



**American Hospital
Association**

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January 9, 2013

Marilyn Tavenner
Acting Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
200 Independence Ave., S.W.
Washington, DC 20201

RE: Medicare and Medicare EHR incentive programs (Method 2)

Dear Ms. Tavenner:

On behalf of our more than 5,000 member hospitals, health systems and other health care organizations, and our nearly 42,000 individual members, the American Hospital Association (AHA) is writing to express continued concern over the unfair exclusion of certain physicians providing services in the outpatient departments of critical access hospitals (CAHs) from the Medicare and Medicaid Electronic Health Record (EHR) Incentive Programs.

The physicians in question are those for whom bills are submitted via the optional or “Method 2” billing approach. Under this method, the CAH bills Medicare on behalf of the physician for services covered under the Medicare Physician Fee Schedule (PFS). Under Method 2, physician bills are submitted on the UB-04, instead of the Form 1500. Due to system constraints, the Centers for Medicare & Medicaid Services (CMS) does not include these Method 2 claims when it identifies which physicians are eligible for the incentive programs, resulting in Method 2 physicians being inappropriately excluded from both incentive programs (Medicare and Medicaid) because they are designated as “hospital-based” when they are not.

The AHA first sent CMS a letter about this issue on Dec. 16, 2011. In your reply, you acknowledged that, due to claims processing limitations, the process for determining which physicians are hospital-based, and therefore *not* eligible for incentive payments, is flawed, but stated that CMS does not plan to resolve this issue until 2014, only one year before EHR penalties begin. Physicians must attest to meaningful use for 2012 in order to receive the full benefit of the Medicare incentives, and only have until Feb. 28, 2013, to complete the attestation process. Therefore, the issue is very time sensitive.



The AHA appreciates CMS's recognition of this problem and willingness to correct it. However, we request that the agency correct the error as quickly as possible so that "Method 2" physicians are eligible for the EHR incentive programs and can receive incentive payments for 2012 and 2013. By waiting until 2014 to fix this issue, Method 2 physicians would become eligible for incentives only the year before penalties begin. If it is not possible to fix the error in a timely manner, CMS should find alternative ways to identify these physicians, allow them to attest to meaningful use, and make retroactive incentive payments.

Under the rules of the EHR incentive programs, eligible professionals (EPs) must first attest to meaningful use in 2012 in order to fully benefit from the incentives; every year of delay decreases the total incentive payment. For example, an EP who first attested in 2012 would receive a total incentive payment of \$44,000. If that EP must wait until 2014 to attest, his or her total incentive payment would drop to \$24,000 – a loss of \$20,000, or almost half of the total incentive. Those EPs who are ready to attest already have incurred the costs associated with implementing their EHRs and should receive timely incentive payments.

The total impact of this flaw in the CMS claims processing system will be very significant for the rural communities served by CAHs. Based on analysis of the outpatient claims file, the AHA estimates that about 60 percent of the 1,300 CAHs nationwide bill using Method 2. If we assume that each CAH is billing for an average of 20 EPs, a \$20,000 loss per physician would amount to missed incentives of \$312 million. This is an unacceptable loss for financially strapped rural providers who maintain access to care in underserved areas.

In addition, we understand that CMS is using only Form 1500 claims to set the incentive payment amounts. This means that services billed under Method 2 are being inappropriately excluded from the calculation of the incentive payments, as well, which are based on covered Medicare Part B charges. As a result, Method 2 physicians who may have some claims filed on a Form 1500 may be deemed eligible, but receive a smaller incentive payment than they should. Consistent with the statute, CMS should include all covered charges based on the Medicare PFS in the calculation of the incentive payments, regardless of the claim form used.

Therefore, we respectfully request timely action to address this issue.

Thank you for your consideration of this matter. If you need more information, please do not hesitate to contact me or Chantal Worzala, AHA director of policy, at cworzala@aha.org or (202) 626-2313.

Sincerely,

/s/

Rick Pollack
Executive Vice President

Cc: Jonathan Blum, Deputy Administrator and Director for the Center of Medicare
Michelle Snyder, Deputy Chief Operating Officer
Rob Tagalicod, Office of e-Health Standards & Services
Elizabeth S. Holland, HIT Initiatives Group