July 1 Is the Deadline to Avoid a Medicare Penalty

You’ve probably heard about Medicare and Medicaid incentives for the “meaningful use” of electronic health records (EHRs). But the Centers of Medicare & Medicaid Services worried that physicians might not pay enough attention to carrots, so it also created a stick: a 1% Medicare pay cut beginning in 2015 for doctors who don’t demonstrate meaningful use of a certified EHR system by this October. (The EHR incentives and penalties do not apply to physician assistants or nurse practitioners.)

You’re subject to a penalty unless you qualify for a “hardship exemption” and apply for it by July 1, 2014.

In general, if you are an “ambulatory physician,” one for whom more than 10% of patient encounters are outside a hospital, the penalty applies to you. An ambulatory physician is simply one who doesn’t provide almost all of his or her care in an acute care hospital or emergency department. If you work in an office, laboratory, or mainly a post-acute care and long-term care (PA/LTC) setting, you are probably “ambulatory.”

Even if you already have received a reward from Medicare for adopting EHRs, you may be penalized by Medicare if you don’t separately demonstrate meaningful use of your system in 2014. What is the penalty in dollars and cents? If you bill $200,000 in allowable Medicare Part B charges in 2015, your payment subject to the 1% penalty would be the $160,000 (80%) paid by Medicare: a $1,600 reduction in reimbursements.

Physician Quality Reporting System and Value Based Purchasing. And it is important to know that the EHR pay penalty is applied at the provider level. In other words, you can move to a new group, but your payment penalty follows you.

Some Brighter News

Thanks to their advocates, including AMDA, PA/LTC physicians have the opportunity to qualify for a “hardship exemption.” Here is how the exemption program works (apologies for the complexity, but what can you expect?).

You may be exempt if more than half of your patient encounters are in PA/LTC nursing home settings, and the settings do not provide or support EHR technology that meets meaningful use criteria. This is CMS’s “access to certified ambulatory EHR technology” test, and it’s critical to you.

Nursing facilities have “certified ambulatory EHR technology” if they have installed an EHR system that the government’s Office of the National Coordinator for Health Information Technology (ONC) has certified as offering meaningful use to physicians. It may be a stand-alone system or the facility’s certified EHR system (e.g., Point Click Care, American HealthTech, Matrix, AOD).

As of the end of April, no nursing facility EHR system had been fully ONC certified. Most had been “modularly certified.” They got that partial certification so they can receive and send transition-of-care messages to hospitals and community physicians. But modular certification is not complete certification.

Unfortunately, if you work mainly in a retirement community clinic, home care setting, or assisted living facility, the exemption is not going to be available to you, as I read the rules.

Have Your Own System?

If a physician brings his or her own certified EHR into nursing homes, does that mean EHR technology is available, and so the exemption isn’t? No, CMS has indicated that the test is based on whether the location has EHR technology available. The hardship exemption should be available unless the facility has ambulatory EHRs available directly or via integration.

This is the key concession that AMDA was able to achieve when CMS published these “stage two” EHR rules in 2012. The rules’ authors came to understand that many PA/LTC physicians were adopting EHR technology but had no way to satisfy meaningful-use standards – because complete patient data were not available to them.

By law, nursing facilities have to manage all medical orders for their residents. Physicians could enter their orders into their own EHR systems, but to get their computerized physician order entries (CPOEs) into the nursing facility’s system would require integration with the facility’s record system, something that did not exist at the time the rule was published.

This is where the catch for retirement community clinics, home care, and assisted living PA/LTC comes in. These community-based settings are not required to maintain their own EHRs, so it’s up to the physicians practicing there.

OK, What’s Next?

Anyone applying for the hardship exemption needs to complete the Eligible Professional Application form, available at the CMS website: www.cms.gov/Regulations-and-Guidance/Legislation/PhysicianFeeSchedule/PhysicianFeeSchedule.html. If you are in a group with more than one eligible professional, there is an addendum for multiple applicants. Based on existing CMS guidance, you are going to request an exemption under the “lack of control of EHR technology exemption.”

To see – in a Q&A format – the algorithm determining whether you may qualify for the PA/LTC-physicians’ exemption from “meaningful use” of electronic health records in 2014, view this column online at www.caringfortheages.com. Look for the “Public Policy” column under the “Views” tab on the home page.

A quick tip: When you are completing section 3.3, this tricky statement appears: “I do not reassign payments for my services to the ownership or management.” This refers to the ownership or management of the facility, not your practice.

It is usually appropriate to check the box. Even if you are a salaried employee of a nursing facility, I’d suggest explaining that the Medicare penalty would be imposed directly on your national provider identifier (NPI). All of us who work with regulations in PA/LTC settings look forward to the day that CMS recognizes that its EHR policies require adjustment. Please support AMDA’s efforts in this area. And to make sure nothing about the coming deadline and the exemption process has changed, check on the AMDA website for updates: www.amda.com.

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