NEW JERSEY HOSPITAL ASSOCIATION

May 7, 2012

Ms. Marilyn Tavenner
Acting Administrator
Center for Medicare and Medicaid Services
Department of Health and Human Services
200 Independence Ave. S.W., Room 445-G
Washington, DC 20201

RE: Medicare and Medicaid Programs; Electronic Health Records Incentive Program – Stage 2 Notice of Public Rulemaking (CMS -0044-P)

Ms. Tavenner,

We appreciate the opportunity to provide comments on the Electronic Health Records (EHR) incentive program Stage 2 meaningful use (MU) objectives proposed rule. NJHA currently represents 111 (including 70 acute care) hospitals in New Jersey, working closely with them to implement EHR systems and to become meaningful users of EHR technology. Along with our hospitals, NJHA believes the wide-scale implementation of EHRs will help elevate the quality of healthcare, improve patient safety and increase efficiency. In contrast to the time of the Stage 1 meaningful use rule, we now have a much better idea where our membership stands with respect to their EHR adoption abilities, and how the proposed rule for Stage 2 will impact their overall EHR adoption success.

NJHA believes the EHR rule on Stage 1 MU, albeit not perfect, had the desired effect of transforming Healthcare Information Technology (HIT) across the Garden State. The lesson learned: aim high, but set realistic attainable goals and objectives. Our hope is for the rulemaking process to draw from the Stage 1 experiences and produce a final Stage 2 rule that makes sense to all and is attainable. In order for this to occur, we believe the EHR Stage 2 MU proposed rule needs to be revised.

The following is a list of suggestions which we believe meet the spirit and purpose of the EHR incentive program and will help ensure the proper level of HIT transformation:

- Exceptions for Market Basket Penalties – Considering the level of difficultly is achieving EHR MU objectives, there will be hospitals that put a significant amount of time and money into reaching the various stages and still fail based on outside factors. Our recommendation is to add the following exceptions:
    - If the selected EHR vendor that is currently certified fails to re-certify by 2014, the provider should be exempt from any penalties.

- If the selected EHR vendor that is currently certified does not deliver on contractual requirements, the provider should be exempt from any penalties.

- If the provider can prove a good faith effort to contract with an EHR vendor that has a certified EHR product, but was not able to get an EHR vendor to contractually agree to deliver in the CMS-required timelines, the provider should be exempt from any penalties.

- The above exceptions should also apply to an "EHR Certified Module Vendor" since, in the EHR module approach, dealing with more vendors increases the number of risk factors.

- We would also recommend an exception for hospitals in severe financial distress, such as bankruptcy/restructuring of debt.

- Adequate Time Between Stages – The EHR Stage 2 MU final rule should take into consideration the logistics of implementing each EHR version, the impact and training requirements on the clinical staff, and the potential impact to patient safety when rushed. The proposed two-year time frame is not enough to safely implement a new stage of EHR MU. Our recommendation is to allow providers three years between stages. This will permit staff to adjust to the current platform and related workflow changes. The additional year will also give EHR vendors more time to test and implement the version for the next stage of meaningful use. Like Stage 1, we believe providers should be allowed to meet all Stage 2 requirements during the last 90 days of the third year.

- Patient Portal Requirements – Ideally patients should be engaged in their care. However, providers cannot control or force patients to engage in their care by using a patient portal. Much of our underserved patient population in New Jersey lacks internet resources and is unable to access a Web-based patient portal. In addition, the vast majority of New Jersey hospitals currently participate in Office of the National Coordinator-funded health information exchange (HIE) organizations that plan to offer a future patient portal. We consider this a better approach to engaging patients: the HIE patient portal will cross the continuum of care, whereas the hospital portal limits the patient to a single provider. Maintaining multiple usernames and passwords to access multiple providers' EHRs is cumbersome. Allowing the patient to use one HIE portal instead is a simpler and more effective approach. The one portal approach would also reduce the security risks associated with maintaining multiple user accounts across many providers. The patient portal requirement should be eliminated or, at a minimum, credit those providers actively engaged in a HIE. This would meet the intent of this EHRs and support the HIE value proposition. Otherwise, this requirement would run counter to the HIE concept of connecting providers throughout the continuum of care.

- Transition of Care Summary Requirements – The proposed rule requires a 65 percent summary of care threshold overall, and a 10 percent threshold from certified EHR to certified EHR. NJHA feels that providing care summaries during the transition of care is

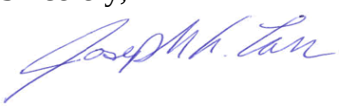
important and is the obvious next step from testing this feature in Stage 1. However, we feel the threshold requirement is overly burdensome. Had the EHR incentive funding program been made available to post-acute care providers, the proposed rule criteria would seem more reasonable. Unfortunately, very few post-acute providers have a certified EHR system. This layer of administrative burden adds to the transition of care challenge rather than making it more efficient. Our recommendation is that providers offer the care summary to the transferring organization in either paper or electronic format. There will be a time when most post-acute care providers will have the ability to accept an electronic care summary, but imposing this requirement at this time is premature.

- Greater Meaningful Use Objectives Flexibility – When including the CPOE-related objectives, the actual number of objectives expands the base requirements significantly. NJHA is greatly concerned that this will dramatically increase the number of providers that will not qualify under Stage 2. The lessons learned in Stage 1 should serve as a reminder to ensure that MU objectives are attainable. Making them a stretch is acceptable, as long as they are within reach. Our recommendation for Stage 2 is to ensure that the objectives are attainable by moving a portion of the base requirements to the menu set format and giving providers the option to choose. We believe this will ensure greater success by giving providers the ability to select those objectives they feel they can accomplish.

Great progress has been made in the number of providers that have implemented EHRs. Progress has also been made in the number of providers that are now leveraging EHR technology to an even greater extent by fulfilling the meaningful use requirements outlined in Stage 1. This progress has had a positive impact on the delivery of care in New Jersey, and we are hopeful that Stage 2 continues this important momentum. We caution against current and proposed threshold measures that place undue burden on providers, especially when these threshold metrics lead to no tangible improvements in patient care. NJHA believes that adding unnecessary burden runs counter to what EHRs – and the HITECH Act – were designed to do: deliver high-quality, efficient patient care by giving clinicians the tools they need. What may sound good during an HIT policy discussion to ensure compliance may not always work in the point-of-care trenches. Clinicians should be focusing on patient care, not EHR threshold metrics. We hope that you consider our recommendations and help us make EHR technology work for as many providers as possible and, more importantly, for as many patients as possible.

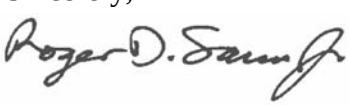
The New Jersey Hospital Association appreciates the ability to comment on these proposals and your consideration of our recommendations.

Sincerely,



Joseph A. Carr
Chief Information Officer

Sincerely,



Roger D. Sarao
Vice President, Economic & Financial Information