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Memo to: Executive Directors  
State Medical Associations  
County Medical Societies  
National Medical Specialty Societies

From: James L. Madara, MD

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Subject: The Final Rule on the 2012 Medicare E-Prescribing Penalty Program

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Today, the Centers for Medicare & Medicaid Services (CMS) released the final regulation on the 2012 Medicare e-prescribing penalty program. The American Medical Association (AMA) has had tremendous concerns with the e-prescribing penalty that is scheduled to begin on January 1, 2012. The penalty for not successfully participating in the e-prescribing program or not filing for an exemption on time is a 1 percent payment reduction based on the 2012 Medicare fee schedule amounts during the year. AMA's Immediate Past President, Cecil Wilson, MD, and I discussed the issue on multiple occasions with Don Berwick, MD, the CMS Administrator. AMA staff has continually stressed to senior CMS officials of the urgent need to change the policy. As a result of these discussions CMS took the unusual step of issuing a proposed rule to modify the final e-prescribing penalty program to make it more fair. The changes reflected in the proposed rule were issues raised by the AMA.

Since the publication of the proposed rule in June, the AMA has continued to press for more changes. Although we are very disappointed that the final rule does not include an additional reporting period in 2012 as AMA recommended, it does reflect our ongoing discussions in many respects. **The final rule does provide more flexibility under the exemption categories so that more physicians can be eligible for an exemption to avoid the 2012 e-prescribing penalty. Physicians can also apply for more than one exemption category if a combination of the categories apply to their particular hardship. In addition, CMS extended the deadline to apply for an exemption to November 1, 2011, but strongly encourages physicians to apply for an exemption as soon as the Web-based portal is available to avoid claims reprocessing. We will alert the Federation as soon as the Web-based portal is available.**

See below for details on the final 2012 Medicare e-prescribing penalty program.

Final exemption hardship categories for eligible physicians to avoid the 2012 Medicare e-prescribing penalty are as follows:

- The physician's practice is located in a rural area without high speed internet access.
- The physician's practice is located in an area without sufficient available pharmacies for e-prescribing (CMS added more examples including natural disaster caused disruption of e-prescriptions between physician offices and pharmacies).
- The physician is registered to participate in the Medicare or Medicaid EHR Incentive Program and has adopted Certified EHR Technology by October 1, 2011, and prior to the time the physician requests an exemption.
- Inability to electronically prescribe due to local, State or Federal law or regulation (CMS clarifies that physicians who mainly prescribe narcotics but due to certain limitations cannot submit these prescriptions electronically can apply for this exemption category).
- Limited prescribing activity (physicians who do not prescribe on a regular basis may apply for this exemption).

- Insufficient opportunities to report the e-prescribing measure due to limitations of the measure's denominator (physicians who do not e-prescribe on the service date can apply for this exemption).

Although physicians are required to apply for at least one exemption category, CMS will allow physicians to apply for more than one exemption category if a combination of the categories apply to their particular hardship.

Individual physicians must apply on-line via a Web-based tool (can not submit request via mail, e-mail, or fax) for an exemption(s) by no later than November 1, 2011, in order to avoid the January 1, 2012, Medicare e-prescribing penalty. CMS is strongly encouraging physicians to apply for an exemption(s) as soon as possible to avoid claims reprocessing. Physicians are required to include the following information in their exemption request:

- Identifying information such as the TIN, NPI, name, mailing address, and e-mail address of all affected eligible professionals.
- The significant hardship exemption category(ies) that apply.
- A justification statement describing how compliance with the requirement for being a successful e-prescriber for the 2012 e-prescribing penalty program during the reporting period resulted in a significant hardship to the eligible physician.
- An attestation of the accuracy of the information provided.

Instructions on how to access the Web-based tool and request an exemption(s) will be available on CMS' E-Prescribing Incentive Program website at: <http://www.cms.gov/ERxIncentive/>.

Any questions regarding use of CMS' Web-based tool may be directed to the Quality Net Help Desk. The Quality Net Help Desk's may be contacted via telephone at 1-866-288-8912 or via email at: [Qnetsupport@sdps.org](mailto:Qnetsupport@sdps.org). Further information on the Quality Net Help Desk is available at: [https://www.cms.gov/ERxIncentive/11\\_HelpDeskSupport.asp#TopOfPage](https://www.cms.gov/ERxIncentive/11_HelpDeskSupport.asp#TopOfPage).

Group practices already participating in the 2011 e-prescribing group practice reporting option that wish to submit an exemption request must submit their request via a mailed letter (can not submit request on-line) 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(s) via mail, such as the mailing address for submitting this request, will be available on CMS' E-Prescribing Incentive Program website at: <http://www.cms.gov/erx incentive/>.

Upon the effective date of the final rule, physicians will be allowed to use Certified EHR technology that complies with the Part D standards for the electronic transmission of prescriptions for the remainder of the 2011 Medicare e-prescribing incentive program reporting period (through Dec. 31, 2011) and to avoid the 2013 e-prescribing penalty (e.g., e-prescribe and report the G8553 code at least 10 times on applicable Medicare Part B claims by June 30, 2012).

For more information about the Medicare e-prescribing penalty link to AMA's webpage: <http://www.ama-assn.org/ama/pub/physician-resources/health-information-technology/incentive-programs/cms-eprescribing-incentive-program.page>