DEPARTMENT OF HEALTH AND SOCIAL SERVICES

PROPOSED REGULATIONS

ALASKA MEDICAID ELECTRONIC HEALTH RECORDS INCENTIVE PROGRAM
7 AAC 165

Effective Date
June 1, 2011
(Version 3.7)

7 AAC 105.400(21) is amended to read:

(21) failing to repay or make arrangements for repaying

(A) an identified overpayment or otherwise erroneous **Medicaid** payment **under 7 AAC 105 - 7 AAC 160; or**

(B) an electronic health record incentive payment if the department requires repayment under 7 AAC 165.050(d)(2);

(Eff. 2/1/2010, Register 193; am 6/1/2011, Register 198)

Authority: AS 47.05.010 AS 47.05.320 AS 47.07.030
AS 47.05.300 AS 47.05.330 AS 47.07.040
AS 47.05.310 AS 47.05.340

7 AAC is amended by adding a new chapter to read:

Chapter 165. Alaska Medicaid Electronic Health Record Incentive Program.

Section

50. Program standards for continuing participation

80. Appeals

900. Definitions

7 AAC 165.001. Purpose. The purpose of this chapter is to encourage selected Medicaid providers to deploy and use electronic health record technology and the electronic health information exchange system created under AS 18.23.300 - 18.23.325. (Eff. 6/1/2011, Register 198)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 165.010. Participation in the Alaska Medicaid electronic health record incentive program. (a) To participate in the Alaska Medicaid electronic health record incentive program a provider

(1) must be enrolled in and in compliance with the Medicaid program under 7 AAC 105 - 7 AAC 160 as one of the following types of providers:

(A) a hospital provider;

(B) a physician;

(C) a dentist;

(D) an advanced nurse practitioner, including an advanced nurse practitioner certified to perform nurse midwife services;

(E) a physician assistant who practices predominantly in a

(i) federally qualified health center led by a physician assistant; or

(ii) rural health clinic led by a physician assistant;

(2) may not be subject to a provider sanction under 7 AAC 105.400 - 7 AAC 105.490;

(3) must complete the registration and attestation requirements of 7 AAC 165.020; and

(4) must meet the applicable Medicaid patient volume or needy individual volume requirements in (b) of this section.

(b) To participate in the Alaska Medicaid electronic health record incentive program,

(1) a hospital provider must serve at least the minimum Medicaid patient volume calculated under 42 C.F.R. 495.302 - 495.306, revised as of October 1, 2010, and adopted by reference;

(2) a nonhospital-based physician, nonhospital-based pediatrician, nonhospital-based dentist, or nonhospital-based advanced nurse practitioner must serve at least the minimum Medicaid patient volume calculated under 42 C.F.R. 495.302 - 495.306, adopted by reference in (1) of this subsection;

(3) if the provider practices predominantly in a federally qualified health center or a rural health clinic, a physician, a pediatrician, a dentist, or an advanced nurse practitioner must serve at least the minimum needy patient volume calculated under 42 C.F.R. 495.302 -

495.306, adopted by reference in (1) of this subsection;

(4) a physician assistant described in (a)(1)(E) of this section must serve at least the minimum needy individual patient volume calculated under 42 C.F.R. 495.302 - 495.306, adopted by reference in (1) of this subsection.

(c) For purposes of this section,

(1) a physician, a pediatrician, a dentist, or an advanced nurse practitioner is nonhospital-based if that provider would not be considered hospital-based under the definition of "hospital-based EP" in 42 C.F.R.495.4; for purposes of this paragraph, the definition of "hospital-based EP" in 42 C.F.R.495.4, revised as of October 1, 2010, is adopted by reference; and

(2) the requirement that a physician, a pediatrician, a dentist, or an advanced nurse practitioner be nonhospital-based does not apply if the provider may participate under (b)(3) of this section.

(d) For purposes of this section, a provider practices predominantly at a federally qualified health center or rural health clinic if more than 50 percent of the provider's total patient encounters over a period of six months in the most recent calendar year occur at a federally qualified health center or rural health clinic.

(e) In this section,

(1) "federally qualified health center" has the meaning given in 7 AAC 160.990(b);

(2) "pediatrician" means a physician certified by the American Board of Pediatrics or the American Osteopathic Board of Pediatrics;

(3) "rural health clinic" has the meaning given in 7 AAC 160.990(b). (Eff. 6/1/2011, Register 198)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 165.020. Provider registration and attestation. (a) To participate in the Alaska Medicaid electronic health record incentive program a provider must electronically register using the

(1) Medicare and Medicaid electronic health record incentive program registration and attestation system; and

(2) Alaska Medicaid state-level registry for provider incentive payments.

(b) To complete the registration, a provider must submit to the department the provider's

(1) state Medicaid enrollment number;

(2) state professional or facility licensing information;

(3) Medicaid patient volume or needy individual patient volume that meets the minimum requirements of 7 AAC 165.010;

(4) federal taxpayer identification number that the provider is using to identify the individual or group who will receive the incentive payment;

(5) national provider identifier number under 45 C.F.R. 162.402 - 162.414 that

the provider will use to participate in the Alaska Medicaid electronic health record incentive program;

(6) attestation that meets the requirements of (c) or (d) of this section; and

(7) electronic mail address to be used for official correspondence between the department and provider.

(c) If registering to participate in the Alaska Medicaid electronic health record incentive program for the first time, a provider must attest

(1) to meeting the annual Medicaid patient volume or needy individual patient volume requirements of 7 AAC 165.010;

(2) to adopting, implementing, or upgrading of electronic health records technology used in the provider's practice, or to meeting, with respect to that technology, the meaningful use objectives and measures applicable to the type of provider that are established in 42 C.F.R. 495.6, revised as of October 1, 2010, and adopted by reference;

(3) that the electronic health records technology used is certified by the national coordinator for health information technology under 45 C.F.R. 170.102 - 170.306;

(4) to the accuracy of the electronic health record certification number provided;

(5) to any voluntary assignment made by the provider; and

(6) to the accuracy of the data used to determine the incentive payment calculations, if the provider is a hospital provider; the data used must be available for inspection under 7 AAC 105.

(d) If registering for any participation year after the provider's initial year of participation in the Alaska Medicaid electronic health records incentive program, the provider must attest to

(1) meeting the applicable annual Medicaid patient volume or needy individual patient volume requirements of 7 AAC 165.010;

(2) using the data in a manner that meets the meaningful use objectives and measures applicable to the type of provider that are established in 42 C.F.R. 495.6, adopted by reference in (c)(2) of this section;

(3) the accuracy of the electronic health record certification number provided;

(4) any voluntary assignment made by the provider; and

(5) the accuracy of the data used to determine the incentive payment calculations, if the provider is a hospital provider; the data used must be available for inspection under 7 AAC 105.

(e) The electronic registration process is not complete until

(1) the provider sends the attestation and all supporting documentation to the department as an electronic document through the Alaska Medicaid state-level registry for provider incentive payments or as a facsimile copy;

(2) the provider mails to the department the original signed attestation; and

(3) the department has received the material submitted under (1) and (2) of this subsection.

(f) Before determining if the provider meets the requirements of this chapter, the

department may request any missing or additional information from the provider. If missing or additional information is required, the department will notify the provider by electronic mail of the specific information needed. A provider must submit the additional information to the department no later than 30 days after the date of the electronic mail notice. If the provider fails to submit the required information during that period, the department will determine the registration incomplete.

(g) Before determining if the provider meets the requirements of this chapter, the department will evaluate the facts to which the provider has attested and may request additional information from sources other than the provider to validate the provider's attestation submitted under this section. (Eff. 6/1/2011, Register 198)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

Editor's note: The Medicare and Medicaid electronic health record incentive program registration and attestation system referenced in 7 AAC 165.020 can be found at the Internet address: https://ehrincentives.cms.gov/hitech/login.action. The Alaska Medicaid state-level registry for provider incentive payments referenced in 7 AAC 165.020 can be found at the Internet address: http://ak.arraincentive.com/.

7 AAC 165.030. Participation and payment determinations. (a) If the department determines that a provider meets the requirements of 7 AAC 165.010 and 7 AAC 165.020, the

department will

(1) send to the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), an electronic request for validation, through CMS's automated national level registry, that the provider is not

(A) deceased;

(B) federally sanctioned; or

(C) paid, in the same year, an incentive payment from Medicare or another jurisdiction, unless the provider is a hospital provider; and

(2) upon receiving validation through the CMS registry, notify the provider of the approval.

(b) If the department determines that a provider does not meet the requirements of 7 AAC 165.010 and 7 AAC 165.020, or if the department does not receive validation from CMS, the department will notify the provider of the

(1) reason for denial; and

(2) the provider's right to request an appeal under 7 AAC 165.080.

(c) If a change occurs in the information that the department used to deny participation, or that previously resulted in a failure to receive CMS validation, the provider may submit a new or updated attestation at any time during that payment year. (Eff. 6/1/2011, Register 198)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 165.040. Incentive payments. (a) The department will make an incentive payment to a provider under this chapter in accordance with

(1) the requirements of 42 C.F.R. 495.308 - 495.312, revised as of October 1, 2010, and adopted by reference; and

(2) if a hospital provider, the payment schedule identified in (b) of this section.

(b) If a hospital provider continues to be eligible for participation in the Alaska Medicaid electronic health record incentive program each payment year, the department will pay, as follows, the aggregate amount determined under this chapter and 42 C.F.R. 495.310, adopted by reference in (a)(1) of this section, to that provider:

(1) in the first year of participation, 50 percent of the aggregate amount;

(2) in second year of participation, 40 percent of the aggregate amount;

(3) in the third year of participation, 10 percent of the aggregate amount.

(c) Before making a payment under this chapter, the department will verify that the federal taxpayer identification number to which the provider attested under 7 AAC 165.020 is the federal taxpayer identification number of a Medicaid-enrolled provider under 7 AAC 105 - 7 AAC 160. (Eff. 6/1/2011, Register 198)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 165.050. Program standards for continuing participation. (a) A provider who has received an incentive payment under this chapter must continue to meet the eligibility

standards for that payment through the entire payment year.

(b) The department may investigate a provider and audit the provider's records to verify that the provider

(1) continues to be enrolled and in compliance with the Medicaid program under 7 AAC 105 - 7 AAC 160;

(2) continues to meet the requirements of this chapter, including

(A) the accurate calculation and reporting of Medicaid patient volume, needy individual patient volume, and total patient volume for the type of provider, in accordance with 42 C.F.R. 495.302 - 495.306, adopted by reference in 7 AAC 165.010(b)(1); and

(B) in each participation year after the provider's initial year of participation, meaningful use objectives and measures applicable to the type of provider that are established in 42 C.F.R. 495.6, adopted by reference in 7 AAC 165.020(c)(2);

(3) received accurate payments; and

(4) is not subject to any sanctions under 7 AAC 105.400 - 7 AAC 105.490.

(c) An investigation or audit conducted under (b) of this section may include any information the provider used to justify payment under this chapter, including the results of any Medicaid claim or payment information generated under 7 AAC 105 - 7 AAC 160.

(d) If the department finds that a provider is deficient for any reason listed in (b) of this section, the department may take any of the following actions:

(1) suspend an incentive payment until the provider has removed the deficiency to the satisfaction of the department;

(2) require full repayment of all or a portion of an incentive payment;

(3) terminate participation in the Alaska Medicaid electronic health record incentive program.

(e) Any action taken by the department under (d) of this section may be appealed by the provider under 7 AAC 165.080. (Eff. 6/1/2011, Register 198)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 165.080. Appeals. (a) A provider may appeal the department's decision to do any of the following:

(1) deny participation in the Alaska Medicaid electronic health records incentive program under 7 AAC 165.030;

(2) suspend an incentive payment under 7 AAC 165.050;

(3) require repayment of all or a portion of an incentive payment under 7 AAC 165.050;

(4) terminate participation in the Alaska Medicaid electronic health record incentive program under 7 AAC 165.050.

(b) To appeal a decision by the department a provider must submit a written request for a first-level appeal to the department no later than 30 days after the date of the department's letter

denying participation. The request for a first-level appeal must specify the basis upon which the department's decision is challenged and include any supporting documentation. A first-level appeal will be conducted by the supervisor who oversees the health information technology program in the department.

(c) Upon receipt of a request for a first-level appeal, if the department has suspended an incentive payment, the department may continue suspending the payment until a final determination is made regarding the appropriateness of the suspension.

(d) The department will notify the provider in writing of the department's first-level appeal decision.

(e) A provider who is not satisfied with the first-level appeal decision under (d) of this section may request a second-level appeal by submitting a written request to the commissioner no later than 30 days after the date of the first-level appeal decision. The request for second-level appeal must include

(1) a copy of the department's first-level appeal decision;

(2) a description of the basis upon which the decision is being appealed;

(3) a copy of the first-level appeal submitted by the provider; and

(4) any additional supporting documentation that supports the basis upon which the provider is making the appeal.

(f) The commissioner's review of the original appeal record, decision, and any additional material submitted by the provider and the department constitutes the second-level appeal. A

decision by the commissioner under this subsection is the final administrative decision of the department. The department will notify the provider of the provider's right to appeal to the superior court under the Alaska Rules of Appellate Procedure. (Eff. 6/1/2011, Register 198)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 165.900. Definitions. In this chapter,

(1) "CMS" means the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services;

(2) "hospital provider" means a hospital enrolled under 7 AAC 140.300 that is

(A) an acute care hospital as defined in 42 C.F.R. 495.302, revised as of October 1, 2010, and adopted by reference; or

(B) a children's hospital as defined in 42 C.F.R. 495.302, revised as of October 1, 2010, and adopted by reference;

(3) "Medicaid patient"

(A) means an individual who has been determined eligible for Medicaid in this state under 42 U.S.C. 1396 - 1396w-5 (Title XIX of the Social Security Act) and who is receiving or has received a Medicaid-covered service from a provider enrolled in the Medicaid program in this state;

(B) does not include an individual who has been determined eligible under 42 U.S.C. 1397aa;

(4) "needy individual patient" means

(A) an individual who is

(i) a Medicaid patient or who has been determined eligible for Medicaid services in this state under 42 U.S.C. 1397aa; and

(ii) receiving or has received a Medicaid-covered service from a provider enrolled in the Medicaid program in this state;

(B) an individual who received uncompensated medical care by the provider; or

(C) an individual who received medical care by the provider at no cost to the individual or at reduced cost to the individual based on a sliding scale determined by the individual's ability to pay;

(5) "payment year" has the meaning given in 42 C.F.R. 495.4, revised as of October 1, 2010, and adopted by reference;

(6) "provider" means a type of provider identified in 7 AAC 165.010(a)(1). (Eff. 6/1/2011, Register 198)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040