HLB
HOOPER, LUNDY & BOOKMAN, PC
HEALTH CARE LAWYERS

CMS BEGINS EHR INCENTIVE PROGRAM AUDITS

As of the end of May 2012, over 110,000 eligible professionals and over 2,400 eligible hospitals have attested to meaningful use of electronic health records ("EHR") and have received incentive payments of $5.7 billion dollars by either the Medicare or Medicaid EHR Incentive Program. Any provider that has attested to meaningful use to receive an EHR incentive payment may be subject to an audit.

On April 16, 2012, CMS awarded a contract to Figliozzi & Company to perform audits of Medicare providers and dual-eligible Medicare and Medicaid providers that have attested to meaningful use to receive an EHR incentive payment, and Figliozzi & Company has recently started to conduct these audits.[1] If a provider is being selected for an audit, it will receive a letter from Figliozzi & Company with the CMS logo on the letterhead. Some providers have already received audit letters, and more are sure to follow.

Peter Figliozzi, of Figliozzi & Company, has been auditing healthcare facilities to determine compliance with Medicare regulations for over two decades. At Hooper, Lundy & Bookman, we have extensive experience representing clients facing audits by Mr. Figliozzi. In particular, our attorneys represented a hospital system in the largest hospital payments investigation in U.S. history for over four years where Mr. Figliozzi acted as the lead auditor and audit expert for the plaintiffs. Ultimately, this firm achieved a largely successful result for the client on such audits.

CMS provides an overview of the audit process at https://www.cms.gov/Regulations-and-Guidance/Legislation/EHRIncentivePrograms/Attestation.html. Audits are conducted to both validate that the provider accurately attested and submitted Clinical Quality Measures (CQMs), and to verify that the incentive payment received was accurate. If, based on the audit, Figliozzi & Company determines that the provider was not eligible for the EHR payments received, those payments will be recouped.

To prepare for a potential audit, CMS advises that each provider save documentation supporting its attestation, CQMs, and payment calculations. Providers should retain all relevant supporting documentation for at least six years post-attestation. Documentation to support payment calculations (such as cost report data) should follow the current documentation process. According to early reports, the audit letters from Figliozzi and Company request four categories of information: (1) a copy of the certification for the technology system used; (2) documentation to support the method chosen to report emergency department admissions; (3) documentation supporting the attestation module responses related to the core set objectives and measures; and (4) documentation supporting the attestation module responses related to the menu set of objectives and measures. The audit letters to date only provide two weeks to respond.

If a provider believes that the audit decision is in error, it can appeal that decision through an EHR Incentive Program administrative appeals process. The Office of Clinical Standards and Quality ("OCSQ"), an office within CMS, provides a two-level appeal process comprised of an informal review and a request for reconsideration. Generally, providers can file an Eligibility Appeal, a Meaningful Use Appeal, or an Incentive Payment Appeal, although Incentive Payment Appeals for hospitals are referred to the Provider Reimbursement Review Board. All of these types of appeals must be filed quickly. For example, Meaningful Use Appeals must be filed no later than 30 days after the date of the demand letter for recoupment, and Incentive Payment Appeals must be filed no later than 60 days after a determination that the incentive payment amount was incorrect.

Hospitals, physicians, and other healthcare providers that have attested to meaningful use and received EHR incentive payments are all audit targets. Due to our extensive experience with audits by Figliozzi & Company, and our long-standing experience assisting providers with preparations for audits by CMS contractors and subsequent audit appeals, we are in a unique position should you need assistance in these matters.

For additional information, please contact John Hellow, Laurence Getzoff, Jon Neustadter or Amy Joseph in our Los Angeles office at 310.551.8111, Robert Roth in our Washington, D.C. office at 202.580.7701, Steve Lipton or Paul Smith in our San Francisco office at 415.875.8500, or Mark Johnson in our San Diego office at 619.744.7300. For more information about the firm, please visit our website at www.health-law.com.

---

[1] States, and their contractors, will perform audits on Medicaid providers.