



JAN 27 2015

*Administrator*  
Washington, DC 20201

Austin I. King, MD  
President  
Texas Medical Association  
401 West 15th Street  
Austin, Texas 78701

Dear Dr. King:

Thank you for your letter regarding the Medicare and Medicaid electronic health record (EHR) Incentive Programs. We appreciate receiving feedback on the program and are always seeking ways to improve the EHR Incentive Programs.

In your letter, you requested that we immediately suspend core measures 7 and 17 from the EHR Incentive Programs, claiming that widespread opposition from patients to these particular measures prevent eligible professionals from attesting to Stage 2 of meaningful use. Your letter also indicated that these measures and the overall patient engagement objective under Stage 2, do not lead to improved outcomes, and will ultimately result in eligible professionals turning down those elderly patients lacking either the access or ability to use the internet.

We appreciate the comments raised in your letter, and agree that patients should be more engaged in their own healthcare. Accordingly, we created Stage 2 of meaningful use under the EHR Incentive Programs and included the measures cited in your letter to increase such engagement. In implementing Stage 2, we recognized the increased challenges associated with the patient engagement objective and its associated measures. Therefore, we established a low threshold for these measures, recognizing that some measures under this objective require some direct action by the patient. For the remaining measures, such as providing timely online access to their health information for more than 50% of patients, the measure only requires the eligible professional to provide access to a patient's health information. It does not yet require more than 50% of patients to actually access the health information, just that it is there for them to view if they desire. This distinction is important, as it provides a starting point for providers and patients to increase the electronic exchange of health information. We believe that providers can meet the thresholds established by these measures, and note that early data from Stage 2 indicates that providers have not only met, but already surpassed such expectations.


However, we do not agree that patient opposition to these particular measures prevents physicians from attesting to Stage 2 of meaningful use. Rather, the attestation of eligible professionals to Stage 2 meaningful use has been impacted by a number of factors, including the inability of many eligible professionals to fully implement 2014 Edition CEHRT due to delays in 2014 Edition CEHRT availability. Based on these delays, we issued a final rule providing

additional relief for the EHR reporting period in 2014.<sup>1</sup> In order to further assist the eligible professionals affected by such delays, we released an interim final rule with comment period that extended the hardship application deadline for eligible professionals to November 30, 2014, to provide additional time for eligible professionals to request a hardship exception to avoid the 2015 payment adjustment under Medicare due to delays in fully implementing 2014 Edition CEHRT.

You requested that we work with Congress and immediately suspend all meaningful use physician penalties scheduled to begin on January 1, 2015. The payment adjustments scheduled to begin in 2015 under the Medicare EHR Incentive Program are established by statute, and any changes to that statute must originate from Congress. Further, we generally cannot suspend the current measures and objectives, without notice and comment rulemaking. Therefore, we cannot accommodate such requests.

However, we believe the recent changes we implemented in recent rules helped to alleviate the concerns expressed by eligible professionals relating to the 2015 payment adjustment under the Medicare EHR Incentive Program and provided eligible professionals with the flexibility needed to attest for 2014. As always, we value your input on this matter and look forward to continued discussions to promote adoption of Health IT. Please do not hesitate to contact us with any further thoughts or concerns.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marilyn Tavener".

Marilyn Tavener

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<sup>1</sup> Medicare and Medicaid Programs; Modifications to the Medicare and Medicaid Electronic Health Record Incentive Programs for 2014 and Other Changes to the EHR Incentive Program; and Health Information Technology: Revisions to the Certified EHR Technology Definition and EHR Certification Changes Related to Standards, 79 Fed. Reg. 52910 (Sep. 4, 2012).