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## Oversight

### \$729M in Medicare Incentive Payments Deemed Improper

An estimated \$729 million in Medicare electronic health records incentive payments were improper because recipients failed to meet requirements, and the agency should take steps to recover the money, a government watchdog said.

The incentive program, designed to promote and reward the adoption of EHRs, made payments between 2011 and 2014 to physicians and hospitals who never demonstrated their meaningful use of EHR systems, according to a report from the Health and Human Services Office of Inspector General released June 12. The Centers for Medicare & Medicaid Services paid out \$6 billion in EHR incentives during the audit period and has paid \$37 billion since 2011.

The audit's findings are likely to prompt some changes in future incentive payment programs, such as more real-time audit and review efforts beyond current CMS efforts, Katie Pawlitz, a health-care attorney with Reed Smith in Washington, told Bloomberg BNA June 12.

Pawlitz said the CMS confirmed in the report that it would be continuing to conduct targeted risk-based audits of incentive payments through the rest of 2017.

Although the EHR incentive program has been replaced with the Merit-Based Incentive Payment System (MIPS), the OIG recommended that the CMS conduct reviews to determine if additional payment recipients didn't meet meaningful use standards.

MIPS was established by 2015's Medicare Access and CHIP Reauthorization Act.

"Providers should be prepared to provide support for incentive payments previously received and the meaningful use attestations they made to support those payments in the event they are confronted with an audit," Pawlitz said.

The Medicare EHR incentive program offers payments to eligible professionals if they can meet certain criteria showing their effective use of EHR systems.

**Issues With Extrapolation** The OIG arrived at the \$729 million estimate after extrapolating from a much smaller sample, which attorneys have often complained about in the past, Judy Waltz, a health-care attorney with Foley & Lardner LLP in San Francisco, told Bloomberg BNA June 12.

Auditors sampled payments to 100 eligible professionals (out of 250,470), and found that 14 payments,

totaling \$291,222, didn't meet the meaningful use requirements.

"I wonder about the reliability of the very small sample, and note that it wasn't described by the OIG as a statistically valid sample, but only as a simple random sample," Waltz said.

If the sample wasn't adequate, then the extrapolated overpayment wouldn't be reliable either, Waltz said.

Waltz said that while she would look at the report's findings with some caution as to their validity, they will prompt the CMS to increase its targeted audits of meaningful use payments.

The OIG recommended that the CMS recover the \$291,222 in improper payments uncovered in the sample as well as make attempts to recover the entire \$729 million.

The report also called for more health-care provider education on meeting meaningful use requirements. While the original EHR incentive program has been replaced, MIPS includes some meaningful use criteria that providers have to meet.

The CMS agreed with most of the recommendations and said it would recover the \$291,222 and boost educational efforts. As for recovering the entire \$729 million, the CMS said it would continue its risk-based audits.

**Margin of Error** Some of the improper payments likely result from a built-in margin of error in the incentive program, Waltz said.

"One would assume there would be some margin of error when self-attestations were used, especially with a new program for which providers didn't have experience in what documentation would suffice," Waltz said.

Waltz said she couldn't think of another way the CMS could have rolled out the incentive program as quickly as it did without accepting some error.

"CMS and many other health-care stakeholders have determined that the use of EHRs is critical to advancing health care in our country, and probably without government support a lot of physicians and groups wouldn't have implemented EHRs," Waltz said.

She said the report also didn't indicate whether any of the findings had been appealed by health-care providers, so some of the improper payments may turn out to be proper after all when appeals are finished.

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