



Physicians Caring for Texans

June 10, 2013

Marilyn Tavenner, Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-1454-P
P.O. Box 8013
Baltimore, MD 21244-8013

RE: File Code CMS-1454-P; Physicians' Referrals to Health Care Entities With Which They have Financial Relationships: Exception for Certain Health Records Arrangements

Dear Ms. Tavenner,

The Texas Medical Association (TMA) is a private, voluntary, nonprofit association of Texas physicians and medical students. TMA was founded in 1853 to serve the people of Texas in matters of medical care, prevention and cure of disease, and improvement of public health. Today, our maxim continues in the same direction: "Physicians Caring for Texans." TMA's diverse physician members practice in all fields of medicine.

On behalf of our more than 47,000 member physicians, the TMA appreciates the opportunity to comment on the above referenced proposed rule regarding physician referrals and exceptions for certain health records arrangements and offers the following comments:

- TMA agrees with the deeming provision that data not be locked in, and further agrees with the proposed approach related to the current certification of EHRs to determine the interoperability of the systems. This approach ensures that physicians receive the most current technology that enables continuity of care for the patients they treat.
- Section II, B proposes deleting the electronic prescribing provision, citing the reason that most EHRs include the electronic prescribing component. TMA disagrees and recommends that the electronic prescribing requirement stay. A review of the certified health product list denotes whether a product is complete or modular. There are many modular products that require a separate electronic prescribing module. If a physician were offered a modular product, there is risk the product may not include the electronic prescribing component.
- Section II, C refers to whether the sunset provision should have a date that correlates with the EHR incentive program or should be removed entirely. Consistency between CMS programs is important and to arbitrarily pick 12/31/2016 adds to programmatic confusion. TMA recommends removing the entire sunset provision. Health care is dynamic and new physicians enter practice as others retire. There is continuous need for physicians to have access to EHRs to ensure continuity of care for their patients. By keeping the safe harbor in place, physicians will have options for securing appropriate technology needed for their practice.

If removing the provision is not accepted, TMA recommends expiration at the end of 2021, which represents the end of the Medicaid Meaningful Use program.

- Section II, D, 3, discusses covered technology, but does not specifically address HIE participation. Section II, A, discusses the need for the systems to be interoperable with other EHRs and health entities. TMA recommends CMS clarify whether the exception can be extended to cover the costs of participation with a local health information exchange (HIE). Many public HIEs funded by grants under HITECH have fees for onboarding, and rely upon monthly or annual subscription fees by participants. It would be helpful if the health care entities could either cover or subsidize the cost of physician participation.
- Section V discusses costs and benefits. TMA believes CMS policies incentivizing EHR adoption create a significant liability for the future. Specifically, recent data shows that approximately 37 percent of the EHR market is served by 400+ vendors. It is widely believed many of these vendors and even some of those that supply the 63 percent share will not be able to support physicians in qualifying for Meaningful Use stages 2 and 3. These physicians will need EHR replacements they may not be able to afford. Significant additional costs will occur because of the need to move data from the old EHR to the new EHR to meet medical record retention requirements and for patient continuity of care. Unfortunately, we anticipate that some physicians will not be able to afford data transfer and so patient harm will probably occur because of the loss of their important data.

TMA recommends CMS recognize that these are costs associated with this program, as well as the Meaningful Use program, and that they need to be addressed in accordance with Executive Order 12866.

TMA further recommends that, to reduce these future costs to the health care system, interoperability requirements need to be strengthened by 2016 to require EHR vendors to support complete electronic database switching between comparable vendors (e.g., ambulatory to ambulatory). This could be accomplished at low cost in a number of ways including the expanded use of standardized XML tags on data, as are currently used in a limited fashion for CCRs/CCDs.

Should you have any additional questions or need any further information, please do not hesitate to contact me directly or contact Shannon Vogel at TMA at 512-370-1411.

Sincerely,



Joseph H. Schneider, MD, MBA
Chair, *ad hoc* Committee on Health Information Technology