



NATIONAL ASSOCIATION OF
Community Health Centers



***Medicare and Medicaid
Electronic Health Records Incentives:
Reassigning Payments***

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Federal Regulatory Policy Report
Medicare and Medicaid Electronic Health Record Incentives:
Reassigning Payments

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REASSIGNMENT OF MEDICARE AND MEDICAID ELECTRONIC HEALTH RECORDS INCENTIVES

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 (“ARRA”), created the Medicare and Medicaid Electronic Health Record Incentive Programs¹. These programs provide incentives to Eligible Professionals (EP) for the adoption, implementation, upgrading, and meaningful use of certified electronic health records. Providers at federally qualified health centers (“FQHCs”) are eligible for these incentives, provided that they meet the requirements in the statute². This issue brief specifically details the process for EPs to assign their incentive payments to an FQHC and suggests appropriate contract language for FQHCs to use in their provider agreements to ensure that FQHCs receive the benefit of the incentive payments.³

Background

Under the Final Rule for the Electronic Health Record Incentive Program, 75 *Fed. Reg.* 44313 (July 28, 2010) (hereinafter “Final Rule”), the assignment of incentive payments to an employer or other organization with which a provider has a contractual relationship is permissible, provided certain conditions are met. The Final Rule provision addressing assignment of incentive payments is as follows:

(f) Limitations on incentive payment reassignments.

- (1) 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 services.
- (2)(i) Assignments in Medicare must be consistent with Section 1842(b)(6)(A) of the Act and 42 CFR part 424, subpart F.
 - (ii) Medicaid EPs may also assign their incentive payments to a TIN for an entity promoting the adoption of EHR technology, consistent with subpart D of this part.
- (3) Each EP may reassign the entire amount of the incentive payment to only one employer or entity.

42 CFR § 495.10.

Accordingly, EPs that are employees or independent contractors of an FQHC are allowed to reassign their incentive payments to the FQHC. Reassignment can be made through the Medicaid EHR Incentive Programs, provided that the provider meets the definition of Eligible Professional to receive EHR

¹ This document references policy and provides suggested language relating both to Medicare and Medicaid EHR incentive payments. However, NACHC believes that in most circumstances the Medicaid option is likely to be much more beneficial to health centers than Medicare.

² For more information on the incentives and how providers can qualify for these incentives, please see the [NACHC Overview of the Final Rule on Electronic Health Records](#) and the CMS document [Medicaid Questions on the CMS EHR Incentive Program Final Rule](#). Please review these materials closely to ensure that providers meet all applicable requirements.

³ This contract language can be used for full time providers at the health center, or part time providers who have chosen to assign their payments to the FQHC. In the case of part time providers, it is important to note that they can only assign payments to one entity.

incentive payments for the Medicaid program. A provider that is eligible to participate in either program may participate in only one program, but may change his/her election once.⁴ In addition, reassignment of payments due to an EP under either program must be assigned in their entirety to a single entity. *Id.*

Under the Medicare EHR Incentive Program, an Eligible Professional is “a physician as defined in section 1861(r) of the [Social Security] Act, which includes, with certain limitations, all of the following types of professionals: (1) A doctor of medicine or osteopathy (2) A doctor of dental surgery or medicine (3) A doctor of podiatric medicine (4) A doctor of optometry (5) A chiropractor”⁵

In contrast, an Eligible Professional for the Medicaid EHR Incentive Program is one of the following types of providers acting within the scope of the practice regulations applicable for each professional: (1) A physician; (2) A dentist; (3) A certified nurse-midwife; (4) A nurse practitioner; (5) A physician assistant practicing in a Federally qualified health center (FQHC) or a rural health clinic (RHC), that is so led by a physician assistant.⁶

If the provider is one that is an Eligible Professional for purposes of the Medicare and Medicaid incentive program, then the assignment must comply with the payment conditions set forth in 42 U.S.C. §1395u(b)(6)(A), which requires that the following condition be met for assignment:

- 1) payment is made to the employer and the physician is required to turn over the payments as a condition of employment; or
- 2) payment is made to an entity with which the physician has a contractual arrangement, the service was provided under the contractual arrangement, the contractual arrangement requires the entity to bill for the physician’s services, and the arrangement meets program integrity and other standards determined by the Secretary of HHS.

Current arrangements between FQHCs and Eligible Professionals will likely meet that condition, either through an employment contract or an independent contractor agreement.

The reassignment provision in the Final Rule also allows Eligible Professionals participating in the Medicaid EHR Incentive Program to choose to reassign their payments to a special state-designated entity that is “an entity promoting the adoption of EHR technology.”⁷ States will soon designate which entities fall into this category, although it is unlikely that FQHCs will be designated as such. Therefore, this provision is not likely to have an impact on the reassignment by Eligible Professionals that are employed by or independent contractors of the FQHC.

To receive payment, an Eligible Professional (EP) will be required to submit several pieces of information, in a form and manner to be designated by CMS, including the name of the provider, the National Provider Identifier (NPI), the business address and phone number, and the taxpayer

⁴ 42 CFR § 495.10(e). 75 *Fed.Reg.* 44572 (July 28, 2010).

⁵ 42 CFR § 495.100. *Id.*

⁶ 42 CFR § 495.302. 75 *Fed.Reg.* at 44577.

⁷ 75 *Fed.Reg.* 44577.

identification number (TIN) to which the EP's incentive payment should be made.⁸ An Eligible Professional that has elected to reassign EHR Incentive payments to an FQHC would need to provide the FQHC's TIN at the point of registration for direction of their incentive payment.

Revising Provider Agreements to Comply with Assignment Requirements

Health Centers should evaluate their current provider agreements to determine whether the existing payment reassignment provisions will cover the reassignment of EHR incentive payments. Generally, existing reassignment provisions specify that the payments assigned to the health center are for services rendered by the provider. The EHR incentive payments, however, are not payments for the provision of professional services.⁹ In such cases, amendments to the provider agreements will be necessary.

Health centers can amend their current agreements to include EHR Incentive payments by: (1) revising the current reassignment clause to include EHR Incentive payments, or (2) attaching, through an addendum, a separate provision that specifically addresses the reassignment of EHR Incentive payments. A separate addendum may be the easier solution, and is rather straightforward. It also provides an opportunity to clearly set forth how the parties will work together to qualify for the EHR incentive payments. For example, in addition to the provider demonstrating his or her qualification as an Eligible Professional, the health center could state that it would assist the provider in demonstrating compliance with the eligibility criteria and meaningful use objectives, such as data needed for provider attestation and other relevant information. Below is sample language for an EHR Incentive reassignment clause.

Eligible Professionals

- a. Provider understands that Health Center is adopting, implementing, and/or upgrading its health information technology systems to comply with the Electronic Health Record ("EHR") Incentive Program, created by the American Recovery and Reinvestment Act, Pub. L. 111-5. Provider agrees to assist Health Center in meeting the obligations and objectives set forth in 42 CFR Part 495 and to take such steps as necessary to allow Health Center to realize the benefits of the EHR Incentive Program, including but not limited to participating in the Medicaid EHR Incentive Program as an Eligible Professional, using Certified EHR Technology, and providing attestations of adoption, implementation, upgrading and meaningful use of such technology as requested or required by Health Center or other federal or state authority.
- b. Provider reassigns to Health Center the right to receive any payments made in connection to Provider's participation as an Eligible Professional, as that term is defined in 42 C.F.R. § 495.4, in the Medicaid EHR Incentive Program. Provider understands and agrees that Health Center will collect and retain any payments made for the implementation, adoption, upgrade, and/or meaningful use of health information technology systems, including but not limited to certified EHR technology, by its employees or independent contractors.

⁸ 75 Fed.Reg. 44571, to be codified at 42 CFR § 495.10(a)-(c).

⁹ See 75 Fed.Reg. 44446.

Conclusion

Health Centers should evaluate their current provider agreements to determine whether the existing payment reassignment provisions will cover the reassignment of EHR incentive payments. If it is not the case, the language provided in this issue brief can be helpful in order to revise agreements to best meet the reassignment requirements. Additionally, health centers and Primary Care Associations should also follow the developments in their State Medicaid Agency's development of the Medicaid Electronic Health Records Incentive program in order to ensure they are meeting all of the state requirements for the program as well.