

## REASSIGNMENT OF MEDICARE/MEDICAID EHR INCENTIVE PAYMENTS: IS YOUR MEDICAL PRACTICE COVERED?

The Health Information Technology for Economic and Clinical Health (“HITECH”) Act provides incentive payments through the Medicare and Medicaid programs to hospitals<sup>1</sup> and certain individual health care providers – referred to as Eligible Professionals<sup>2</sup> – that adopt and “meaningfully use”<sup>3</sup> certified electronic health records (“EHR”) technology. As more and more individual health care providers receive these payments, an increasing number of medical practices have inquired about receiving these payments via reassignment from the individual providers.

The HITECH Act and the related rules **do not** provide for automatic payment of the EHR incentive payments to an Eligible Professional’s medical practice (including a medical practice affiliated with a hospital) or other entity which bills for the Eligible Professional’s services. However, the HITECH Act and the related rules do permit (but do not require) Eligible Professionals to reassign their right to receive the EHR incentive payments to an employer or other entity with which they have a contractual arrangement allowing the entity to bill for the services of the Eligible Professionals.<sup>4</sup> This reassignment must be consistent with the general rules governing reassignment of Medicare and Medicaid payments. As a result, medical practices, medical practice foundations, community clinics and hospital outpatient clinics that bill for their Eligible Professionals’ services may receive the EHR incentive payments, provided that these organizations have taken appropriate steps to ensure receipt of such payments.

Most contracts between a medical practice and each of its Eligible Professionals already contain reassignment language that pertains to monies received from professional services, as well as, in most cases, remuneration earned from medically-related activities. However, it is

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<sup>1</sup> Please note that hospitals may receive the payments directly from the Medicare and Medicaid programs. A reassignment from an Eligible Professional is not necessary to receive to such payments. However, a hospital affiliated medical practice that employs Eligible Professionals will not be able to receive the EHR incentive payments unless its Eligible Professionals have reassigned their rights to such payments to the medical practice.

<sup>2</sup> Under the Medicare program, Eligible Professionals include physicians, dentists, chiropractors, podiatrists and optometrists. Hospital-based professionals who provide substantially all (i.e. 90%) of their services in an inpatient or emergency room setting, such as emergency physicians, anesthesiologists, hospitalists and pathologists, are not eligible to receive incentive payments from the Medicare program. Under the Medicaid program, Eligible Professionals include physicians, dentists, certified nurse-midwives, nurse practitioners, and physician assistants who lead rural health clinics or federally qualified health centers who meet certain Medicaid volume criteria.

<sup>3</sup> Please note that the **Medicare** EHR Incentive Program will provide incentive payments to Eligible Professionals, eligible hospitals, and critical access hospitals that demonstrate meaningful use of certified EHR technology. The **Medicaid** EHR Incentive Program will provide incentive payments to Eligible Professionals, eligible hospitals, and critical access hospitals as they adopt, implement, upgrade, or demonstrate meaningful use of certified EHR technology.

<sup>4</sup> It is important to note that each Eligible Professional may reassign the entire amount of the incentive payment to only one employer or entity. An Eligible Professional may also reassign his or her incentive payments to a state-designated entity promoting the adoption of certified EHR technology.

prudent to amend the relevant contractual provisions to expressly state that the Eligible Professional is reassigning to the medical practice his or her right to receive any payments made in connection with the Eligible Professional's participation in the EHR incentive programs. In addition, the contractual provision should require the Eligible Professional to provide the medical practice's taxpayer identification number at the time of the Eligible Professional's registration for the EHR incentive program and to take any other steps that may be necessary to ensure that the medical practice receives the payments.

A medical practice should take these affirmative steps to ensure that it receives the payments from the EHR incentive programs as a result of its adoption, implementation, and/or upgrading, or the meaningful use by its individual health care providers, of its health information technology systems.

If you have any questions concerning the issues raised in this alert, please contact the authors of this alert [Jodi Knox](#) or [Jill Girardeau](#) or any of our [Health Care attorneys](#).

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