

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 Electrophysiological 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