

Congress of the United States
Washington, DC 20515

November 20, 2015

The Honorable Paul Ryan
Speaker of the House
H-232 Capitol
Washington, DC 20515

Dear Mr. Speaker:

As medical providers and elected representatives, we, the members of the GOP Doctors Caucus, urge you to work with us to prevent the harmful effects of two policies proposed by the Centers for Medicare and Medicaid Services (CMS): Modified Stage 2/Stage 3 of the Meaningful Use (MU) program and the Comprehensive Care for Joint Replacement (CJR) payment model. We believe both Stage 3 of the MU program and CJR should be delayed. We also encourage a blanket hardship waiver exception for Stage 2 of the MU program.

As you are aware, the HITECH Act—which was enacted as part of the American Recovery and Reinvestment Act—provided financial incentives for providers who became “meaningful users” of electronic medical records (EMR) systems in their practices. To qualify for financial incentives and avoid penalties, it is not enough for providers to simply adopt EMR systems. Providers must also use those systems according to rules set forth under MU—a program the American Medical Association has termed a “morass of regulations” that “relegates physicians to the role of data entry clerks.” While over 80 percent of physicians have adopted EMR systems, only 12 percent of physicians and 40 percent of hospitals have met Stage 2 requirements.

On October 6, 2015, CMS announced its intention to push forward in finalizing the rule for Stage 3 of MU, despite calls from the healthcare community and Congress to refrain from doing so. In the same final rule, CMS included modifications to Stage 2 recognizing that the original criteria were unworkable. Given the fact that only 12 percent of physicians have met Stage 2 requirements, we believe a simultaneous implementation of more-stringent criteria, along with the assessment of penalties for the first time this year, is likely to create a chilling effect on further EMR adoption as physicians conclude that the cost of implementation is simply not worth the bureaucratic hassle. CMS has pushed forward with its rule in the face of bipartisan, bicameral opposition. Thus, a legislative remedy is the only way to ensure providers are protected from this deeply flawed Stage 3 rule.

Furthermore, we believe that CMS has put doctors in an untenable position with its modifications to the 2015 MU Stage 2 rule. Absent CMS’ willingness to fix a problem they created, we believe providing a blanket hardship exception for the 2015 MU Stage 2

requirements for MU Stage 2 for a period of 90 consecutive days during calendar year 2015 in order to avoid a penalty. However, CMS did not publish the Modifications Rule for Stage 2 of MU until after October 1, 2015—meaning that by the time providers were informed of the requirements, fewer than the 90 required days remained in the calendar year. CMS has acknowledged this discrepancy and has indicated a willingness to grant exceptions to avoid penalties for noncompliance, but does not believe it can handle the administrative burden of providing exceptions on a case-by-case basis as the MU statute requires. This means that hardship exceptions that would otherwise be approved may never be processed or will be significantly delayed, burdening thousands of physicians with penalties through no fault of their own. Amending the MU statute to allow for a blanket hardship exception for the 2015 MU Stage 2 reporting period would be a practical, straightforward solution to address the problem created by CMS.

We also believe implementation of the CJR payment model must be delayed. The CJR payment model is a new episode-based payment model for lower extremity joint replacement (LEJR) that would apply to 67 Metropolitan Statistical Areas (MSAs) for five years. The CJR model represents the first mandatory episode payment program under CMS' Center for Medicare and Medicaid Innovation (CMMI) authority. It is extremely broad in nature, lacks evidence-based support for much of its criteria, and will be implemented by CMS in just a few months. While development of patient-centered payment models that drive quality and efficiency should be encouraged, we have grave concerns about conducting mandatory demonstrations on a national scale. CMS has chosen to move forward with this mandatory model without seriously considering the negative consequences of this rule and its effect on patient access, choice, and quality. On November 16, CMS delayed implementation of the CJR by just 90 days in its final rule. We believe further delay is not only prudent, but necessary to ensure patient care is not impaired.

Members of our caucus, as well as numerous congressional health care leaders, have engaged CMS on these issues to warn them of the potential negative consequences of placing these new requirements on providers in order to meet an arbitrary deadline. CMS has ignored Congress. Congressional action is the only solution left for preserving patient access, choice and quality. We stand ready to work with you to find an appropriate legislative vehicle to protect patients by addressing CMS' hasty rulemaking in the Meaningful Use program and the CJR payment model.

Sincerely,

John D. ...
MID

John ...
Fred R. ...

Ken ...

Larry ...

Duane Black

Brian ...

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