

Insights

As EHR Incentive Program Sunsets, OIG Identifies Overpayments to Eligible Professionals

July 27, 2017

By: Thomas N. Hutchinson

A June 12, 2017, OIG report indicates that, between 2001 and 2014, CMS paid \$730 million in electronic healthcare record (“EHR”) incentive payments to eligible professionals (“EPs”) who *did not comply* with Federal requirements for “meaningful use” of EHRs. In other words, the OIG believes these were improper payments to participating EPs. In context, this overpayment represents 12% of the total incentives Medicare has paid to EPs for program participation.

The EHR Incentive program manifested from the Health Information Technology for Economic and Clinical Health Act (HITECH) in 2009, when CMS began offering financial incentives to healthcare providers.

EHR incentive program guidelines require that CMS audit 5% of total program participants every year, meaning an overwhelming number of program participants continue receiving incentives without oversight. In the June 12 report, OIG randomly sampled 100 EPs who received one or more meaningful-use payments. Of the 100 EPs sampled, 14 non-compliant EPs collected \$291,222 to which they were not entitled. OIG concluded that, based on the sample audit, CMS had made \$730 million in overpayments to participating EPs.

OIG identified several meaningful use compliance concerns with the sampled EPs, including:

- Failure to maintain support for submitted attestations
- Inability to produce records of required security risk assessments
- Poor retention of patient encounter information for Stage 1 meaningful use (e.g., drug interaction checks).

After establishing the existence and cause of the overpayments, the OIG report offered suggestions for CMS. Without surprise, OIG pushed CMS to recover the \$291,222 identified in the limited OIG sample. But OIG expressed similar encouragement for CMS' recovery of a significant portion of the \$730 million as well. OIG acknowledged that this could be done through an expansion of the existing “review” structure, meaning that providers may see a significant uptick in audit frequency. Of note, OIG pushed CMS to continue auditing EPs at all phases of the EHR Incentive Program, including and up to the program's outset, meaning that providers may be required to produce documentation from their 2011 program year.



Importantly, affected providers need to understand that program regulations require a full, fair review process, including a right to appeal adverse audit findings. A preemptive review of historical meaningful use attestation submissions may indicate an EP's likelihood of success or failure in an audit appeal.

Krieg DeVault LLP recommends that EPs who received payments under the EHR Incentive Program be familiar with the audit process and assured that their organization can prevail in a EHR Incentive Program audit or review. Our Health Care Practice Group members have successfully guided many clients through the EHR Incentive Program audit process. Should you have any questions regarding EHR Incentive Program compliance or audits, please contact Tom Hutchinson at (317) 238-6254 or thutchinson@kdlegal.com.

**A copy of the OIG report can be found here.*