

December 1, 2015

Andrew M. Slavitt
Acting Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Acting Administrator Slavitt:

On behalf of the physician and medical student members of the American Medical Association (AMA), I am writing to urge the Centers for Medicare & Medicaid Services (CMS) to take stronger steps to protect physicians from 2016 Medicare payment penalties stemming from data issues and systemic problems within the Physician Quality Reporting System (PQRS) and Value Modifier (VM) program. Automatic, across-the-board protections are desperately needed due to numerous issues with CMS' ability to accurately calculate and clearly communicate the incentives and penalties based upon 2014 PQRS and VM data.

While we appreciate CMS' extensions of the deadline for practices to file a request for an Informal Review of their applicable 2016 PQRS and/or VM penalty, a longer extension and a more proactive approach are needed. CMS' failure to provide transparent, clear, and timely information on the various data problems and the system glitches that have impeded accurate calculation of 2016 adjustments has led to mass confusion. Many physicians still are not aware that they are facing significant Medicare payment reductions that they could, and should, contest. Consequently, providing them with three additional weeks to file such requests is simply not a sufficient solution to address this problem.

As discussed below, we strongly urge CMS to apply a broad "hold harmless" policy that would automatically exempt all physicians who attempted to comply with the 2014 PQRS requirements from any PQRS or VM penalties in 2016. Alternatively, at the very least, CMS should extend the Informal Review deadline into the next calendar year so that physicians can see the impact of any PQRS and/or VM adjustments on their payments and file for a review if appropriate. We also request for CMS to proactively mail letters to the affected practices informing them of the situation. Since CMS has the ability to send out

payment adjustment letters to individual physicians, the agency should also be able to send them individual notification letters.

We are highly concerned that despite making a good faith effort to participate in the PQRS and VM programs, many physicians will face payment penalties in 2016 due to CMS' inability to: (a) appropriately analyze the data for 2014; (b) distribute accurate PQRS Feedback Reports and Quality and Resource Use Reports (QRURs) for the VM; and (c) distribute accurate, timely, and clearly articulated penalty notification letters. Many physicians are receiving a penalty notification letter from CMS after the original Informal Review deadline had already closed (on November 9, 2015) and less than one week ahead of the first extended Informal Review deadline (November 23, 2015). Apparently, calculations have since been modified, and some practices that received the letters are no longer facing penalties. However, the notification letters that went out are not dated and do not explain why a penalty is being applied. Also, rather than stipulating an actual date by which the request for review must be filed, the letters state that a physician has 60 days to file an Informal Review request, and neglect to mention that the clock started running in September when the PQRS Feedback Reports were released. As a result, physicians receiving the letters have no idea of whether they should or should not file a request for Informal Review, or what to address in such a review.

Moreover, we have recently learned that CMS will be shutting down access to the site where physicians can request an Informal Review for several days. The unavailability of the site will cause delay and confusion for the physicians who try to request a review during that time. This makes it all the more crucial for CMS to postpone the deadline for such requests into calendar year 2016, as the current timeline is simply insufficient to accommodate such a delay.

We appreciate that CMS has recalculated some QRURs. However, the extent of these recalculations and accompanying outreach to affected physicians appear to fall well short of what is needed. The majority of physicians do not even know these reports exist. Even those who do often have not reviewed their data due to limitations on who can access the reports and the administrative burdens associated with managing multiple tax identification numbers (TINs) and national provider identifiers (NPIs). Practice managers, who would generally take on these administrative responsibilities, also are frequently unaware of the QRURs and have focused solely on the PQRS Feedback Reports, which also have calculation problems. Most will need more than another three weeks to acquire, interpret, and evaluate their QRUR findings and the validity of any resulting VM penalty, in order to file a successful request for Informal Review.

Even under the best of circumstances, it is unrealistic to expect physicians to identify, document, and contest errors in their reports through a 60-day Informal Review process that is often initiated before they are made aware of the reports' existence. Expecting hundreds of thousands of physicians to do so in a truncated time frame is completely unacceptable, especially in the case of the 2016 reports where data problems and CMS calculation errors have heightened the need for careful reviews. One quarter (or more) of Medicare participating physicians are at risk of payment cuts of two to four percent, unless they file a successful request for Informal Review. Thus, an extension of the current deadline into the next calendar year is absolutely essential.

CMS has known since late summer that there were widespread, serious issues that made the 2014 PQRS data submitted through electronic health records (EHRs) and qualified clinical data registries (QCDRs) unreliable. To resolve the problem, CMS proactively deemed all affected physicians as “satisfactory” PQRS reporters, which the AMA supported. However, CMS subsequently conceded that there were additional difficulties with calculating PQRS and VM adjustments from the data, and encouraged all participating physicians and groups to file a PQRS and VM request for Informal Review as a precautionary measure.

The AMA has a number of concerns related to CMS’ handling of 2014 calculations:

1. It now appears that CMS has counted some of the affected practices as PQRS failures rather than counting them as successful PQRS reporters. CMS communications to date do not provide enough detail to determine whether the issue is related to physician reporting errors or CMS miscalculations.
2. CMS’ solution for practices whose data cannot be used to calculate a quality score and those who file a successful request for Informal Review is to call the practices “average” on the quality side. However, without a “high” quality score to offset a bad cost score, these practices could still receive a VM penalty if they are judged to have “high costs.” We do not believe putting physicians with problematic data in the “average” category for quality alone is sufficient. They may still receive a VM penalty due to technical problems with data that are not their fault. Therefore, **CMS should automatically hold physicians in these situations harmless from both PQRS and VM penalties.**
3. CMS has not effectively and clearly communicated any aspects of this policy to physicians. As a result, we are now nearing the end of the Informal Review period, but the vast majority of affected physicians and groups do not know they need to file a review. During Open Door Forums, CMS staff repeatedly stated that there was no need to file an Informal Review request related to the 2014 EHR and QCDR data issues—but more recently has suggested that ALL practices should look at their QRURs and consider requesting a review. In addition, there has been no real explanation or outreach on the calculation issues nor has CMS outlined the problems in any official communications on its website or in public notices in the Federal Register.
4. Relying on the Informal Appeals mechanism is insufficient as many physicians are unaware they will be subject to the VM, which initially applied only to large practices with 100 or more practitioners. Being held accountable for errors by vendors and by CMS which are outside of physician’s control is excessively punitive, especially for those who will be subject to the VM for the first time.

Failed Informal Review Attempts

We also would like to make CMS aware that some physicians who have tried to file a request for Informal Review, for reasons other than those highlighted above, are still being deemed as “unsuccessful” even after presenting evidence that they have met the program requirements. For instance, specialties that have less than three applicable measures are informing us that their members are being told they have failed PQRS and failed the Informal Review because a third measure was applicable, even though the physician did not have sufficient cases to count the third measure. And in other instances, CMS is failing physicians in reviews related to CMS system problems that caused the rejection of their data at the time of submission. CMS specifically stated during the submission period that any practice that had filed an Informal Review request when the review period opened would be considered successful. We believe the confusion is due to the growing complexity of the PQRS program which now poses significant barriers for successful calculations.

The complexity and errors diminish physicians’ faith in CMS’ ability to administer the program, as well as physicians’ desire to participate. The AMA predicted some of these problems in communications with former Administrator Tavenner, in a letter dated [May 2, 2014](#), and recommended modifications to the program to improve its success and avoid confusion. Unfortunately, the Administration did not adopt these modifications and CMS made several decisions to eliminate and/or alter the reporting mechanisms that have exacerbated the problems.

Those decisions involved:

- Elimination of the administrative claims option;
- Removal of reporting measures groups through claims;
- Ending the ability to report one measure or measure group to avoid the penalty;
- Requiring the reporting of nine measures, across three domains, to avoid a penalty and earn an incentive;
- Failure to initiate policies that could have better protected small physician practices from the impact of the VM; and
- Lack of consistency between PQRS and Meaningful Use quality requirements, which forces physicians to report twice to satisfy both programs.

The AMA is now receiving numerous inquiries from puzzled physicians as to why they are scheduled to receive a payment adjustment in 2016, when they had been successful and early adopters of the PQRS program and in some instances successful with Meaningful Use. **Holding harmless any physicians who attempted to comply with 2014 PQRS requirements, and exempting them from both PQRS and VM penalties in 2016, are necessary to avoid widespread turmoil. Alternatively, we urge CMS to exempt from PQRS and VM penalties any practice that requests an Informal Review. And because many physicians will not realize the impact 2014 data discrepancies have had on their Medicare payment until new rates take effect on January 1, we also strongly recommend an extension of the informal review deadline until after the new rates take effect next year.**

Physician Compare

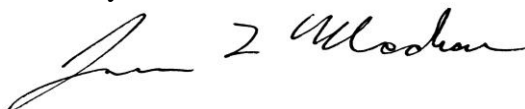
Given the widespread issues with 2014 PQRS calculations and feedback reports, the AMA believes it is extremely premature for CMS to expand Physician Compare to include individual measures on profile pages, as currently scheduled for release by the end of 2015. We strongly believe there are too many outstanding issues that make the data unreliable, and therefore would violate CMS' commitment of only displaying data that are considered valid and reliable. If CMS moves forward, Physician Compare will only include a small set of physicians. This would lead to confusion by the public and incorrect and faulty inferences about the quality of care an individual physician or group provides. We also urge CMS to postpone posting any checkmarks indicating successful PQRS participation on individual profile pages, until after CMS recalculates the data and completes Informal Review request determinations.

Furthermore, we believe CMS is in violation of section 10331(b)(6) of the Affordable Care Act (42 U.S.C. § 1395w-5), which requires CMS to have processes to ensure that timely statistical performance feedback is provided to physicians concerning the data reported under any program that is subject to public reporting on Physician Compare. Currently, CMS only provides 30 days for an eligible professional or group practice to review their Physician Compare performance information before it goes live on Physician Compare. We appreciate that CMS extended the preview period by an extra 10 days, at the last minute and at the urging of the AMA. However, we still believe the preview period is insufficient and physicians were not provided timely statistical performance feedback given the numerous calculation issues that spill into the various feedback reports (PQRS, QRURs, and Physician Compare). Therefore, a large percentage of physicians were not provided any opportunity to review or correct information before it goes live.

We sympathize with CMS' workload and challenging timelines that make it difficult to address these types of administrative difficulties, but CMS has the opportunity to avoid unanticipated and inequitable financial stress on a significant number of physician practices by moving forward with the AMA's recommendations. We welcome the opportunity to discuss this in greater depth. If you require additional information, please feel free to contact Koryn Rubin, Assistant Director of Federal Affairs, at 202-789-7408 or koryn.rubin@ama-assn.org.

The AMA appreciates your consideration of our views.

Sincerely,

A handwritten signature in black ink, appearing to read "James L. Madara". The signature is fluid and cursive, with a large initial "J" and "M".

James L. Madara, MD