March 28, 2012

Marilyn B. Tavenner Acting Administrator U.S. Department of Health and Human Services Hubert H. Humphrey Building, Room 445-G 200 Independence Avenue, SW Washington, DC 20201

Dear Acting Administrator Tavenner:

The undersigned organizations are writing to express our profound concern about the imminent storm that is about to occur due to simultaneous implementation of multiple programs that will create extraordinary financial and administrative burden as well as mass confusion for physicians. These programs include the value-based modifier, penalties under the electronic prescribing (e-prescribing) program, physician quality reporting system (PQRS) and electronic health record (EHR) incentive program, along with the transition to ICD-10. We urge CMS to re-evaluate the penalty timelines associated with these programs and examine the administrative and financial burdens and intersection of these various federal regulatory programs. We also urge CMS to use its discretionary authority provided by Congress under these programs to develop solutions for synchronizing these programs to minimize burdens to physician practices, and propose these solutions in the physician fee schedule proposed rule for calendar year 2013. The Department of Health and Human Services (HHS) recently announced its continued commitment to complying with President Obama's January 18, 2011, Executive Order calling on federal agencies to reassess and streamline regulations. This is a perfect opportunity for HHS to make good on its commitment to improve the regulatory climate for physicians.

Physicians face the ongoing threat of steep Medicare physician payment cuts due to the flawed sustainable growth rate (SGR), including a 27 percent cut (according to Congressional Budget Office estimates) on January 1, 2013, along with a 2 percent deficit reduction sequester beginning in January 2013. These cuts alone will take a huge toll on physician practices and patient access to care. Yet, this is only the beginning. While medicine is pleased that you have announced that CMS is undertaking a process to initiate a delay of ICD-10, we are anxious to hear the details of the proposal. Absent a delay, physicians will be transitioning to ICD-10 (currently scheduled for October 1, 2013), while at the same time spending significant time and resources implementing EHRs into their practices. Physicians are also facing present and future financial penalties if they do not successfully participate in multiple Medicare programs, including the e-prescribing program, the EHR meaningful use program, and the Physician Quality Reporting System (PQRS). In addition, physicians are being required to meet separate requirements under these three overlapping health IT programs and have been and will be unfairly penalized if they decide to participate in one program over the other. These burdens are

coming at the same time that physicians are trying to undertake meaningful payment and delivery reforms.

Further, in the midst of this storm, CMS has decided to back-date the reporting requirements under the penalty programs so that a physician will face a penalty based on activity in a year prior to the year of the penalty specified in the law. For example, CMS is basing the 2012 e-prescribing penalty on a physician's e-prescribing activity in 2011. Also, although the law requires that penalties under Stage 2 of the Medicare/Medicaid meaningful use EHR incentive program begin in 2015, CMS is proposing to back-date the penalty program so that physicians who do not successfully meet meaningful use requirements in 2013 or by October 3, 2014, would face a penalty starting on January 1, 2015. Further, CMS is basing the 2015 PQRS penalty on clinical quality measure reporting that occurs in 2013, and is using the 2013 year as the basis for the payment adjustments for the 2015 value-based payment modifier. CMS has essentially pushed up deadlines for participation by a full year or more, and this back-dating policy will subject a significant number of physicians to financial penalties and slow down the adoption and implementation rates of EHRs. The physician community strongly disagrees with CMS' interpretation of these timelines.

In the wake of this onslaught of overlapping regulatory mandates and reporting requirements, HHS has a responsibility to review all of these programs and take the opportunity to ease the burdens on physician practices. We urge that CMS, in the physician fee schedule proposed rule for calendar year 2013, discontinue its plans to back-date penalty programs, while better synchronizing the incentive and penalty programs so that physicians who successfully participate in one program are protected from penalties associated with the other programs. Relief from this back-dating policy will also avoid the reality that physicians could receive an incentive payment and a penalty in the same year for the same program, which undermines any incentive for greater reporting or use of health IT. We also urge CMS to establish in the proposed rule exemption categories to protect physicians facing hardships from penalties. Finally, we emphasize to CMS our view that a strong appeals process for application of penalties to physicians under all programs is critical. Experience with the PORS and eprescribing has shown the myriad of problems in determining successful physician participation, which results in physicians being incorrectly penalized, as we are seeing with e-prescribing. We urge CMS to ensure this does not occur under any of these programs.

Thank you for considering our recommendations. We look forward to discussing these urgent matters with you, as well as working with CMS to better align all of these programs and remove unnecessary burdens for physicians.

Sincerely,

American Medical Association American Academy of Allergy, Asthma and Immunology American Academy of Dermatology Association American Academy of Facial Plastic and Reconstructive Surgery

American Academy of Family Physicians American Academy of Home Care Physicians American Academy of Ophthalmology American Academy of Otolaryngology—Head and Neck Surgery American Academy of Physical Medicine and Rehabilitation American Association of Clinical Endocrinologists American Association of Clinical Urologists American Association of Neurological Surgeons American Association of Neuromuscular and Electrodiagnostic Medicine American College of Allergy, Asthma and Immunology American College of Cardiology American College of Chest Physicians American College of Emergency Physicians American College of Gastroenterology American College of Mohs Surgery American College of Osteopathic Family Physicians American College of Osteopathic Internists American College of Osteopathic Surgeons American College of Phlebology American College of Physicians American College of Radiation Oncology American College of Radiology American College of Rheumatology American College of Surgeons American Congress of Obstetricians and Gynecologists American Gastroenterological Association American Geriatrics Society American Osteopathic Academy of Orthopedics American Osteopathic Association American Society for Aesthetic Plastic Surgery American Society for Gastrointestinal Endoscopy American Society for Radiation Oncology American Society for Reproductive Medicine American Society for Surgery of the Hand American Society of Anesthesiologists American Society for Clinical Pathology American Society of Cataract and Refractive Surgery American Society of Clinical Oncology American Society of Echocardiography American Society of Plastic Surgeons American Society of Transplant Surgeons American Thoracic Society American Urological Association Association of American Medical Colleges College of American Pathologists **Congress of Neurological Surgeons**

Council of Medical Specialty Societies Infectious Diseases Society of America International Spine Intervention Society Joint Council of Allergy, Asthma and Immunology Medical Group Management Association Society for Cardiovascular Angiography and Interventions Society of Hospital Medicine Society for Vascular Surgery The Endocrine Society The Society of Thoracic Surgeons

> Medical Association of the State of Alabama Alaska State Medical Association Arizona Medical Association Arkansas Medical Society California Medical Association Colorado Medical Society **Connecticut State Medical Society** Medical Society of Delaware Medical Society of the District of Columbia Florida Medical Association Inc Medical Association of Georgia Hawaii Medical Association Idaho Medical Association Illinois State Medical Society Indiana State Medical Association Iowa Medical Society Kansas Medical Society Kentucky Medical Association Louisiana State Medical Society Maine Medical Association MedChi, The Maryland State Medical Society Massachusetts Medical Society Michigan State Medical Society Minnesota Medical Association Mississippi State Medical Association Missouri State Medical Association Montana Medical Association Nebraska Medical Association Nevada State Medical Association New Hampshire Medical Society Medical Society of New Jersey New Mexico Medical Society Medical Society of the State of New York North Carolina Medical Society North Dakota Medical Association

Ohio State Medical Association Oklahoma State Medical Association **Oregon Medical Association** Pennsylvania Medical Society Rhode Island Medical Society South Carolina Medical Association South Dakota State Medical Association **Tennessee Medical Association Texas Medical Association** Utah Medical Association Vermont Medical Society Medical Society of Virginia Washington State Medical Association West Virginia State Medical Association Wisconsin Medical Society Wyoming Medical Society