



## QUESTIONS AND ANSWERS REGARDING THE NEW FEDERAL PROPOSED E-PRESCRIBE REGULATION DATED JUNE 1, 2011

### **1. When was the new regulation proposed?**

The new proposed federal regulation was published on June 1, 2011 in the Federal Register.

### **2. When would the new regulation become effective?**

There is a sixty-day comment period on the proposed regulation (comments must be received by July 25, 2011), then CMS would need to review the comments at a public hearing and revise the proposed rule. After that, normally the rule must be posted for 30 days before becoming effective. This means that a final version of the new e-prescribe regulations would most likely not be in effect before the middle of September.

### **3. What is the topic of the proposed regulation?**

The proposed regulation would make changes to the current e-prescribe (eRx) incentive/disincentive program that the Center for Medicare and Medicaid Services (CMS) is sponsoring. The original program was enacted by Congress as part of the MIPPA Act of 2008.

### **4. What did the original MIPPA e-prescribe regulations cover?**

The original regulations created an incentive program for physicians and other prescribing professionals to use e-prescribing for permissible prescriptions.

### **5. How do the MIPPA incentives/disincentives work?**

Under the MIPPA e-prescribe program, if a prescribing physician or other professional [i.e., podiatrist, physician assistant (PA), certified registered nurse anesthetist (CRNA), or certified nurse midwife (CNM)] writes at least 10 Medicare e-prescriptions by June 30, 2011 and a total of 25 Medicare e-prescriptions by December 31, 2011, then he or she would be eligible for a 1% increase in their Medicare Part B Physician Fee Schedule (PFS) allowable charges in 2012 (based on his or her 2011 charges). If the prescribing professional does not meet these totals and is not

eligible for one of the exemptions, then the physician or other prescribing professional would lose 1% of their Medicare PFS reimbursement starting in 2012, 1 ½% in 2013 and 2% in 2014. The MIPPA e-prescribing incentives/disincentives do not extend to the Medicare Advantage programs or the Medicare Advantage patient population.

#### **6. How does CMS track the number of prescriptions written using e-prescribing?**

Under the MIPPA e-prescribe program, CMS determines the number of e-prescriptions written by using a special code for e-prescribing on the Medicare PFS claims. In order to get credit for an e-prescription, a practitioner would need to code a Medicare PFS patient claim with a G-code modifier to show that a prescription was written using an e-prescribing system and that it was sent on to the pharmacy using the e-prescribing system. The G-code to be used for e-prescribing is G-8553. A practitioner must attach the G-8553 code to the Medicare claim in order to be credited with an e-prescription.

#### **7. What are the E&M codes that are used to determine the number of visits that count toward the e-prescribing totals?**

The list of codes that are counted when determining if the practitioner has 100 E&M claims in the January – June 2011 timeframe is the following:

#### **Patient visit during the reporting period (Current Procedural Terminology [CPT] or Healthcare Common Procedure Coding System [HCPCS] G-codes):**

90801, 90802, 90804, 90805, 90806, 90807, 90808, 90809, 90862, 92002, 92004, 92012, 92014, 96150, 96151, 96152, 99201, 99202, 99203, 99204, 99205, 99211, 99212, 99213, 99214, 99215, 99304, 99305, 99306, 99307, 99308, 99309, 99310, 99315, 99316, 99324, 99325, 99326, 99327, 99328, 99334, 99335, 99336, 99337, 99341, 99342, 99343, 99345, 99347, 99348, 99349, 99350, G0101, G0108, G0109

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This is the same claims coding list that CMS uses when determining if these claims represent less than 10% of the practitioner's total Medicare Part B charges for the January – June 2011 period, thus making the practitioner exempt from the e-prescribing disincentives.

#### **8. What exemptions are there in the MIPPA regulations for e-prescribing?**

The exemptions from e-prescribing under the MIPPA incentive program are the following:

- Eligible professionals that do not have prescriptive privileges and code one claim between January – June 2011 with the code G-8644 (i.e., no prescriptive privileges)
- Eligible professionals that do not have at least 100 claims for E&M visits (appearing in the coding list in question 7) during the January 1, 2011 to June 30, 2011 time period
- Eligible professionals that have less than 10% of their total allowed Medicare Part B PFS billed as claims for E&M encounters (appearing in the coding list in question 7) for claims from January 1, 2011 – June 30, 2011
- Eligible professionals that qualify for a “significant hardship” exemption, either due to the fact that he or she practices in a rural area with limited high speed Internet access (must code at least one claim with the code G-8642) or that he or she practices in an area with limited available pharmacies capable of accepting e-prescribing (must code at least one claim with the code G-8643)

**9. Are there any new “significant hardship” exemptions created for e-prescribing in the proposed regulation?**

Yes. There are several new exemptions created in the proposed rule. These exemptions expand the list that currently exists and do not replace any current exemptions to e-prescribing. The new exemptions are:

- Eligible professionals that: 1) register to participate in the Medicare or Medicaid EHR incentive programs and adopt certified EHR technology; and 2) provide identifying information concerning the EHR technology, including the ONC CHPL certification number derived from the ATCB certification process. The proposed rule would require the eligible professional to attest to the fact that he or she has purchased the EHR system or has the technology available for immediate use and plans to use it to qualify for a Medicare or Medicaid 2011 incentive payment.
- Eligible professionals that have prescribing privileges but are restricted from e-prescribing under federal, state or local laws or regulations.
- Eligible professionals that have prescribing privileges but prescribe only infrequently (e.g., a nurse practitioner that does not prescribe under his or her own NPI; a physician who lets his DEA license lapse; or an eligible professional who prescribed fewer than 10 prescriptions between January 1, 2011 to June 30, 2011).
- Eligible professionals that have insufficient opportunities to report the electronic prescribing measure due to limitations of the measure’s denominator (specific example is a surgeon). In this instance, a professional may have an eRx system, electronically

prescribe, have the appropriate number of visits but does not normally write prescriptions in the office setting. The example cited is the surgeon, who although he or she prescribes, does so almost exclusively in the inpatient setting post-operatively.

**10. Are any of the exemptions automatically granted?**

Yes. The exemptions that are based on claims data (i.e., the number of E&M visits from January to June, 2011 or the % of Medicare Part B PFS charges) are automatically calculated and the professional does not need to submit any further documentation to obtain these exemptions. The exemption for not being a prescriber requires the professional to submit at least one claim with the G-code of “no prescriptive authority” (i.e., G-8644), but beyond that the professional does not need to apply separately for an exemption.

**11. Are “significant hardship” exemptions automatically granted?**

No. For any of the significant hardship exemptions, a professional will need to apply for the exemption, then CMS will make a decision on a case-by-case basis on whether to grant the exemption.

**12. What happens if CMS decides not to grant a significant hardship exemption to a professional?**

If CMS does not grant a significant hardship exemption, then the professional will have his or her Medicare PFS Part B allowed charges reduced by 1% in 2012, by 1 ½% in 2013, and by 2% in 2014 if he or she does not show evidence of e-prescribing to the level required in the regulations. At this time, the reduction is considered permanent.

**13. How does a professional apply for a significant hardship exemption?**

The proposed e-prescribe rule would create a new online mechanism to apply for a hardship exemption. Under this proposed system, a professional would need to include a justification statement describing how compliance with the e-prescribing regulations would create a significant hardship and attesting to the accuracy of the information provided. If the professional is requesting a significant hardship exemption for lack of prescribing activity, he or she would need to include the number of prescriptions generated during the 2011 reporting period.

**14. When would a professional apply for a significant hardship exemption?**

The time for applying for a significant hardship exemption is extended in the proposed rule to October 1, 2011 or 5 business days after the effective date of the rule, whichever is later.

**15. What is a “qualified” e-prescribing system in the proposed e-prescribing rule?**

Under MIPPA, a “qualified” eRx system is one that has the capability to meet these four requirements: 1) must be able to generate a complete active medication list incorporating electronic data received from pharmacies and pharmacy benefit managers (PBM, if available); 2) must be able to allow physicians and other prescribers to select medications, print prescriptions, electronically transmit prescriptions, and conduct alerts; 3) must be able to provide information related to lower cost therapeutically appropriate alternatives, if available; and 4) must be able to provide information on formulary medications, patient eligibility and authorization requirements, if available. The system must meet these requirements using standards currently in effect for Part D eRx program.

Under the new proposed e-prescribe rule, if an eRx system (either modular or complete EHR system) is certified under the ONC-ATCB certification program for EHR systems, then the system would be deemed to have met all the requirements of a “qualified” eRx system.

**16. Is this a final version of the rule?**

No. The proposed rule can be changed by CMS based upon comments received during the comment period.