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
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