

March 28, 2012

Marilyn B. Tavenner
Acting Administrator
U.S. Department of Health and Human Services
Hubert H. Humphrey Building, Room 445-G
200 Independence Avenue, SW
Washington, DC 20201

Dear Acting Administrator Tavenner:

The undersigned organizations are writing to express our profound concern about the imminent storm that is about to occur due to simultaneous implementation of multiple programs that will create extraordinary financial and administrative burden as well as mass confusion for physicians. These programs include the value-based modifier, penalties under the electronic prescribing (e-prescribing) program, physician quality reporting system (PQRS) and electronic health record (EHR) incentive program, along with the transition to ICD-10. **We urge CMS to re-evaluate the penalty timelines associated with these programs and examine the administrative and financial burdens and intersection of these various federal regulatory programs. We also urge CMS to use its discretionary authority provided by Congress under these programs to develop solutions for synchronizing these programs to minimize burdens to physician practices, and propose these solutions in the physician fee schedule proposed rule for calendar year 2013.** The Department of Health and Human Services (HHS) recently announced its continued commitment to complying with President Obama's January 18, 2011, Executive Order calling on federal agencies to reassess and streamline regulations. This is a perfect opportunity for HHS to make good on its commitment to improve the regulatory climate for physicians.

Physicians face the ongoing threat of steep Medicare physician payment cuts due to the flawed sustainable growth rate (SGR), including a 27 percent cut (according to Congressional Budget Office estimates) on January 1, 2013, along with a 2 percent deficit reduction sequester beginning in January 2013. These cuts alone will take a huge toll on physician practices and patient access to care. Yet, this is only the beginning. While medicine is pleased that you have announced that CMS is undertaking a process to initiate a delay of ICD-10, we are anxious to hear the details of the proposal. Absent a delay, physicians will be transitioning to ICD-10 (currently scheduled for October 1, 2013), while at the same time spending significant time and resources implementing EHRs into their practices. Physicians are also facing present and future financial penalties if they do not successfully participate in multiple Medicare programs, including the e-prescribing program, the EHR meaningful use program, and the Physician Quality Reporting System (PQRS). In addition, physicians are being required to meet separate requirements under these three overlapping health IT programs and have been and will be unfairly penalized if they decide to participate in one program over the other. These burdens are

coming at the same time that physicians are trying to undertake meaningful payment and delivery reforms.

Further, in the midst of this storm, CMS has decided to back-date the reporting requirements under the penalty programs so that a physician will face a penalty based on activity in a year prior to the year of the penalty specified in the law. For example, CMS is basing the 2012 e-prescribing penalty on a physician's e-prescribing activity in 2011. Also, although the law requires that penalties under Stage 2 of the Medicare/Medicaid meaningful use EHR incentive program begin in 2015, CMS is proposing to back-date the penalty program so that physicians who do not successfully meet meaningful use requirements in 2013 or by October 3, 2014, would face a penalty starting on January 1, 2015. Further, CMS is basing the 2015 PQRS penalty on clinical quality measure reporting that occurs in 2013, and is using the 2013 year as the basis for the payment adjustments for the 2015 value-based payment modifier. CMS has essentially pushed up deadlines for participation by a full year or more, and this back-dating policy will subject a significant number of physicians to financial penalties and slow down the adoption and implementation rates of EHRs. The physician community strongly disagrees with CMS' interpretation of these timelines.

In the wake of this onslaught of overlapping regulatory mandates and reporting requirements, HHS has a responsibility to review all of these programs and take the opportunity to ease the burdens on physician practices. We urge that CMS, in the physician fee schedule proposed rule for calendar year 2013, discontinue its plans to back-date penalty programs, while better synchronizing the incentive and penalty programs so that physicians who successfully participate in one program are protected from penalties associated with the other programs. Relief from this back-dating policy will also avoid the reality that physicians could receive an incentive payment and a penalty in the same year for the same program, which undermines any incentive for greater reporting or use of health IT. We also urge CMS to establish in the proposed rule exemption categories to protect physicians facing hardships from penalties. Finally, we emphasize to CMS our view that a strong appeals process for application of penalties to physicians under all programs is critical. Experience with the PQRS and e-prescribing has shown the myriad of problems in determining successful physician participation, which results in physicians being incorrectly penalized, as we are seeing with e-prescribing. We urge CMS to ensure this does not occur under any of these programs.

Thank you for considering our recommendations. We look forward to discussing these urgent matters with you, as well as working with CMS to better align all of these programs and remove unnecessary burdens for physicians.

Sincerely,

American Medical Association
American Academy of Allergy, Asthma and Immunology
American Academy of Dermatology Association
American Academy of Facial Plastic and Reconstructive Surgery

American Academy of Family Physicians
American Academy of Home Care Physicians
American Academy of Ophthalmology
American Academy of Otolaryngology—Head and Neck Surgery
American Academy of Physical Medicine and Rehabilitation
American Association of Clinical Endocrinologists
American Association of Clinical Urologists
American Association of Neurological Surgeons
American Association of Neuromuscular and Electromyography Medicine
American College of Allergy, Asthma and Immunology
American College of Cardiology
American College of Chest Physicians
American College of Emergency Physicians
American College of Gastroenterology
American College of Mohs Surgery
American College of Osteopathic Family Physicians
American College of Osteopathic Internists
American College of Osteopathic Surgeons
American College of Phlebology
American College of Physicians
American College of Radiation Oncology
American College of Radiology
American College of Rheumatology
American College of Surgeons
American Congress of Obstetricians and Gynecologists
American Gastroenterological Association
American Geriatrics Society
American Osteopathic Academy of Orthopedics
American Osteopathic Association
American Society for Aesthetic Plastic Surgery
American Society for Gastrointestinal Endoscopy
American Society for Radiation Oncology
American Society for Reproductive Medicine
American Society for Surgery of the Hand
American Society of Anesthesiologists
American Society for Clinical Pathology
American Society of Cataract and Refractive Surgery
American Society of Clinical Oncology
American Society of Echocardiography
American Society of Plastic Surgeons
American Society of Transplant Surgeons
American Thoracic Society
American Urological Association
Association of American Medical Colleges
College of American Pathologists
Congress of Neurological Surgeons

Council of Medical Specialty Societies
Infectious Diseases Society of America
International Spine Intervention Society
Joint Council of Allergy, Asthma and Immunology
Medical Group Management Association
Society for Cardiovascular Angiography and Interventions
Society of Hospital Medicine
Society for Vascular Surgery
The Endocrine Society
The Society of Thoracic Surgeons

Medical Association of the State of Alabama
Alaska State Medical Association
Arizona Medical Association
Arkansas Medical Society
California Medical Association
Colorado Medical Society
Connecticut State Medical Society
Medical Society of Delaware
Medical Society of the District of Columbia
Florida Medical Association Inc
Medical Association of Georgia
Hawaii Medical Association
Idaho Medical Association
Illinois State Medical Society
Indiana State Medical Association
Iowa Medical Society
Kansas Medical Society
Kentucky Medical Association
Louisiana State Medical Society
Maine Medical Association
MedChi, The Maryland State Medical Society
Massachusetts Medical Society
Michigan State Medical Society
Minnesota Medical Association
Mississippi State Medical Association
Missouri State Medical Association
Montana Medical Association
Nebraska Medical Association
Nevada State Medical Association
New Hampshire Medical Society
Medical Society of New Jersey
New Mexico Medical Society
Medical Society of the State of New York
North Carolina Medical Society
North Dakota Medical Association

Ohio State Medical Association
Oklahoma State Medical Association
Oregon Medical Association
Pennsylvania Medical Society
Rhode Island Medical Society
South Carolina Medical Association
South Dakota State Medical Association
Tennessee Medical Association
Texas Medical Association
Utah Medical Association
Vermont Medical Society
Medical Society of Virginia
Washington State Medical Association
West Virginia State Medical Association
Wisconsin Medical Society
Wyoming Medical Society