Federation of American Hospitals®

Charles N. Kahn III
President and CEO

September 4, 2013

The Honorable Marilyn Tavenner
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attn: Physician Data Comments
Hubert H. Humphrey Building, Room 341D-05
200 Independence Avenue SW
Washington, D.C. 20201

Re: Request for Public Comments on the Potential Release of Medicare Physician Data

Dear Administrator Tavenner:

The Federation of American Hospitals ("FAH") is the national representative of nearly 1,000 investor-owned or managed community hospitals and health systems throughout the United States. Our members include teaching and non-teaching hospitals in urban and rural parts of the United States, as well as inpatient rehabilitation, psychiatric, long-term acute care, and cancer hospitals. We appreciate the opportunity to respond to the Centers for Medicare & Medicaid Services ("CMS") *Request for Public Comments on the Potential Release of Medicare Physician Data*.

The FAH recognizes that Medicare data transparency can be used to achieve important quality improvement goals and help transform our Medicare payment and delivery structure into a more efficient, care-coordinated, and value-driven system. Effective transparency is critical, however, so that the data that are released actually can aide consumers, hospitals, physicians and all stakeholders in making more effective choices, from comparing health plans and providers, to making smart health care choices, and to providing more effective and improved quality of care at the point of care.

The FAH supports efforts to promote transparency and provide quality and price information that enhances consumer choice. Releasing data in the name of "transparency" only, simply for the sake of releasing data, only confuses and can harm consumers and other stakeholders, who may make ill-conceived choices based on faulty or irrelevant data.

For example, earlier this year, CMS released hospital charge data for Medicare inpatient and outpatient procedures. The release of this information, though, missed the mark because true

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price transparency for consumers should list Medicare payments compared to costs, not charges. Unfortunately, the release of the charge data created confusion among consumers, and missed an opportunity to provide meaningful, useful information.

Inappropriate data release also creates unnecessary and costly administrative burdens for CMS and other stakeholders without any corresponding benefit. **In light of the foregoing potential adverse outcomes that can result from the release of Medicare data that is not relevant to consumers, providers and other stakeholders, the FAH urges CMS to implement the following principles when developing a mechanism to release physician data.**

Dissemination of Standardized, Meaningful and Actionable Data

As discussed above, public dissemination of raw Medicare data does not provide patients with helpful information about the quality of care or treatment options. It also can be misleading and in some cases harmful. Therefore, the FAH urges CMS to refrain from "raw data dumps" that have no value to consumers and other stakeholders. Instead, CMS must ensure that Medicare data are meaningful, actionable, and user-friendly, and released in a manner that promotes and improves quality of care and provides the ability to make smarter, more effective, patient-centered health care choices by consumers, providers and other stakeholders.

Further, in developing methodologies for disseminating data, CMS must take into account the various existing Medicare programs under which physician and other provider data is made public. CMS should align any dissemination of physician data with the data released under existing programs, and release the data in a standardized, easy-to-use format. Otherwise, there could be contradictory and misleading data reports that only will confuse providers and the public.

Safeguards to Ensure Meaningful and Actionable Medicare Data

The release of Medicare data should adhere to certain safeguards to help ensure improved transparency efforts result in accurate information that is useful to patients, providers and other stakeholders. To be useful, public data reports must be valid, reliable and actionable for patients, physicians, and all stakeholders. Safeguards to ensure that these goals are met are discussed below.

Correct Attribution and Verification of Services Provided

CMS must ensure that any data release is based on an effective methodology for attributing care to those physicians who actually provide the care to a specific patient. The attribution methodology should be transparent, assessed on a condition-specific basis, and based on the input of affected stakeholders. Physicians, consumers and stakeholders must be able to trust the data provided, and should not have to decipher confusing or conflicting reports based on inaccurate attribution, which would undermine the goal of public reports resulting in actionable decisions by patients, physicians and other stakeholders, as well as improved quality of care.

Further, physicians and other affected providers must have the ability to verify that the data relates to patients actually treated by the physician for the specific services identified in a data report. Physicians also must have the opportunity for prior review and comment, along with the right to appeal, with regard to any data or data use that is part of the public data release process. Such comments also should be included with any publicly reported data. This is necessary to give an accurate and complete picture of the data and patient care provided by the physician and other professionals or providers.

Understandable Description of Data Reports

Data reports should contain an understandable description of the data, including limitations and possible misinterpretations of the data as well as any quality measures used to analyze the data. Misinterpretations can result from incorrectly linking volume with assumptions about quality, as well as from lack of information about medical specialty, location, patient mix and demographics, drug and supply costs, hospital and service costs, professional liability coverage, support staff, and other practice costs. Full disclosure of the data limitations will help consumers and others properly assess the data.

Quality Information Should Accompany Data Reports

Data reports should be released with quality information about the data. Any quality measures that are used to analyze the data should be standardized and endorsed through the National Quality Forum, a multi-stakeholder, consensus-based organization that enables broad-based vetting and "buy-in" of quality measures which consumers and other stakeholders can trust. The measures and resulting data reports also must include reliable risk-adjustment methodologies.

Data Should not Be Subject to Discovery or Admitted as Evidence

Physician data that is released should be for quality improvement purposes and should not be used to promote or increase litigation. Specifically, the data should not be subject to discovery or admitted into evidence in any judicial or administrative proceeding without the consent of the provider or supplier. This safeguard has precedent, and is included in Section 10332 of the *Patient Protection and Affordable Care Act*, which requires CMS to provide certain Medicare physician data to qualified entities that produce public performance reports.

Other Considerations for Data Release

CMS also should consider other elements in releasing data reports. For example, data reports should be accurate, user-friendly, relevant, and helpful to consumers, patients, physicians and other stakeholders. In addition, the reports should not encourage patient de-selection for individuals at higher-risk for illness due to age, diagnosis, severity of illness, multiple co-morbidities, low literacy level, or economic and cultural characteristics that make them less adherent with established protocols. Finally, CMS also should consider whether there is adequate public interest in data that pre-dates a certain time period. Old data are not likely to

promote any public interest and can mislead and even harm patients. Thus, CMS should be careful not to release old data.

Preserving Privacy

The FAH urges CMS to consider all privacy interests involved when releasing physician data, including the privacy interests of patients, physicians and any other providers affected by a data report. CMS should ensure compliance with the Health Insurance Portability and Accountability Act (HIPAA) and also should consider the potential for identity theft when releasing physician National Provider Identifiers (NPIs) to the public.

The FAH appreciates the opportunity to provide our views on these important issues affecting the transparency of Medicare data. We look forward to continuing our work with CMS to resolve these matters in a manner that improves the delivery of quality health care to our patients. If you have any questions, please contact me, Jeff Micklos, Jayne Hart Chambers or Katie Tenoever at (202) 624-1500.

Sincerely,

