

Health Law Alert: Attestation and Third-Party Registration Now Available for Medicare Electronic Health Records Incentive Programs

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Starting on April 18, 2011, providers can attest to meeting the electronic health record (EHR) meaningful use standards, the last step required to qualify for incentive payments from the Centers for Medicare & Medicaid Services (CMS). The burden for providers has also been reduced, with CMS' April 26 announcement that third party registration is available for the Medicare EHR incentive program. According to CMS, incentive payments will begin approximately 4-6 weeks following completion of the attestation process. The following is an overview of the process for registration, attestation, and receiving incentive payments:

Background on Medicare and Medicaid EHR Incentive Programs

The Medicare and Medicaid EHR Incentive Programs (the Programs) offer incentive payments to eligible professionals (EPs), eligible hospitals, and critical access hospitals that demonstrate meaningful use of certified EHR technology. EPs can receive up to \$44,000 over 5 years under the Medicare Program. In order to receive the maximum available payment, participation must begin by 2012. EPs who fail to demonstrate meaningful use by 2015 will see their Medicare Part B reimbursement reduced. The Medicaid Program offers higher total payments, with EPs eligible for up to \$63,750 over a 6-year period. However, the Medicaid Program has certain beneficiary volume thresholds that not all providers will be able to meet.

Registration

Registration for the Medicare Program is available through CMS' Web-based registration system. CMS encourages providers to register as soon as possible to maximize incentive payments. In preparation for registration, providers will need the following:

- A National Provider Identifier (NPI)
- An enrollment record in PECOS (for hospitals and Medicare EPs only)
- A CMS Identity and Access Management (I&A) User ID and Password

Additional registration information varies depending on whether you are an EP or hospital. Specific information, as well as step-by-step instructional manuals, can be accessed on the Centers for Medicare &



Medicaid Services Web site.

Unlike the Medicare Program, the Medicaid Program is administered jointly by CMS and the states. Only a handful of states have opened registration for the Medicaid Program and Minnesota's Department of Human Services (DHS) has not yet started registration. DHS has indicated that registration will begin by the end of 2011.

If an EP is eligible for both Programs, the EP must choose which program he/she wishes to participate in upon registration. Before 2015, an EP may switch programs only once after the first incentive payment is initiated. Hospitals, however, can participate in both Programs. Hospitals that are eligible for both should select "Both Medicare and Medicaid" during the registration process, even if they plan to apply only for Medicaid EHR incentive payments.

Third Party Registration and Attestation is Now Available for Medicare Program

Third party registration and attestation is now available for EPs under the Medicare Program. CMS' prior view had been that each EP was required to take these steps on an individual basis. Now, however, users registering on behalf of EPs can do so, provided that they have an I&A User ID and Password and are associated with the EP's NPI. While states are permitted to offer third-party registration in the Medicaid Program, DHS has not yet indicated whether that functionality will be available in Minnesota.

How to Attest

Attestation is the last step that must be taken in order to receive payments. Providers must attest that they have met the meaningful use requirements through CMS's Web-based Registration and Attestation System. In the first year of participation, meaningful use must be met for a consecutive 90-day reporting period, whereas, in later years, meaningful use must be met for a full year. Using an assigned CMS EHR Certification Number, providers will enter numerators and denominators for the meaningful use objectives and clinical quality measures, indicate if they qualify for exclusions to specific objectives, and legally attest that they have successfully demonstrated meaningful use. Upon a successful online submission, the system will create a summary of the attestation and indicate whether the providers will qualify for incentive payments under the Medicare Program.

When and How Incentive Payments will be Received

Incentive payments will be made approximately 4-6 weeks after successful registration, the demonstration of meaningful use, and successful attestation. Payments to Medicare providers will be made to the taxpayer identification number selected at the time of registration, and through the same channels and in the same form (electronic funds transfer or check) as their claims payments are made. While CMS expects that Medicare incentive payments will begin in May 2011, payments will be held for EPs until the EP meets the \$24,000 threshold in allowed charges. Additionally, EPs are permitted to reassign their incentive payments



to their employer or to an entity with which they have a contractual arrangement allowing the employer or entity to bill and receive payment for the EP's covered professional service.

Exclusions from the Meaningful Use Requirements

EPs who participate in the Programs are required to meet all of the meaningful use objectives. However, in recognition of the fact that not all objectives are appropriate for every provider type, certain providers may qualify for exclusions if the particular meaningful use objective is not applicable to the scope of the EP's practice. If an EP is eligible for an exclusion, the EP must claim that exclusion during attestation. Failure to meet the measure of an objective or qualify for an exclusion will prevent the EP from demonstrating meaningful use and receiving an incentive payment.

Can EPs Earn Incentives from Multiple Programs?

Participation in the Programs may affect the EP's ability to participate in other Medicare and Medicaid incentive programs. CMS has said:

- Physician Quality Reporting System incentives may continue to be received regardless of an EP's participation in the Medicare or Medicaid Programs.
- An EP's participation in CMS' EHR Demonstration program does not preclude participation in either the Medicare or Medicaid Programs.
- EPs earning incentives under the Medicare Program cannot also receive incentive payments under the Electronic Prescribing (eRx) Incentive Program in the same program year, and vice versa. EPs successfully participating in both programs will receive the EHR incentive payment. However, the EP may participate in the Medicaid EHR Incentive Program and the eRx Program simultaneously.

If you have questions about the EHR Incentive Programs, please contact Jesse Berg at 612.632.3374 or jesse.berg@lathropgpm.com.

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