



Michael D. Maves, MD, MBA, Executive Vice President, CEO

January 27, 2011

Donald Berwick, MD
Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Room 445-G, Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Re: Corrective amendment to the Final Rule on the Medicare and Medicaid electronic health records (EHR) incentive program

Dear Dr. Berwick:

On behalf of the physician and medical student members of the American Medical Association (AMA), I am writing to strongly urge the Centers for Medicare & Medicaid Services (CMS) to make an immediate corrective amendment to the final rule on the Medicare and Medicaid Electronic Health Record (EHR) meaningful use incentive program clearly stating that physicians are encouraged but not required to apply the meaningful use measures to their non-Medicare/Medicaid patient population/services in order to receive Medicare or Medicaid EHR meaningful use incentives.

The EHR incentive program specified in the “American Recovery and Reinvestment Act of 2009” (ARRA: P.L. 111-5), and ultimately codified under the Medicare statute (42 U.S.C.S § 1395w-4), applies only to eligible physicians who demonstrate meaningful use of their EHRs for Medicare and Medicaid covered professional services. **There is no language in the law that authorizes CMS to extend the meaningful use measures to a physician’s non-Medicare/Medicaid patient population/services and to require that a physician meet the meaningful use measures for all of their patients in order to receive Medicare or Medicaid EHR incentives.** Although many physicians who purchase an EHR plan to use their EHR for all of their patients, CMS has no statutory authority to force physicians to meet CMS’ meaningful use requirements for their non-Medicare/Medicaid patient population/services.

Requiring physicians to apply CMS’ meaningful use requirements to their entire patient population could be excessively burdensome for some physicians. For example, in order to meet the 40 percent threshold requirement for the e-prescribing measure, a physician issuing permissible prescriptions for 20 Medicare patients and 400 private payer patients during a 90

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consecutive day period in 2011 would have to e-prescribe for 168 patients (majority of whom are non-Medicare patients) in order to meet just 1 out of the 20 required meaningful use measures. A physician should only have to meet the 40 percent threshold requirement based on e-prescriptions issued for Medicare patients seen during the reporting period (e.g., 8 e-prescriptions). Congress clearly indicated in ARRA that services provided to Medicare and Medicaid patients are the only services covered under the Medicare and Medicaid meaningful use EHR incentive program (see definition for covered professional services under 42 U.S.C.S § 1395w-4). **CMS' unjustified regulatory decision to expand Medicare requirements to non-Medicare services could deter many physicians from taking part in the EHR incentive program.**

Throughout the year, CMS along with other key stakeholders have been educating physicians on the Medicare and Medicaid EHR incentive program requirements. CMS has made little to no effort to notify physicians of its unilateral decision to expand the Medicare and Medicaid EHR incentive program requirements to cover a physician's entire patient population. CMS' handling of the education, implementation, and administration of its programs greatly affect whether the policy that CMS is trying to implement is embraced by the physician community. This attempt by CMS to mandate that physicians apply CMS' meaningful use measures to non-Medicare/Medicaid patients/services could substantially halt the overall move to EHR adoption. While we expect that once physicians start using EHR systems they will record information for their entire patient population, CMS does not have the authority under the law to expand its jurisdiction over non-Medicare/Medicaid patient records and to infringe upon the contracting rights of physicians with private payers or non-Medicare/Medicaid patients.

We urge CMS to immediately issue a correction that clarifies that physicians are encouraged but not required to apply the meaningful use measures to their non-Medicare/Medicaid patient population/services in order to receive Medicare or Medicaid EHR meaningful use incentives. Should you have questions about these comments, they can be directed to Mari Savickis at mari.savickis@ama-assn.org or 202-789-7414.

Sincerely,

A handwritten signature in black ink that reads "Mike Maves". The signature is written in a cursive, flowing style.

Michael D. Maves, MD, MBA