AMERICAN ACADEMY OF FAMILY PHYSICIANS
STRONG MEDICINE FOR AMERICA

March 23, 2016

Andy Slavitt, Acting Administrator
Centers for Medicare & Medicaid Services
200 Independence Ave., SW
Washington, DC 20201

Dear Acting Administrator Slavitt:

On behalf of the American Academy of Family Physicians (AAFP), which represents 120,900 family physicians and medical students across the country, I am responding to the proposed rule titled, "Expanding Uses of Medicare Data by Qualified Entities" (CMS–5061–P) as published by CMS in the February 2, 2016 *Federal Register*.

In this regulation, CMS proposes to expand how qualified entities use and disclose data and to explain how qualified entities may create non-public analyses. In general, the AAFP is supportive of these proposals since providing these data and analyses has the potential to improve the patient experience of care, improve the health of populations, and reduce the cost of health care. Thus, the AAFP applauds CMS for moving forward with expanding the appropriate use of Medicare data. The AAFP and other medical societies are trusted partners that can continue to be responsible for providing meaningful analysis to providers. We offer the following brief recommendations to strengthen and improve this proposal.

Regarding the proposed rule's discussion of the term "patient" within the section titled "Limitations on the Qualified Entities with Respect to the Sale and Provision of Non-public Analyses", CMS proposes to define *patient* as an individual who has visited the provider or supplier for a face-to-face or telehealth appointment at least once in the past 12 months. Since some patients may only require an annual wellness visit and the interval between two annual visits may exceed 12 months, the AAFP recommends CMS consider the duration as "at least once in the past 18 months."

Within that same section, CMS proposes to bar disclosure by qualified entities of non-public analyses that individually identify a provider or supplier, unless:

a) The analyses only individually identifies the singular recipient of the analyses or;
b) Each provider or supplier who is individually identified in a non-public analyses that identifies multiple providers or suppliers has been afforded an opportunity to review the aspects of the analyses about them, and, if applicable, request error correction.

Instead of these two proposed approaches, the AAFP recommends a third option: when a group of providers are identified as part of a practice group (i.e., under the same TIN) and prior

consent by the practice has been obtained, CMS should define “provider” to mean an individual. Currently, the regulation is ambiguous about the definition of “provider.” We ask that CMS explicitly define the term in the regulation and define it to mean either an individual or a group of individuals that practice together.

Within the “Confidential Opportunity to Review, Appeal, and Correct Analyses” section, CMS discusses a proposed exception in cases where the analyses only individually identifies the (singular) provider or supplier who is being provided or sold the analysis. The AAFP recommends that if all the providers belong to the same group practice (such as same TIN), the practice should be considered an entity authorized to receive appropriate non-public analyses and data.

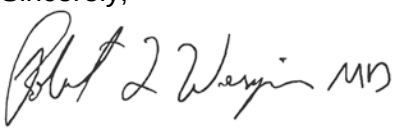
In the “Data Use Agreement” section of the proposed rule, CMS discusses that qualified entities may only permit providers and suppliers to re-disclose combined data, Medicare claims data, or non-public analyses that contain patient identifiable data and any derivative data for the purposes of performance improvement and care coordination. The AAFP supports this direction but recommends adding explicit permission for the re-disclosure of data "for direct patient care" and "issues of patient safety" since such data is useful for these purposes.

Within the same section, CMS requests comment on whether an authorized user should be permitted to link combined data, Medicare claims data, non-public analyses that contain patient identifiable data and any derivative data with other data sources, and whether the proposed provisions are adequate to protect the privacy and security of the combined data, Medicare claims data, and/or non-public analyses that contain patient identifiable data and/or any derivative data given to downstream users. The AAFP considers it important for providers to be able to link or combine data. We recommend that every authorized user be subject to the same restrictions for which the qualified entity is responsible. This would allow authorized users who are providers with access only to their data to link and combine for the purposes of performance measurement, quality improvement, and direct treatment of patients.

CMS proposes to define “medical society” as a nonprofit organization or association that provides unified representation for a large number of physicians at the national or state level and the majority of whose membership is comprised of physicians. The AAFP fully agrees with this definition and believes it should be finalized as proposed.

We appreciate the opportunity to provide these comments make ourselves available for any questions you might have. Please contact Robert Bennett, Federal Regulatory Manager, at 202-232-9033 or rbennett@aafp.org.

Sincerely,



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Board Chair

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