August 17, 2010

David Sharp  
Director, Center for Health Information Technology  
Maryland Health Care Commission  
4160 Patterson Ave  
Baltimore, MD  21215  

RE: Proposed Regulations – 10.25.16 Electronic Health Record Incentives  

Dear Mr. Sharp:  

The Maryland State Medical Society, the Maryland Chapter of the American Academy of Pediatrics, the Maryland Academy of Family Physicians, the American College of Physicians - Maryland Section, the Mid-Atlantic Association of Community Health Centers and the Maryland Hospital Association jointly submit these comments on the above referenced regulations regarding the creation of an incentive program that will require specific State-regulated payors to provide incentives to certain health care providers to promote the adoption and use of electronic health records (EHR).  

While each of the respective undersigned organizations may have additional comments on these proposed regulations that reflect interests, the comments reflected in this letter represent the collective voice of the primary care physicians in the State. The financial and operational challenges that face primary care physicians are multifaceted. For many primary care physicians, the adoption of an EHR is beyond their capability absent a meaningful financial contribution from an external source or sources. The passage of House Bill 706 in 2008 and the regulatory framework that these regulations propose provides an excellent framework to begin to assist primary care practices in the acquisition and implementation of EHRs. While we are excited about the possibility of a meaningful incentive program and encouraged by the State’s commitment to attempt to ensure that the program is able to achieve the stated objectives, we nonetheless have several questions and comments that we would like the Commission to consider. 

First and foremost is a concern that a payor retains the authority to determine in what form the incentive will be provided. Section 10.25.16.03A., provides a list of possible incentives that a payor may utilize. Any one of these incentives may or may not be of benefit to a primary care physician. For instance, “In-kind payments,” “rewards for quality and efficiency,” and other such incentives may not provide sufficient direct cash flow to a practice in a manner that will enable the practice to make the financial investment in an EHR - the intended objective of the program. Our organizations would ask the practice have the right to determine the form of the incentive payment.
Given that the regulations specify the total value of the incentives a payor is required to provide - $8 per member, Maryland residents only - with a maximum of $15,000 per practice (Section 10.25.15.06C.-D.) the financial exposure of the payor is limited and the form of the incentive should be at the discretion of the physician not the payor. The only discretion held by the physician is a right to decline hardware and software as the form of incentive. For the incentives to be meaningful, they must match with the needs of the practice. A “one size fits all” decision by a payor with respect to the form of its incentives could render them meaningless to a substantial segment of the marketplace.

Our organizations would also like to request that the Commission consider shortening the time frame of payment of the incentives. From the date of application for an incentive to the possible receipt of any meaningful funds can be as long as 1 year and may extend well beyond that time frame. Again, the only way this incentive program can be successful in achieving its objectives is if the monetary contributions are both timely and sufficient so that they match with the planning and purchase needs of the practice. A shorter, more flexible time frame for application and payment will enhance the effectiveness of the program.

Finally, our organizations would like to request that the Commission ensure that the standards for recognizing a “management service organization” (MSO) are rigorous and include such requirements as demonstration of general insurance liability coverage and other threshold parameters that ensure they are legitimate. Because the regulations enable the payment of additional incentives for adoption of EHRs through an MSO, we want to be sure that if our members chose to adopt HER through one of these MSO’s that they will not find their investments has been made in a company that cannot ultimately deliver the necessary technology and services.

We look forward to continuing to work with the Commission on the implementation of this program and believe our requested changes, if adopted will yield a more meaningful and successful program.

Sincerely,

Gene Ransom, Chief Executive Officer
MedChi, The Maryland State Medical Society

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Eugene J. Newmier, D.O., President
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