



AMERICAN ACADEMY OF
FAMILY PHYSICIANS
STRONG MEDICINE FOR AMERICA

July 18, 2011

Donald Berwick, MD
Administrator
Centers for Medicare & Medicaid Services
Department of Health & Human Services
Attention: CMS-3248-P
P.O. Box 8013
Baltimore, MD 21244-8013

Re: Proposed Changes to the Electronic Prescribing Incentive, CMS-3248-P

Dear Dr. Berwick:

On behalf of the American Academy of Family Physicians (AAFP), which represents more than 100,300 family physicians and medical students nationwide, I am writing to comment on the "Proposed Changes to the Electronic Prescribing Incentive Program" (CMS-3248-P) as published in the June 1, 2011 *Federal Register*. Overall, the AAFP appreciates that the Centers for Medicare & Medicaid Services (CMS) proposes to modify the 2011 electronic prescribing quality measure, to offer additional significant hardship exemption categories so that certain physicians and group practices can request an exemption during 2011 to avoid the 2012 electronic prescribing penalty, and to extend the deadline for requesting these hardship exemptions.

The AAFP believes that the use of electronic health record systems and electronic prescribing systems greatly assists physicians' ability to access and communicate needed clinical information and leads to higher quality, safer, and more affordable healthcare. The experience of our membership, with over 60 percent of our active members using electronic health record systems in their practices, has been predominately, but not exclusively, positive with regard to impact on patient safety.

Currently, the description statement for the 2011 electronic prescribing measure indicates that it documents whether a physician or group practice has adopted a "qualified" electronic prescribing system. In this proposed regulation, CMS discusses revising the description statement to indicate that the measure documents whether an eligible professional or group practice has adopted a 'qualified' electronic prescribing system or is using certified electronic health record technology. Many family physician practices are actively pursuing payments associated with the Medicare or Medicaid Electronic Health Record Incentive programs. As such, the AAFP strongly supports this proposal and we agree with the agency that the proposed change merely expands on the definition of a "qualified" electronic prescribing system without altering the original intent of the measure.

The AAFP agrees with the proposal to further harmonize electronic prescribing efforts with the Medicare Part D program. We therefore concur with the proposal that, for purposes of the 2011 electronic prescribing measure, certified electronic health record technology must comply with Part D standards for the electronic transmission of prescriptions.

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Under current electronic prescribing rules, physicians will not be subjected to the 2012 electronic prescribing penalty (1.0 percent less than physician fee schedule amount) if one of the following applies:

- The eligible professional is not a physician (MD, DO, or podiatrist), physician assistant, nurse practitioner, certified registered nurse anesthetist, or certified nurse midwife as of June 30, 2011 based on the primary taxonomy code in the National Plan and Provider Enumeration System.
- The eligible professional does not have prescribing privileges and reports G-code G8644 at least one time on an eligible claim prior to June 30, 2011.
- The eligible professional does not have at least 100 cases containing an encounter code in the electronic prescribing measure's denominator between January 1 and June 30, 2011.
- The eligible professional's total 2011 Medicare Part B physician fee schedule allowed charges for all such covered professional services submitted based on codes present in the electronic prescribing measure's denominator are less than 10 percent.
- The eligible professional reports a significant hardship code and CMS determines that the hardship code applies. Under current rules, hardship codes will be considered for practices that are either:
 - In a rural area with limited high speed Internet access; or
 - In an area with limited available pharmacies for electronic prescribing.
- The eligible professional reports the electronic prescribing measure via claims for at least 10 unique electronic prescribing events for patients in denominator of measure between January 1 and June 30, 2011, which would make them a successful electronic prescriber.

Though falling outside the scope of this proposed regulation, the AAFP urges CMS to provide additional guidance in the final rule on the term "area with limited available pharmacies." Patients predominately select their preferred pharmacy and this decision falls outside of the prescribing physician's control. We recommend that CMS encourages mail order pharmacies to accept electronic prescriptions as our members have reported a lack of these entities. CMS should not impose any new administrative burdens that require a physician practice to manage or collect data on pharmacies used by their patients.

In this regulation, CMS proposes additional significant hardship exemption categories as a way to further minimize the number of physicians and group practices that are inappropriately subjected to the 2012 electronic prescribing penalty. The AAFP appreciates that CMS recognized the need for further hardship categories. Specifically, CMS proposes the following additional significant hardship exemption categories for the 2012 electronic prescribing payment penalty with regard to the reporting period of January 1, 2011 through June 30, 2011:

- a) Eligible professionals who register to participate in the Medicare or Medicaid Electronic Health Record Incentive Programs and adopt certified electronic health record technology no later than October 1, 2011.
- b) Inability to electronically prescribe due to local, state, or federal law or regulation.
- c) Limited prescribing activity
- d) Insufficient opportunities to report the electronic prescribing measure due to limitations of the measure's denominator.

The AAFP strongly agrees with creating a hardship exemption (category 'a') for physicians striving to be "meaningful users" for purposes of the Medicare or Medicaid Electronic Health Record Incentive Program, which was not constructed to penalize physicians that attempt participation in 2012.

CMS proposes physicians or group practices use a web-based tool or interface to submit all significant hardship exemption requests. If the final rule is not effective by October 1, 2011, CMS then proposes that physicians or group practices must submit the hardship request by no later than 5 business days after the effective date of the final rule. The AAFP believes 5 business days is significantly too short a timeframe. It

will operationally be unrealistic for physicians or group practices to understand the final rule, make an informed decision, and then apply online to CMS for these hardship waivers. Five days is also too brief a timeframe for CMS to provide proper physician education prior to the deadline. At a minimum, the AAFP urges CMS to provide physicians at least 30 business days to apply for the hardship exceptions.

The AAFP urges CMS to consider these comments and develop comprehensive yet understandable policies pertaining to the electronic prescribing, Medicare or Medicaid electronic health record, and other quality incentive programs.

We appreciate the opportunity to provide these comments and make ourselves available for any questions you might have or clarifications you might need. Please contact Susan Hildebrandt at 202-232-9033 or Shildebrandt@aafp.org.

Sincerely,

A handwritten signature in cursive script that reads "Lori Heim". The signature is written in black ink and is positioned above the typed name.

Lori J. Heim, MD, FAAFP
Board Chair