Part II

Department of Health and Human Services

Center for Medicare & Medicaid Services

42 CFR Parts 405, 409, 410 et al.
Medicare Program; Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2011; Final Rule
the proposed 2011 requirements to avoid the payment adjustment in 2012. **Response:** With respect to commenters’ claims that the proposed reporting period for purposes of applying the 2012 eRx payment adjustment conflicts with the law, section 1848(a)(5) of the Act requires that the PFS amount for covered professional services furnished by an eligible professional during 2012, be reduced by 1 percent during 2012, if the eligible professional is not a successful electronic prescriber for the reporting period for the year. Under section 1848(a)(5)(D) of the Act, we have the discretion to define the “reporting period” for purposes of the payment adjustment with respect to a year.

While we appreciate the commenters’ suggestions to use data from the entire 2011 calendar year, a later part of 2011, or from 2012 for such an assessment for purposes of applying the 2012 eRx payment adjustment for services furnished in 2012, we believe it is necessary to have the PFS amount concurrently with claims submissions in 2012. The alternatives to reducing the PFS amount concurrently with claims submissions in 2012 would be having to recoup payments after the determination is made about whether the payment adjustment applies, providing added payments if the claims are paid at the reduced amount before the determination is made about whether the payment adjustment applies, or holding claims until the determination is made about whether the payment adjustment applies. As a result, we need to determine whether eligible professionals are successful electronic prescribers prior to 2012, based on a reporting period that also takes place prior to 2012. We believe that the proposed reporting period of the first six months of 2011 will allow sufficient time for eligible professionals to report the electronic prescribing measure, allow us to collect and analyze the data submitted by eligible professionals, and avoid retroactive adjustments of payments in 2012. Avoiding retroactive adjustments would not be possible if the determination of a successful electronic prescriber for purposes of the 2012 payment adjustment was based on reporting for the entire 2011 calendar year or a later portion of the 2011 calendar year. After the end of the reporting period, we must allow some time for claims for services furnished during the reporting period to be submitted and processed before it is available for analysis. Once we have completed our analysis we also need time to make the necessary system changes to begin applying the payment adjustments to the appropriate individuals. All of this must occur prior to January 1, 2012. **Comment:** One commenter suggested we be consistent with EHR Incentive Program submission guidelines by allowing electronic prescribing measure data to be submitted for up to two months after the close of the reporting period, rather than the proposed one month. **Response:** As we explained previously, we need sufficient time following the close of the 6-month reporting period to determine whether an eligible professional is a successful electronic prescriber and must do so prior to 2012, when the eRx payment adjustment would be assessed (if applicable). Accordingly, we cannot allow claims to be submitted for up to two months after the close of the reporting period.

After considering the comments and for the reasons we explained previously, we are finalizing a 6-month reporting period, from January 1, 2011 through June 30, 2011, for the 2012 eRx payment adjustment.

(2) Criteria for Determining Applicability of the 2012 eRx Payment Adjustment to Individual Eligible Professionals

As we explained previously, section 1848(a)(5) of the Act requires a payment adjustment be applied with respect to covered professional services furnished by an eligible professional in 2012, if the eligible professional is not a successful electronic prescriber for the reporting period for the year. Section 1848(m)(3)(B) of the Act sets forth the requirements for being a successful electronic prescriber. As we discussed in section VII.F.2.b.(2), of this final rule with comment period, for the 2011 eRx Incentive Program, we decided to continue to require eligible professionals to report on the electronic prescribing measure to determine whether an eligible professional is a successful electronic prescriber. Details about the electronic prescribing measure are discussed in section VII.F.2.b.(2),(C) and (D) of this final rule with comment period.

In addition, based on the authority under section 1848(m)(3)(D) of the Act to revise the criteria for submitting data on the electronic prescribing quality measure, we proposed that the 2012 eRx payment adjustment would not apply to the following:

(1) An eligible professional who is not a physician (includes MDs, DOs, and podiatrists), nurse practitioner, or physician assistant as of June 30, 2011.

(2) An eligible professional who does not have at least 100 cases (that is, claims for patient services) containing an encounter code that falls within the denominator of the electronic prescribing measure for dates of service between January 1, 2011 through June 30, 2011.

(3) An eligible professional who is a successful electronic prescriber for the January 1, 2011 through June 30, 2011 reporting period. Specifically, we proposed that to be a successful electronic prescriber for purposes of avoiding the 2012 eRx payment adjustment, the eligible professional must report that at least 1 prescription for Medicare Part B FFS patients created during an encounter that is represented by 1 of the codes in the denominator of the 2011 electronic prescribing measure was generated and transmitted electronically using a qualified eRx system at least 10 times during the 2012 eRx payment adjustment reporting period (that is, January 1, 2011 through June 30, 2011). (75 FR 40209).

The limitation with respect to the electronic prescribing measures required under section 1848(m)(2)(B)(i) of the Act also applies to the eRx payment adjustment. Therefore, we proposed that if less than 10 percent of the eligible professional’s estimated total allowed charges for the January 1, 2011 through June 30, 2011 reporting period are comprised of services which appear in the denominator of the 2011 electronic prescribing measure, then the eligible professional would not be subject to the 2012 eRx payment adjustment (75 FR 40209). As with the 2011 eRx incentive payment, we proposed that the determination of whether an eligible professional is subject to the payment adjustment will be made at the individual professional level, based on the NPI and for each unique TIN/NPI combination.

The following is a summary of the comments received on the proposed criteria for determining the applicability of the 2012 eRx payment adjustment to individual eligible professionals and our responses.

**Comment:** A couple of commenters suggested that regardless of the payment adjustment exemption criteria, any eligible professional who qualifies for the incentive payment should be exempt from the payment adjustment. The commenters specifically requested an exemption for eligible professionals who are successful electronic prescribers for the 2011 eRx incentive.

**Response:** As discussed previously, section 1848(a)(5) of the Act requires that the PFS amount for covered professional services furnished by an