

Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships

Exceptions for Certain Electronic Prescribing and Electronic Health Records Arrangements

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Statutory Authority

- **Electronic Prescribing Exception §411.357(v)**

Section 101 of the MMA

- **Electronic Health Records Exception §411.357(w)**

Section 1877(b)(4) of the Social Security Act



Electronic Prescribing

§411.357(v)



Covered Technology includes:

- Items and services that are necessary and used solely to transmit and receive electronic prescription information.
- Hardware, software, internet connectivity, and training and support services.

Electronic Prescribing

Standards with Which Donated Technology Must Comply

Applicable standards for electronic prescribing under Medicare's Part D (the first set is codified at §423.160).

Donors and Recipients

As required by statute, hospitals to members of their medical staffs; group practices to physician members; PDP sponsors and MA organizations to prescribing physicians.

Electronic Prescribing

Selection of Recipients

Donors may not take into account **directly or indirectly** the **volume or value of referrals** from the recipient or other business generated between the parties.

Value of Protected Technology

No limit on the value of donations of electronic prescribing technology.

Expiration of the Exception

None.

Electronic Health Records

§411.357(w)



Covered Technology includes:

- Software necessary and used predominantly to create, maintain, transmit, or receive electronic health records. Software packages may include functions related to patient administration, for example, scheduling functions, billing, and clinical support.
- Software must include electronic prescribing capability.
- Information technology and training services, which would include, for example, internet connectivity and help desk support services.

Electronic Health Records

Standards

- Electronic prescribing capability must comply with the applicable standards for electronic prescribing under Part D (the first set is codified at §423.160).
- Electronic health records software must be **interoperable**. Software may be deemed interoperable under certain circumstances.

Electronic Health Records

Donors and Recipients

- Entities that furnish designated health services (DHS) to any physician.

Electronic Health Records

Selection of Recipients

- Donors may use selection criteria that are not directly related to the volume or value of referrals from the recipient or other business generated between the parties.

Electronic Health Records

Value of Protected Technology

- Physician recipients must pay 15 percent of the donor's cost for the donated technology and training services.
- The donor may not finance the physician recipient's payment or loan funds to the physician recipient for use by the physician recipient to pay for the items and services.

Electronic Health Records

Expiration of the Exception

- Exception sunsets on December 31, 2013.

More Info?

- Reference: 71 Fed. Reg. 45140 (August 8, 2006).
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