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SPECIAL FOCUS: HIPAA/PRIVACY

Uncertainty Regarding eRx Hardship Exemption Requests to Continue in 2012

By: [Joshua J. Freemire](#) and [James B. Wieland](#)

2012 will not, unfortunately, bring certainty to the many providers who submitted hardship exemption requests for the electronic prescribing incentive program (commonly called “eRx”). Although the deadline for submissions for hardship exemptions was extended (as is further [described in our bulletin](#)), recent emailed notices from CMS indicate that the overwhelming number of requests will prevent notices from being sent to providers regarding the status of their exemptions. Accordingly, many providers will spend at least part of 2012 uncertain whether they are or are not being penalized 1 percent of their 2012 Part B fees for their failure to become “successful electronic prescribers.”

CMS’s email, which was circulated shortly before the holidays, noted that “due to the high volume of significant hardship exemption requests received it is no longer technically feasible for CMS to provide a 2012 Electronic Prescribing (eRx) Incentive Program payment adjustment feedback report as originally intended.” It went on to note that CMS “continues to explore alternative means to notify eligible professionals that they are subject to the 2012 eRx payment adjustment...” and urged providers who had submitted exemption requests to “review your remittance advices for claims submitted for dates of services on or after Sunday, January 1, 2012” to determine whether or not their exemption request had been granted.

Reviewing those remittance advices, however, will not necessarily furnish providers with the conclusive evidence they might hope for. As CMS explained in the preamble to the final rule, it was possible (if not likely) that CMS would be unable to process all of the received exemption requests before the 1 percent penalty went into effect on January 1, 2012. Given that CMS extended the original deadline and was, as a result, so overwhelmed as to be unable to send adjustment feedback

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reports *at all*, it seems unlikely that all exemption requests have been processed and all final decisions rendered. Accordingly, professionals who note a 1 percent penalty in their payments may be seeing evidence that their request for an exemption was denied – or they may simply be seeing evidence that it has not yet been reviewed. This uncertainty will linger, unfortunately, until CMS either identifies an “alternative means” to notify providers that are subject to the penalty or at least announces that all exemption requests have been processed and all decisions rendered.

For providers seeking more information, the CMS email provides links to this [Medicare Learning Network Matters bulletin \[PDF\]](#) and the [dedicated eRx Program website](#). Neither, unfortunately, will help providers determine whether their request has been granted or not.

Ober|Kaler's Comments

The eRx Program has been the source of a fair amount of controversy lately, including, given its confusing rollout and its conflicts with the Medicare and Medicaid Electronic Health Record Incentive Programs, a fair amount of frustration for well-intentioned providers. CMS's efforts thus far, including the creation of the exemption request program, have helped, but have also created additional confusion for providers, who were given little time to review and apply. This latest news indicates that providers' frustrations with the program may continue into the new year. As always, wise providers will stay on top of program developments so that necessary adjustments (or additional necessary paperwork) can be completed timely.