

Payment Adjustments & Hardship Exceptions Tipsheet for Eligible Professionals

Last Updated: October 2013

Overview

As part of the American Recovery and Reinvestment Act of 2009 (ARRA), Congress mandated payment adjustments to be applied to Medicare eligible professionals (EPs) who are not meaningful users of Certified Electronic Health Record (EHR) Technology under the Medicare EHR Incentive Programs. These payment adjustments will be applied beginning on January 1, 2015, for Medicare EPs. Medicaid EPs who can only participate in the Medicaid EHR Incentive Program and do not bill Medicare are not subject to these payment adjustments.

EPs who can participate in either the Medicare or Medicaid EHR Incentive Programs will be subject to the payment adjustments unless they are meaningful users under one of the EHR Incentive Programs in the time periods specified below.

Payment Adjustments for Medicare EPs

Medicare EPs who are not meaningful users will be subject to a payment adjustment beginning on January 1, 2015.

This payment adjustment will be applied to the Medicare physician fee schedule (PFS) amount for covered professional services furnished by the EP during the year (including the fee schedule amount for purposes of determining a payment based on the fee schedule amount). The payment adjustment is 1% per year and is cumulative for every year that an EP is not a meaningful user. Depending on the total number of Medicare EPs who are meaningful users under the EHR Incentive Programs after 2018, the maximum cumulative payment adjustment can reach as high as 5%. The table below illustrates the potential application of payment adjustments to covered professional services for a Medicare EP who is not a meaningful user beginning in 2014.

| % ADJUSTMENT ASSUMING LESS THAN 75 PERCENT OF EPs ARE MEANINGFUL USERS | | | | | | |
|--|------|------|------|------|------|-------|
| | 2015 | 2016 | 2017 | 2018 | 2019 | 2020+ |
| EP is not subject to the payment adjustment for the e-Rx in 2014 | 99% | 98% | 97% | 96% | 95% | 95% |
| EP is subject to the payment adjustment for the e-Rx in 2014 | 98% | 98% | 97% | 96% | 95% | 95% |

| % ADJUSTMENT ASSUMING MORE THAN 75 PERCENT OF EPs ARE MEANINGFUL USERS | | | | | | |
|--|------|------|------|------|------|-------|
| | 2015 | 2016 | 2017 | 2018 | 2019 | 2020+ |
| EP is not subject to the payment adjustment for the e-Rx in 2014 | 99% | 98% | 97% | 97% | 97% | 97% |
| EP is subject to the payment adjustment for the e-Rx in 2014 | 98% | 98% | 97% | 97% | 97% | 97% |

Because payment adjustments are mandated to begin on the first day of the 2015 calendar year, CMS will apply a prospective determination for payment adjustments. Therefore Medicare EPs must demonstrate meaningful use prior to the 2015 calendar year in order to avoid the adjustments.

EPs who first demonstrated meaningful use in 2011 or 2012 must demonstrate meaningful use for a full year in 2013 to avoid payment adjustments in 2015. They must continue to demonstrate meaningful use every year to avoid payment adjustments in subsequent years. The table below illustrates the timeline to avoid payment adjustments for EPs who must demonstrate meaningful use for a full year in 2013.

| | | | | | | |
|--------------------------------|------|-------|------|------|------|------|
| Payment Adjustment Year | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 |
| Full Year EHR Reporting Period | 2013 | 2014* | 2015 | 2016 | 2017 | 2019 |

EPs who first demonstrate meaningful use in 2013 must demonstrate meaningful use for a 90-day reporting period in 2013 to avoid payment adjustments in 2015. They must continue to demonstrate meaningful use every year to avoid payment adjustments in subsequent years. The table below illustrates the timeline to avoid payment adjustments for EPs who demonstrate meaningful use for a 90-day reporting period in 2013.

| | | | | | | |
|--------------------------------|------|-------|------|------|------|------|
| Payment Adjustment Year | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 |
| 90 day EHR Reporting Period | 2013 | | | | | |
| Full Year EHR Reporting Period | | 2014* | 2015 | 2016 | 2017 | 2019 |

* Because all providers must upgrade or adopt newly certified EHRs in 2014, all providers regardless of their stage of meaningful use are only required to demonstrate meaningful use for a three-month (or 90-day) EHR reporting period in 2014.

EPs who first demonstrate meaningful use in 2014 must demonstrate meaningful use for a 90-day reporting period in 2014 to avoid payment adjustments in 2015. This reporting period must occur in the first 9 months of calendar year 2014, and EPs must attest to meaningful use no later than October 1, 2014, in order to avoid the payment adjustments. EPs must continue to demonstrate meaningful use every year to avoid payment adjustments in subsequent years. The table below illustrates the timeline to avoid payment adjustments for EPs who first demonstrate meaningful use in 2014.

| Payment Adjustment Year | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 |
|--------------------------------|--------|------|------|------|------|------|
| 90 day EHR Reporting Period | 2014** | 2014 | | | | |
| Full Year EHR Reporting Period | | | 2015 | 2016 | 2017 | 2019 |

** EPs must attest to meaningful use no later than October 1, 2014.

Hardship Exceptions for Medicare EPs

EPs may apply for hardship exceptions to avoid the payment adjustments described above. Hardship exceptions will be granted only under specific circumstances and only if CMS determines that providers have demonstrated that those circumstances pose a significant barrier to their achieving meaningful use. Information on how to apply for a hardship exception will be posted on the CMS EHR Incentive Programs website (www.cms.gov/EHRIncentiveProgram) in the future.

EPs can apply for hardship exceptions in the following categories:

- **Infrastructure** — EPs must demonstrate that they are in an area without sufficient internet access or face insurmountable barriers to obtaining infrastructure (e.g., lack of broadband).

- **New EPs** — Newly practicing EPs who would not have had time to become meaningful users can apply for a 2-year limited exception to payment adjustments. Thus EPs who begin practice in calendar year 2015 would receive an exception to the penalties in 2015 and 2016, but would have to begin demonstrating meaningful use in calendar year 2016 to avoid payment adjustments in 2017.
- **Unforeseen Circumstances** — Examples may include a natural disaster or other unforeseeable barrier.
- **Patient Interaction:**
 1. Lack of face-to-face or telemedicine interaction with patients
 2. Lack of follow-up need with patients
- **Practice at Multiple Locations:** Lack of control over availability of CEHRT for more than 50% of patient encounters

Frequently Asked Questions

Do I have to be a meaningful user each year to avoid the payment adjustments or can I avoid the payment adjustments by achieving meaningful use only once?

You must demonstrate meaningful use every year according to the timelines detailed above in order to avoid Medicare payment adjustments. For example, an EP who demonstrates meaningful use for the first time in 2013 will avoid the payment adjustment in 2015, but will need to demonstrate meaningful use again in 2014 in order to avoid the payment adjustment in 2016.

If I am an EP who is eligible for both the Medicare and Medicaid EHR Incentive Programs, but I register to participate in the Medicaid EHR Incentive Program, do I still have to be a meaningful user to avoid the payment adjustments?

Yes. If you are eligible to participate in both the Medicare and Medicaid EHR Incentive Programs, you must demonstrate meaningful use according to the timelines detailed above to avoid the payment adjustments. You may demonstrate meaningful use under either Medicare or Medicaid.

If I am an EP who is eligible for both the Medicare and Medicaid EHR Incentive Programs, will I avoid the payment adjustments during a calendar year when I receive an incentive payment for adopting, implementing, or upgrading my Certified EHR Technology?

No. Congress mandated that an EP must be a meaningful user in order to avoid the payment adjustment; therefore receiving a Medicaid EHR incentive payment for adopting, implementing, or upgrading your Certified EHR Technology would not exempt you from the payment adjustments. You must demonstrate meaningful use according to the timelines detailed above to avoid the payment adjustments. You may demonstrate meaningful use under either Medicare or Medicaid.

How do I demonstrate meaningful use in order to avoid a payment adjustment?

You demonstrate meaningful use by successfully attesting through either the CMS Medicare EHR Incentive Programs Attestation System (<https://ehrincentives.cms.gov/>) or through your state's attestation system.

If I am a hospital-based Medicare EP, am I subject to the payment adjustments?

No. If you perform 90% or more of your covered professional services in either the inpatient (Place of Service 21) or emergency department (Place of Service 23) of a hospital, then you will be determined to be hospital-based and are not eligible to receive an EHR incentive and will not be subject to the payment adjustments.

However, your hospital-based status can change from year to year. For example, an EP who is determined to be hospital-based for the 2015 program year would not be subject to the payment adjustments in 2017. But if that EP is determined not to be hospital-based for the 2016 and the 2017 program year, then he or she could be subject to the payment adjustments in 2018 if the EP does not demonstrate meaningful use. Therefore it is important to check your hospital-based status at the beginning of each year. You can check your hospital-based status by visiting the Medicare EHR Incentive Programs Registration System (<https://ehrincentives.cms.gov/>).