deadline Extended to November 1, 2011:

Without A Hardship Waiver, Physicians Who Do Not Meet the Minimum



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Physicians and other health professionals (“Eligible Professionals”) will have an extra month to file for a hardship waiver that would keep Medicare from penalizing them for failing to meet electronic prescribing requirements.

On August 31, 2011, the Centers for Medicare and Medicaid Services (“CMS”) published a final rule that makes several changes to its Medicare e-prescribing initiative. Established under the federal government’s stimulus program in 2008, the e-prescribing initiative grants a 1% bonus on 2012 Medicare payments for Eligible Professionals who meet certain e-prescribing reporting criteria, and subjects those Eligible Professionals who fail to meet the reporting criteria, or who fail to qualify and apply for a hardship exemption, to a 1% reduction in Medicare payments. The penalties escalate in subsequent years to 1.5% in 2013 and 2% in 2014 for those not

meeting the minimum e-prescribing reporting requirements or reporting an eligible hardship.

CMS is using e-prescribing activity reported in the first half of 2011 to determine whether an Eligible Professional will see his or her 2012 Medicare reimbursement increased or subject to the reduction. To avoid the reduction, Eligible Professionals had until June 30 to report at least 10 e-prescriptions generated during eligible patient visits. For those who met the minimum, reporting at least 15 more e-prescriptions before the end of 2011 makes the Eligible Professional eligible for the 1% bonus in 2012.

In its proposed rule, CMS had said that an Eligible Professional would have until October 1, 2011 to report that the Eligible Professional falls into one of six hardship exemption categories that would exempt the Eligible Professional from the e-prescribing payment adjustments. The final rule extended this deadline until November 1, 2011, and clarified that the exemptions are available for Eligible Professionals who:

- Registered to participate in the Medicare or Medicaid electronic health record (“EHR”) incentive

program and have adopted certified EHR technology;

- Were unable to prescribe electronically because of local, state or federal law regulations;
- Had limited prescribing activity;
- Had insufficient opportunities to report e-prescribing for eligible patient encounters;
- Practice in a rural area with insufficient high-speed Internet access;
- Practiced in an area without a sufficient number of pharmacies that accept electronic prescriptions.

Those Eligible Providers who do not meet one of the hardship exemptions above must meet CMS’ reporting criteria or face the reimbursement penalty in 2012, and, should the Eligible Professional continue to fail to meet the reporting criteria and fail to meet and be approved for a hardship exemption, in 2013 and 2014 as well.

Instructions for filing an exemption will be posted on the CMS e-prescribing incentive website, at [www.cms.gov/erx incentive](http://www.cms.gov/erx incentive).

**To discuss how this exemption may affect your business, contact Mike at 727-820-3963 or [migel@trenam.com](mailto:migel@trenam.com).**

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