AMA
AMERICAN MEDICAL ASSOCIATION

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

Dear Administrator Tavenner:

The American Medical Association (AMA) appreciates the opportunity to comment on the Centers for Medicare & Medicaid Services' (CMS) and the Office of the National Coordinator for Health Information Technology's (ONC) Notice of Proposed Rulemaking entitled, *Modifications to the Medicare and Medicaid Electronic Health Record Incentive Programs for 2014; and Health Information Technology: Revisions to the Certified EHR Technology Definition*. The AMA appreciates that CMS and ONC have proposed changes to make it easier for some physicians to obtain an incentive and avoid a penalty under the Meaningful Use (MU) Program. While we believe these program changes are important and necessary, we still have the following concerns:

- **Failure to address the "all-or-nothing" approach of the MU program:** The proposed rule does not address our overarching concern with the MU program, which is the "all-or-nothing" mandate on physicians.
- **Limited relief:** The proposed rule is generally aimed at early adopters of electronic health records (EHRs) and larger providers, leaving other participants with little relief.
- **Quality alignment is missing:** The proposal stops short of addressing quality alignment between MU and the Physician Quality Reporting System (PQRS). Instead, physicians are forced to report twice to avoid penalties.
- **Timing:** The publication of the proposed rule may be too late to offer significant relief to physicians.

Failure to address the "all-or-nothing" approach of the MU program

The AMA appreciates that the proposed rule recognizes the technological challenges facing MU participants; however, the rule fails to acknowledge the chief problem with the program's design—the "all-or-nothing" approach used to evaluate participants. Physicians will continue to see the MU program as overly burdensome until this policy is removed or made more flexible. It remains deeply concerning to the AMA that even if a physician purchased an EHR, updated their practice workflow, and met the vast majority of the MU program requirements, that he or she can be deemed to have failed. We continue to believe that this is a punitive approach—one that is unlikely to move our nation's physicians into a more digitalized environment. **We therefore urge CMS to remove the existing pass-fail approach, replace it with a 75 percent pass rate, and allow physicians who meet at least 50 percent of the MU requirements to avoid a financial penalty.**

Furthermore, we have serious concerns that, unless the MU program is modified, the majority of physicians will not move to Stage 2 of the program and will never reach Stage 3. As stated in our previous letters, many physicians are facing significant challenges utilizing certified EHR technology (CEHRT) to meet information exchange and patient engagement objectives. CMS' own data shows that for some of the Stage 2 objectives physicians and hospitals are barely meeting the required thresholds needed to successfully report MU measurements. Too much emphasis has been placed on future stages of MU, when 50 percent of physicians have yet to even make it to Stage 1. We are concerned that CMS and ONC have not spent enough time learning from those who have participated in Stage 1 before the agencies design, propose, and execute subsequent stages. **We therefore believe CMS and ONC should conduct a rigorous study of the current MU timetable before proposing any future stages.**

Limited relief

The proposed rule allows physicians who could not fully implement the 2014 version of certified software due to vendor delays to continue using their older software (version 2011), a combination of the old and new software, or the new software for the 2014 program year. The proposal also allows participants without fully functional 2014 software, who were expected to move to Stage 2 of the program, to report using Stage 1 objectives and measures for another year. We believe this proposal, while offering some relief, will have a limited impact on physicians, who make up the vast majority of eligible professionals (EPs).

While we appreciate that the rule allows physicians who were scheduled to move to Stage 2 to stay in Stage 1 another year, we are concerned that this proposal is aimed at helping the earliest adopters—those physicians and hospitals that are the most experienced and advanced with respect to the MU program. To date, CMS' data indicates that only one percent of physicians have attested to Stage 2 in 2014. While this data only takes into account a single quarter of the year, we believe only a limited number of physicians are at the Stage 2 level for 2014. In fact,

we are deeply concerned that many physicians will not be able to move to Stage 2 for a variety of reasons (e.g., measures that require patient action, costly interfaces, and interoperability issues). Indeed, CMS' data points to a drop in the number of EPs who attested in 2013 compared to 2012 (for Medicare EPs there was a 7,310 reduction in participation and for Medicaid EPs there was a 20,470 drop). Accordingly, the one-year exception provides little relief for the vast majority of physicians who are still struggling in the early stages of the program and will not enter Stage 2 until later years.

Quality alignment is missing

Unfortunately, the proposed rule did not streamline the PQRS and the MU quality reporting components. As you are aware, having to report for both programs, each with different sets of requirements and reporting periods, places a significant burden on physicians.

While the rule allows physicians to choose their edition of CEHRT, either 2011 or 2014, it prevents them from combining their PQRS and EHR quality reporting requirements. We understand that, due to limitations in CMS' registration and attestation system, if a physician elects to use 2011 Edition CEHRT in 2014, the physician would be required to report clinical quality measures according to the criteria originally finalized in the Stage 1 final rule and for only 90 days. This prevents alignment with the PQRS requirements that require a physician report using version 2014 CEHRT and for a full calendar year. Despite our repeated requests of ONC and CMS to align the reporting requirements, the proposed rule fails to address this problem. This concern with quality alignment is even more pronounced given that physicians will face payment adjustments if they do not successfully report PQRS and MU quality measures in 2014, and that the 2014 quality measures are significantly more challenging than those adopted in 2013.

Timing of the proposed rule

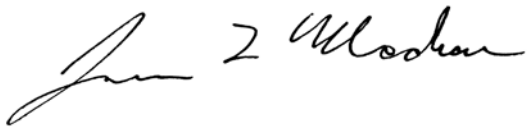
We are concerned with the overall timing of the proposed rule. Since the comment period closes on July 21, and the final rule is not expected before September 1, physicians will not know the MU requirements for 2014 until the year is almost over. This is especially problematic because CMS closed the deadline for EPs to file for a hardship exemption on July 1. Many EPs were unclear as to how this proposed rule impacted the hardship exemptions, especially the exemption related to vendor delays, and therefore did not apply by the deadline. Should an EP be unable to meet the modified MU requirements published in the final rule, they will have no recourse and will face penalties. **We therefore reiterate our earlier request that CMS extend the hardship deadline until 30 days after the final rule is published to allow more time for physicians to understand the program requirements and seek an exemption if necessary.**

CMS has previously extended hardship deadlines (e.g., for the 2011 e-prescribing program) when publication of new regulations have complicated application deadlines.[1]

Finally, we are concerned that future audits of the MU program may ask for extensive documentation or other proof of the lack of availability of CEHRT to justify taking advantage of the relief offered by this proposed rule. The proposed rule states that providers must attest to the inability to fully implement updated technology; however, there is no guidance with respect to what this attestation will require. Given the short timeframe, we urge CMS to make this attestation process the least burdensome as possible and instruct auditors that acceptance by CMS of this attestation will be sufficient to avoid later attempts to review or recoup any MU payments. Auditors should understand that the relief sought by this proposed rule was intended to apply broadly and does not require future documentation or other justifications.

We appreciate the opportunity to comment on this proposed rule and look forward to working with you to improve the MU program. If you have any questions, please direct them to Mari Savickis, Assistant Director, Federal Affairs, at mari.savickis@ama-assn.org or 202-789-7414.

Sincerely,



James L. Madara, MD

[1] *See* CMS. *CMS Announces 2011 Electronic Prescribing (eRx) Incentive Program Final Rule.* August 2011. Available at http://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-Sheets/2011-Fact-Sheets-Items/2011-08-31.html