

# Steps physicians can take to avoid the Medicare ePrescribing penalty<sup>1</sup>

## Background on the Medicare ePrescribing penalty program

The Medicare Improvements for Patients and Providers Act (MIPPA) of 2008 established a five-year Medicare incentive program that began in 2009 to promote the adoption and use of ePrescribing by eligible professionals, including physicians. The law also included a penalty phase beginning in 2012, for physicians who are eligible for the Medicare ePrescribing incentive payments but fail to ePrescribe. Review the AMA's frequently asked questions fact sheet for a complete description of the Medicare ePrescribing program requirements.

## Avoiding the 2012 Medicare ePrescribing penalty

Physicians and other eligible professionals who meet the following criteria are not subject to the 2012 Medicare ePrescribing penalty. You will be excluded automatically from the penalty and no action is required on your part if you meet one of the following criteria:

- (1) You are not an MD, DO, podiatrist, nurse practitioner or physician assistant as of June 30, 2011
- (2) You are a physician or other eligible professional for whom office visits and other services listed in the Centers for Medicare & Medicaid Services (CMS) ePrescribing measure specifications represent **less than 10 percent** of your allowed Medicare Part B charges in the first six months of 2011 (January 1, 2011, through June 30, 2011)
- (3) You are a physician or other eligible professional who has **less than 100 claims** for Medicare Part B patient services containing visit and service codes that fall within the ePrescribing measure specifications for dates of service between January 1, 2011, and June 30, 2011

CMS identified the following circumstances under which a physician or eligible professional can apply for an exemption. To be exempted from the ePrescribing penalty physicians and other eligible professionals must meet one of the following criteria:

- (1) You are a physician or other eligible professional who does not have prescribing privileges and reports G-code, "G8644" at least one time on a Medicare Part B claim prior to June 30, 2011
- (2) Your physician practice is located in a rural area without high-speed Internet access and reports G-code, "G8642" on a Medicare Part B claim by June 30, 2011
- (3) Your physician practice is located in an area without sufficient available pharmacies for ePrescribing and reports the G-code, "G8643" on a Medicare Part B claim by June 30, 2011

## CMS announces additional ways physicians can avoid the 2012 Medicare ePrescribing penalty

On May 26, 2011, the Centers for Medicare & Medicaid Services announced the release of a proposed rule that would expand the number of ways physicians can avoid the ePrescribing penalty in 2012. The new proposed exemption categories would apply if:

- (4) The physician is registered to participate in the Medicare or Medicaid electronic health record (EHR) incentive program and has adopted certified EHR technology
- (5) The physician is unable to electronically prescribe due to local, state, or federal law or regulation (e.g., prescribes controlled substances)
- (6) The physician infrequently prescribes (e.g., prescribe fewer than 10 prescriptions between January 1, 2011 and June 30, 2011)

1. This is a summary of CMS' proposed changes to the ePrescribing program. The new categories are "proposed" and will not be finalized until a final rule is published by CMS, which is expected sometime in August 2011.

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- (7) There are insufficient opportunities to report the ePrescribing measure due to program limitations (e.g., a surgeon ePrescribes but does not ePrescribe on the date of the encounter with the patient in accordance with the program requirements)

**NOTE:** The proposed rule was published in the Federal Register on June 1, 2011. Comments to the proposed rule are due by July 25, 2011. The new categories above and the October 1, 2011, deadline to submit exemptions are “proposed” and will not be finalized until a final rule is published by CMS, which is expected sometime in August 2011.

### Physicians should take steps NOW to avoid the 2012 Medicare ePrescribing penalty

To avoid the 2012 ePrescribing penalty physicians currently have the opportunity to submit exemptions on an eligible claim by **June 30, 2011**, for the first three circumstances identified above. In cases that involve the newly proposed rule (May 26, 2011), CMS indicated that physicians will have an opportunity to request, through an online Web portal (not yet available), an exemption. **At this time, CMS has proposed that the last day physicians can request an exemption from the ePrescribing penalty online is October 1, 2011.**

**Step 1:** Determine if you meet any of the above criteria that would **exclude** you from being subject to the ePrescribing penalty.

**Step 2:** If you do not meet the exclusion criteria, determine if you meet any of the above mentioned categories that would **exempt** you from a Medicare ePrescribing penalty.

**Step 3:** If you meet one of the already finalized categories, submit the appropriate G-code on an eligible claim by June 30, 2011. All claims for dates of services from January 1, 2011, through June 30, 2011, must be processed by July 29, 2011, to be included in CMS’ analysis.

**Step 4:** If you meet one of the proposed exemption categories, be prepared to file for an exemption. While the new exemption categories and details on the online exemption process have not yet been finalized, we recommend that you check the AMA website frequently to ensure that you submit your justification statement for an exemption online at the earliest possible date.

**Step 5:** If you have not already successfully attested and plan on participating in the Medicare or Medicaid EHR incentive program, you must purchase your certified EHR technology prior to October 1, 2011. If you wish to seek an exemption from the 2012 Medicare

ePrescribing penalty, there are a few steps you need to accomplish beforehand:

- (1) You should register for the Medicare or Medicaid EHR incentive program and enter your CMS EHR certification number as soon as possible. Under CMS’ proposal, physicians seeking this type of exemption will need to have purchased a certified EHR. Certified EHR technology can include a complete certified EHR or a combination of modules that together comprise a complete certified EHR. To obtain an EHR certification number that shows you have adopted certified technology for the CMS EHR incentive program, visit: <http://onc-chpl.force.com/ehrcert>
- (2) In order to register for the Medicare EHR program, you must be enrolled in the Medicare enrollment database known as PECOS. There are three ways to verify that you have an enrollment record in PECOS:
  - a. Check the CMS list of physicians in PECOS at: [cms.gov/MedicareProviderSupEnroll/downloads/OrderingReferringReport.pdf](http://cms.gov/MedicareProviderSupEnroll/downloads/OrderingReferringReport.pdf) (note: this file is large and takes several minutes to download)
  - b. Contact your local Medicare enrollment contractor and ask if you have an enrollment record in PECOS. For a list of Medicare contractor contacts visit: [cms.gov/MedicareProviderSupEnroll/downloads/contact\\_list.pdf](http://cms.gov/MedicareProviderSupEnroll/downloads/contact_list.pdf)
  - c. Use Internet-based PECOS to look for your PECOS enrollment record. If no record is displayed, you do not have an enrollment record in PECOS. Go to <https://pecos.cms.hhs.gov/pecos/login.do> for assistance. If you have trouble accessing your file visit: [cms.gov/MedicareProviderSupEnroll/Downloads/ContactInformation.pdf](http://cms.gov/MedicareProviderSupEnroll/Downloads/ContactInformation.pdf)
- (3) If you have already registered for the EHR incentive program and have not entered your CMS EHR certification number, you should modify your registration to reflect your CMS EHR certification number that represents the certified EHR technology you have purchased or have adopted.

### Additional resources

- AMA website on Medicare enrollment: [ama-assn.org/go/Medicareenrollment](http://ama-assn.org/go/Medicareenrollment)
- AMA website on health IT incentive programs: [ama-assn.org/go/hit](http://ama-assn.org/go/hit) (select “Incentive Programs”)
- CMS website on the EHR incentive program: [cms.gov/EHRIncentivePrograms/](http://cms.gov/EHRIncentivePrograms/)