June 10, 2013

Submitted electronically at www.regulations.gov

Marilyn Tavenner
Administrator
Centers for Medicare and Medical Services
200 Independence Avenue, SW
Washington, DC 20201
Washington, DC

RE: Physicians’ Referrals to Health Care Entities With Which They Have Financial Relationships: Exception for Certain Electronic Health Records Arrangements, CMS-1454-P

Dear Administrator Tavenner:

The AAMC is a not-for-profit association representing all 141 accredited U.S. medical schools; nearly 400 major teaching hospitals and health systems, including 51 Department of Veterans Affairs medical centers; and nearly 90 academic and scientific societies. Through these institutions and organizations, the AAMC represents 128,000 faculty members, 75,000 medical students, and 110,000 resident physicians. Clinical faculty practices often work closely with their teaching hospital partners in systems to provide coordinated care for complex and vulnerable patients while also performing research and training the next generation of clinicians. We appreciate the opportunity to comment on the proposed rule, Physicians’ Referrals to Health Care Entities With Which They Have Financial Relationships: Exception for Certain Electronic Health Records Arrangements, 78 Fed. Reg. 21308 (April 10, 2013).

The AAMC supports making the deeming for software under this exception consistent with the Office of the National Coordinator for Health Information Technology (ONC) certification program.

Given the push to electronic health records (EHR)—a result of many factors including the Electronic Health Records Incentive Program, which provides not only incentives for EHR adoption but also starting in 2015 penalties for not meeting requirements—it is essential that the current exception to the Physician Self-Referral law be extended. At a minimum, the exception should be extended until 2021 as that is the last date that an eligible professional can qualify for Medicaid incentives through the program. However, the AAMC asks CMS to eliminate any sunset provision, thus making this exception permanent. As new physicians enter the workforce, and as physicians choose to change the entities with which they affiliate, the need for EHR donations to be protected by an exception will continue well beyond 2016.

CMS requests comment on whether to include in regulatory language what is written in the preamble to the August 26 final rule regarding the scope of covered technology that falls under the exception. Whether or not CMS puts this language into regulation, the Association asks that the Agency delete the phrase “but not separate research” as it is unclear what this phrase means. The
AAMC requests that CMS clarify that it is appropriate for health researchers to use data in electronic health records for research that is related to, for example, evidence-based medicine, population management, or other research, as long as the use complies with applicable Federal, state, and institutional requirements.

Finally, the AAMC shares CMS’s desire to encourage software that is interoperable as this ability is a key to transforming the health care system. However, as the EHR Incentive Program has shown, achieving interoperability cannot be done quickly. It is extremely challenging and requires a commitment by vendors as well as the health care community. The AAMC urges CMS to avoid putting on restrictions that will make it even more challenging for hospitals and physicians to implement interoperable electronic health records, or that differ from those required by ONC for purposes of certification.

The AAMC also will be submitting a letter to the Office of Inspector General supporting its similar proposal related to provisions in the Anti-Kickback Statute.

If you require further information I can be contacted at ibaer@aamc.org or 202-828-0499.

Sincerely,

Ivy Baer, J.D., M.P.H.
Senior Director and Regulatory Counsel
Policy and Regulatory Group

Cc: Joanne Conroy, M.D.