

December 18, 2013

Sylvia Mathews Burwell
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Re: *Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships; Amending the Exception for Certain Electronic Health Records Arrangements (CMS-1454-F); Medicare and State Health Care Programs: Fraud and Abuse; Electronic Health Records Safe Harbor Under the Anti-Kickback Statute (OIG-404-F).*

Dear Director Burwell:

On behalf of the physician and medical student members of the American Medical Association (AMA), I am writing to you in regard to the final rules put forth by the Centers for Medicare & Medicaid Services (CMS) and the Office of Inspector General (OIG) to extend the anti-kickback statute (AKS) safe harbor and the exception to the physician self-referral law for electronic health records (EHRs). These final rules are currently under review at the Office of Management and Budget (OMB).

On April 10, 2013, CMS and the OIG proposed to extend the AKS safe harbor and the exception to the physician self-referral law for EHRs, which are currently set to expire on December 31, 2013. We have long urged CMS and OIG to indefinitely extend the AKS safe harbor and the exception to the physician self-referral law for EHRs. While the cost of EHRs continues to be among the chief barriers to EHR adoption, the safe harbor and exception have, to date, made that cost more manageable for many physician practices. With the December 31, 2013 deadline looming, physician practices are now receiving letters from EHR donors informing them of adjusted, increased operating costs based on the assumption that the AKS safe harbor and the exception to the physician self-referral law will not be extended. These notices are causing great concern for physicians who rely heavily on EHRs.

We strongly urge OMB to finalize and publish the final rules put forth by CMS and OIG to extend these waivers prior to the December 31, 2013 deadline. Should the rules be published after December 31st, we recommend that any extension of the AKS safe harbor/physician self-referral exception be made retrospective to January 1, 2014. If you have any questions regarding this letter, please contact Margaret Garikes at margaret.garikes@ama-assn.org or 202-789-7409.

Sincerely,

James L. Madara, MD