

Congress of the United States
Washington, DC 20515

March 6, 2015

The Honorable Sylvia Mathews Burwell
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Secretary Burwell,

We appreciate the Department of Health and Human Services' (HHS) announcement regarding forthcoming changes to the Medicare and Medicaid EHR Incentive Program, including a shortened, 90-day reporting period in 2015. We understood Dr. Patrick Conway's message to be an honest acknowledgement of the industry's concerns, and we call on the Department to act quickly to have the desired positive impact on the program.

We welcome the opportunity to be active partners in successfully executing the needed flexibilities desired by the nation's healthcare providers, as we recognize the vital role the Meaningful Use Program (MU) plays in transforming our nation's healthcare system. As the Centers for Medicare and Medicaid Services (CMS) and the Office of the National Coordinator (ONC) considers programmatic reforms, we offer the following recommendations based on the concerns we have heard from our constituents regarding the aggressive pace and scope of the MU Program.

Remove Pass / Fail Approach

The Meaningful Use requirements lack flexibility, creating significant barriers for physicians and hospitals, especially non-primary care physicians and those in small practices as well as small and under resourced hospitals. The MU Program requires physicians and hospitals, regardless of their specialty, patient population, geography, or size, to collect the same exact data on each and every patient even if a measure is not relevant to the patient's visit, service, or is rarely used for clinical practice.

Instead of this pass-fail approach, we urge HHS to institute flexibility by allowing physicians and hospitals to avoid penalties where they meet less than 100 percent of program requirements. At a minimum, measures outside of the control of providers (e.g., those that depend on interoperability, such as transitions of care) should be considered optional.

Align Quality Reporting Requirements and Improve Quality Measures

Currently, Medicare physicians and hospitals are required to report on multiple quality reporting programs each with their own set of nuances, requirements, deadlines, measures and

technicalities. This duplicity takes time and resources away from patient care. We call on CMS to deem physicians and hospitals who successfully participate in other reporting programs (PQRS, IQR, MSSP) as meeting the Meaningful Use quality reporting requirements. We also urge the agency to limit hospitals quality measures in meaningful use to those that have been shown to be valid, reliable, and feasible to collect through field testing.

Expansion of Hardship Exemptions

The Secretary is authorized to grant hardship exemptions to providers, subject to annual renewal, to avoid a financial penalty if certain circumstances are met. While CMS has created a number of hardship categories, we propose additional, reasonable circumstances under which the agency should extend exemptions, including allowing providers to switch or update their EHR system.

We suggest HHS provide the following additional hardships:

1. Expand the “unforeseen circumstances” hardship;
2. Continue the exemption for anesthesiologists, radiologists, and pathologists;
3. Provide an exemption for hospitalists;
4. Provide an exemption for physicians close to retirement; and
5. Provide an exemption for hospitals and physicians switching EHR vendors.

Nationwide Interoperability

In order to achieve the efficiencies envisioned under the Health Information Technology for Economic and Clinical Health Act (HITECH), EHRs must be tested and certified to meet functional interoperability—the ability for information to be exchanged, incorporated, and presented to a provider in a contextual and meaningful manner. While a growing amount of information is being exchanged between different providers and across care settings, the data is not being seamlessly integrated into a patient’s record and the value of the exchanged data is often minimal at best. Data exchange is currently based on MU requirements, which trump provider requests, resulting in the exchange of lengthy and poorly constructed documents. It is in this vein that we reemphasize that providers should not be held to program measures outside of their control until this technology is capable of meeting their patients’ needs.

Program Timelines

While we appreciate ONC and CMS’ willingness to adjust the program as issues occur, we recognize that frequent changes to the program requirements has created confusion among physicians and hospitals participating in the program. Without stability, providers are left to constantly monitor for program updates and implement unnecessary workflow changes.

In addition, the first year of meeting MU can present its own challenges and reporting for a full 365 days can be impossible in some cases due to updates, technology failures, and other routine changes. We therefore call on the HHS to:

- Implement a 90-day reporting period for the first year of any new MU stage;

- Require a minimum of three years for requirements at each stage; and
- Remove the 365-day reporting period mandate for the second and third year at each stage.

We appreciate the opportunity to share our constituents' requests and perspectives on the needed reforms to improve the MU Program. We are confident that if the necessary flexibilities are granted, this program can achieve the quality improvement and cost reduction goals initially envisioned by our colleagues when the HITECH Act was developed.

We call for your immediate attention to these suggestions as HHS formulates the reforms referenced in Dr. Conway's blog post. These reforms will be vitally important to ensure the nation's hospitals and physicians are able to use technology to meaningfully improve patient care through the use of technology. We ask for a response no later than 30 days from the receipt of this letter.

Sincerely,



Renee Ellmers
Member of Congress



Ron Kind
Member of Congress

Cc:

The Honorable Andy Slavitt, Acting Administrator, Centers for Medicare and Medicaid Services
The Honorable Karen DeSalvo, National Coordinator for Health Information Technology, Office of the National Coordinator for Health IT
Dr. Patrick Conway, Acting Principal Deputy Administrator, Deputy Administrator for Innovation & Quality, CMS Chief Medical Officer, Centers for Medicare and Medicaid Services