July 18, 2014

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

RE: Modifications to the Medicare and Medicaid EHR Incentive Programs for 2014

Dear Administrator Tavenner,

The Texas Medical Association (“TMA”) is a private, voluntary, nonprofit association of more than 47,000 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 medical specialization. TMA offers the following comments on the modifications to the Medicare and Medicaid electronic health record (EHR) incentive program.

TMA appreciates CMS recognizing industry issues with the certification of 2014 certified EHR technology (CEHRT) and proposing modifications to the Medicare and Medicaid EHR incentive program. It is important for CMS to realize that the certification of EHR products is not the only factor causing physician non-participation in meaningful use Stage 2. Other problems include:

- **Health information exchanges (HIEs)** are beginning to mature, but still have not connected many physicians. Physicians are concerned about being held liable for HIPAA violations outside of their control after submitting protected health information (PHI) to the local HIE.

- **Patient portals** are required for meaningful use stage 2, and many physicians have large Medicare and Medicaid populations. Physicians are committed to helping their most vulnerable patients, but many times this means the patients do not have access to the needed technology. TMA has heard from numerous physician members that they cannot get close to the 50 percent requirement of connected patients. Importantly, they are not willing to “fire” their patients just to meet a metric.
TMA supports the goal of having patients access their information electronically. However, an unintended consequence of the patient portal requirement is that patients will have multiple portals that are silos of information. This fractures their medical records and is frankly dangerous. Also, it is a barrier in the patient-physician relationship, as the patients don’t understand why they have to have multiple portals. It is better to encourage patients to use a personal health record (PHR) or similar tool to collect their own health information, rather than to incentivize these unpopular silos.

In addition, some HIEs and states are setting up global patient portals that will aggregate patient information. We need time for this to occur; and if we proceed down the current path, we will be encouraging a fragmented portal architecture that will not be easily dismantled. EHR vendors are adding more and more features into the portals, which will make it difficult for physicians and patients to move the PHI.

To address this issue, TMA requests emergency suspension of:

- The certified EHR requirement that physicians utilize a certified patient portal. Instead, for 2014 it should be adequate that the physician provides an electronic copy of the Consolidated Clinical Document Architecture (C-CDA) summary that the patient can upload to a portal of his or her choice.
- The Stage 2 requirement that 5-percent of patients view, download, or transmit their information, until the community portals have time to work out how this would be done.

We think this helps to meet the intentions of the meaningful use program and is within CMS’ authority. Failure to do this will result in portal silos that will be detrimental to patient satisfaction and care. If we think long-term, this is an approach that makes sense.

Questions that the TMA would like to see answered include:

- Has CMS conducted studies of patients to see whether a majority of patients are interested in accessing their patient portal?
- Has CMS conducted studies to determine improved outcomes based on patient access to health information?
- Has CMS studied the impact on patients of creating separate silos of patient information versus having a single consolidated personal health record?

While TMA agrees that patient engagement and accountability are good for health care, the requirement for meaningful use needs significant revision.

- **Immunization registry** interfaces are required for meaningful use stage 2, yet there is not a seamless and inexpensive way for physicians to connect to the registry. There is no exclusion for physicians who provide only a few immunizations a year. It is very difficult to justify the EHR vendor fee of, for example, $3,000 to $5,000 just to interface with the
state immunization registry to report fewer than 25 immunizations a year. CMS should consider an additional exclusion for low-volume immunizers.

Additional concerns regarding the overall program include the following:

- TMA believes the proposed rules for flexibility add another layer of complexity to the meaningful use program that will only further confuse and frustrate physicians. As an alternative, TMA would like to suggest that CMS consider delaying penalties until the fourth quarter of 2015. If CMS determines that this is not possible, then TMA recommends that CMS find a way to effectively eliminate the 2015 EHR program penalties.

- TMA strongly recommends, once again, that physicians be required to meet only a subset of meaningful use measures to avoid the penalty rather than the full set required to receive the incentive. CMS set the precedent of fewer requirements for penalty prevention with the e-prescribing program, which required physicians to e-prescribe 10 times to prevent the penalty and 25 times to receive the incentive. Organized medicine is happy to work with CMS to identify the subset of measures that could be met for penalty prevention.

- TMA recommends that the final rule include information on how physicians will be audited since the proposed rule offers flexibility for physicians who “are not able to fully implement 2014 Edition CEHRT for a full EHR reporting period in 2014.” To avoid audit problems, CMS should provide detail on what constitutes “not able to fully implement.” There could be numerous challenges such as:
  - vendor non-readiness
  - not enough time for testing, training or implementation, as these vary greatly

TMA is committed to helping physicians with their HIT needs, specifically when it comes to using technology to increase care quality and patient safety. Should you have questions regarding these comments, feel free to contact TMA Director of Health Information Technology Shannon Vogel via email at shannon.vogel@texmed.org or call (512) 370-1411.

Sincerely,

Matt Murray, MD
Chair
TMA ad hoc Committee on Health Information Technology