Tips for avoiding the 2014 E-prescribing penalty

Eligible professionals (EP’s) who do not meet certain criteria under the Centers for Medicare & Medicaid Services (CMS) E-prescribing Incentive Program or who are not granted an exemption will be subject to a penalty for all Medicare Part B-covered professional services. These EP’s will be subject to a 2 percent penalty in 2014 based on previous years e-prescribing activity. This document will help you understand if this penalty applies to your providers, and how to act now to avoid this 2 percent reduction on Medicare payments in 2014.

The following professionals are eligible to participate in the E-prescribing Incentive Program, and thus considered “EPs”:

1. Medicare physicians
   - Doctor of Medicine
   - Doctor of Osteopathy
   - Doctor of Podiatric Medicine
   - Doctor of Optometry
   - Doctor of Oral Surgery
   - Doctor of Dental Medicine
   - Doctor of Chiropractic
2. Practitioner
   - Physician Assistant
   - Nurse Practitioner
   - Clinical Nurse Specialist
   - Certified Registered Nurse Anesthetist (and Anesthesiologist Assistant)
   - Certified Nurse Midwife
   - Clinical Social Worker
   - Clinical Psychologist
   - Registered Dietitian
   - Nutrition Professional
3. Therapists
   - Physical Therapist
   - Occupational Therapist
   - Qualified Speech-Language Therapist

Disclaimer: This document represents the key items and issues practices should consider to avoid the 2014 e-prescribing penalty. It is based on questions and concerns frequently raised by our members, and is not intended to be a complete instruction on achieving success with this program. Please visit the CMS website to review the complete criteria and implementation specifications associated with the e-prescribing program for more information.

In this document:

- Will the penalty apply to my EP? Page 2
- How to avoid the 2014 e-prescribing penalty Page 2
- Who is eligible for a Hardship Exemption? Page 3
- How to apply for a Hardship Exemption Page 5
- Appealing a penalty determination Page 9
Will the penalty apply to my EP?
The 2014 penalty will not apply if:

1) The EP is not an MD, DO, podiatrist, Nurse Practitioner, or Physician Assistant by **June 30, 2013** based on primary taxonomy code in the National Plan and Provider Enumeration System (NPPES)

2) The EP does not have at least 100 Medicare Part B PFS cases (that is, claims for patient services) containing an encounter code in the measure’s denominator for dates of service from **1/1/13-6/30/13**

3) The EP does not have 10% or more of their Medicare Part B PFS allowable charges (per TIN) for encounter codes in the measure’s denominator for dates of service from **1/1/13-6/30/13**

4) The EP does not have prescribing privileges and reported **G8644** on a billable Medicare Part B service at least once on a claim between **1/1/13-6/30/13**

**Denominator Codes:**

90801, 90802, 90804, 90805, 90806, 90807, 90808, 90809, 90862, 92002, 92004, 92012, 92014, 96150, 96151, 96152, 99201, 99202, 99203, 99204, 99205, 99211, 99212, 99213, 99214, 99215, 99304, 99305, 99306, 99307, 99308, 99309, 99310, 99315, 99316, 99324, 99325, 99326, 99327, 99328, 99334, 99335, 99336, 99337, 99341, 99342, 99343, 99344, 99345, 99347, 99348, 99349, 99350, G0101, G0108, G0109

If any of the above scenarios applies to your eligible professional, they will not be subject to the 2014 penalty and do not need to apply for a hardship exemption.

*The Centers for Medicare and Medicaid Services (CMS) will make these calculations; no action is required by the provider.*

**How to avoid the 2014 e-prescribing penalty**

There are 3 ways EP’s can avoid the 2014 penalty:

1) The EP was a successful electronic prescriber during the 2012 e-prescribing 12-month reporting period (reported at least 25 unique denominator eligible e-prescribing events between **1/1/12-12/31/12**), OR

2) The EP reports G8553 via claims based reporting for **at least 10 Medicare Part B PFS encounters between Jan. 1- June 30, 2013**. In these cases the e-prescribing G-code can be reported on any Medicare Part B claim that includes a billable Part B service, regardless of whether the claim contains coding in the measure’s denominator to avoid the penalty (data must be processed into the National Claims History (NCH) no later than **July 27, 2013**), OR

3) The EP is granted a Hardship Exemption. Hardship Exemption requests must be received by **June 30, 2013** and the request is subject to CMS approval (see below)

Learn more about how to successfully submit an e-prescribing instance on the [CMS website](#).
Who is eligible for a Hardship Exemption?

EP’s may be exempt from the penalty if CMS determines that complying with the requirements for successfully e-prescribing would result in a significant hardship. Therefore, CMS has created six exemption categories for which EPs can apply. Four of these exemptions must be applied for, while two are automatically granted if all eligibility criteria are met. CMS will review each hardship exemption request on a case-by-case basis.

When applying for a hardship exemption the provider will be asked to give a short justification statement. In this statement, the provider will need to give an explanation of why a particular exemption category applies to the provider (see examples below). CMS will review each application and make a final determination.

**Hardship exemption categories:**

1) **Unable to e-prescribe due to local, state or federal law or regulation**  
   *Example: EPs who prescribe a large volume of narcotics, which may not be electronically prescribed in some states, or EPs who practice in a state that prohibits or limits the transmission of electronic prescriptions via a third party network such as Surescripts.*

2) **Prescribe fewer than 100 times during a respective six-month reporting period**  
   *Example: A nurse practitioner who may not write prescriptions under his or her own NPI, a physician who decides to let his Drug Enforcement Administration registration expire during the reporting period without renewing it.*

3) **Providers practicing in a rural area with limited high-speed Internet access**  
   *To request consideration for this hardship exemption: report G8643 at least once on claims, or use the web portal, by June 30, 2013.*

4) **Providers practicing in an area with limited available pharmacies for electronic prescribing**  
   *To request consideration for this hardship exemption: report G8643 at least once on claims, or use the web portal, by June 30, 2013.*

If one of these exemptions applies to your EP(s), follow the next steps to submit a hardship exemption request. To avoid the 2014 penalty you must apply for the exemption by **June 30, 2013**.

As a result of MGMA advocacy, there are two additional hardship exemptions which will be provided automatically to qualifying providers. CMS made these hardship exemptions available per the 2013 Final Medicare Physician Fee Schedule for certain eligible professionals also participating in the Meaningful Use program. The new automatic exemptions, and criteria that must be met to qualify for the automatic exemptions are listed below.

5) **EPs who achieve meaningful use during the respective six or 12 month payment adjustment reporting periods**

6) **EPs who have registered to participate in the EHR Incentive Program and adopted Certified EHR Technology (CEHRT) prior to the application of the respective payment adjustment**
<table>
<thead>
<tr>
<th>Exemption #5</th>
<th>Exemption #6</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Avoiding the 2014 Penalty</strong></td>
<td></td>
</tr>
<tr>
<td>Achieve MU for continuous 90 day period that falls within Jan. 1, 2012 - June 30, 2013, OR</td>
<td>Register for MU between Jan. 1, 2013 – June 30, 2013 and adopt Certified EHR Technology</td>
</tr>
<tr>
<td>For an EHR reporting period that is the full CY 2012</td>
<td></td>
</tr>
</tbody>
</table>

**Note:** You must include the full EHR Certification Number in the CMS EHR Incentives Program’s Registration & Attestation System to get credit for these exemptions.

As a reminder, providers who earn Meaningful Use incentive payments are still subject to e-prescribing program penalties unless one of these hardship exemptions applies.
How to apply for a Hardship Exemption

As a result of MGMA advocacy, billing managers, office managers, receptionists, and other office staff may submit an e-prescribing hardship exemption request on behalf of their eligible professionals to avoid the 2014 e-prescribing penalty.

To begin submission, go to the CMS Quality Reporting Communication Support Page (CSP).

Note that as of publication of this document, CMS has not yet opened this website to accept 2014 penalty hardship exemption requests. MGMA will alert members when this website has been re-opened to accept these requests.

Click on "Create Hardship Exemption Request" (Figure 1.1)
Next, you’re asked to select a Requestor Type (see Figure 1.2):

- Individual Eligible Professional
- Group Practice (a group practice that self-nominated and is approved to participate in the 2013 eRx Group Practice Reporting Option only)

**Note:** Only select the “Group Practice” option if your practice has been selected and approved by CMS to participate in the 2013 eRx “Group Practice Reporting Option (GPRO)”. 

Figure 1.2
Then, you’ll be directed to the application page to complete four sections (see Figure 1.3 and 1.4):
- Requestor Contact Information
- Select the Hardship Exemption that Best Applies
- Provide Justification for Hardship Exemption
- User Agreement

Complete all Requestor Contact Information fields.

Billing TIN: TIN used to bill Medicare or if no TIN available, SSN used to bill Medicare

Remember to fill in your provider's information (i.e. name)

Figure 1.3

This is the email address where final determination notifications will be sent. **NOTE:** If submitting requests for multiple providers, CMS has indicated that the response messages you receive will be automated and may not contain NPI/provider specific information.

**NOTE:** As some individuals (identified by NPIs) may be associated with more than one practice or Tax Identification Number (TIN), the determination of whether an EP is a successful e-prescriber will continue to be made for each unique TIN/NPI combination.
Next, you’re asked to **Select the Hardship Exemption that Best Applies.**

Once you select a **Hardship Exemption**, you will be prompted to select a reason for the hardship exemption. This will appear under the subtitle “Select the Hardship Exemption Reasons that Best Applies (Select all that Apply)” screen. Select one or more reason(s) by clicking the box next to the hardship exemption reason. This is a mandatory field. (See below example in Figure 1.4)

For example, if you check the first exemption: “I have an inability to electronically prescribe due to local, state, or federal law or regulation”, then a “Select All That Apply” box will appear with two options:

- I mainly prescribe controlled substances, such as but not limited to narcotics, stimulants, benzodiazepines, etc.
- Other. Describe in the Justification Section

![Figure 1.4](image-url)
Finally, you’ll be asked to:

- Provide your justification for the hardship exemption
- Accept the User Agreement
- Click Submit to process application

Figure 1.5

- Click Submit to process the data captured on the screen. Once you click Submit, the system validates the fields on the screen. A confirmation message will appear on the screen.
- Click Cancel to return to the Main Menu.
- Click Reset to clear all data entered on the screen.
Appealing a penalty determination

The final 2013 Medicare Physician Fee Schedule made an informal review process available for providers who wish to contest an e-prescribing penalty determination. To request this informal review, or appeal of a CMS 2014 penalty determination, a provider must submit a request for review by February 28, 2014 via email to CMS at: eRxInformalReview@cms.hhs.gov. A written response will be provided and all decisions will be final. The request should include the individual rendering National Provider Identifier (NPI) contact information (email, telephone, mailing address) and justification as to why an informal review is being requested. CMS will contact EPs if additional information is needed.