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January 2, 2024

Micky Tripathi, PhD, MPP

National Coordinator

Office of the National Coordinator for Health Information
Technology

Chiquita Brooks-LaSure

Administrator

Centers for Medicare and Medicaid Services

Submitted electronically via www.regulations.gov

RE: 21st Century Cures Act: Establishment of Disincentives for Health Care Providers That Have Committed Information Blocking Proposed Rule

Dear National Coordinator Tripathi and Administrator Brooks-LaSure,

Established in 1943, the American Academy of Allergy, Asthma & Immunology (AAAAI) is a professional organization with more than 6,700 members in the United States, Canada and 72 other countries. This membership includes allergist/immunologists (A/I), other medical specialists, allied health and related healthcare professionals—all with a special interest in the research and treatment of patients with allergic and immunologic diseases.

AAAAI has extensively reviewed the aforementioned proposed rule and is deeply concerned about the impact of these proposals on A/I practices. Our members have faced significant challenges since the outset of the Electronic Health Record (EHR) Incentive Program, known as “meaningful use,” and continue to believe the investment outweighed the value by far. Now they are facing *more* penalties for “information blocking” – a term that is poorly defined and lacks clear metrics – for EHR systems that have increased practice burden and challenged patient safety.

We remind CMS and ONC that physician practices are already under-resourced and over-burdened; Medicare physician payments have failed to keep pace with inflation and the complexities of participation continue to grow, including engagement in quality reporting and performance improvement programs. Adding another set of “murky” requirements tied to financial disincentives only drives physicians into employment arrangements that ultimately make the cost of care higher for everyone, including Medicare, or away from practicing medicine altogether.

AAAAI is in strong support of the sentiments shared by the American Medical Association (AMA), and urges CMS and ONC to implement the recommendations that would address physician community concerns about disincentives, enforcement, and transparency. These recommendations are listed below.

Disincentives:

- The Agencies should prioritize physician education and opportunities for corrective action over the imposition of harsh financial disincentives. Before imposing a disincentive, the Agencies should first provide educational resources and work with the physician or practice to establish a formal corrective action plan, which would then be closely monitored.
- Any disincentive construct should be predictable, should take into consideration the severity of the alleged misconduct, and should not result in arbitrary financial impacts.
- Any disincentive construct should be centrally administered by HHS to ensure coordination and minimize potential errors that will ultimately fall upon the physician to navigate and resolve, increasing the already overwhelming administrative burden placed on physicians and further detracting from patient care.
- Information blocking disincentives should be carefully designed in close collaboration with interested parties so as not to have the unintended effect of discouraging participation in Medicare quality and value-based care programs.
- The Agencies should propose supplemental rulemaking to address how the proposed disincentives interact with existing, complex quality reporting program rules – and the resulting additional and downstream implications for physicians – before any disincentive construct is finalized and before any enforcement activity begins.

Enforcement:

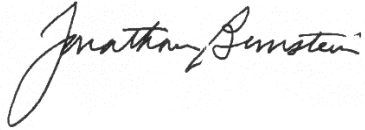
- Physicians' appeal rights should not vary arbitrarily based on the disincentive's underlying program.
- Physicians should have meaningful opportunities to address allegations of information blocking and should be able to challenge and appeal any determination of information blocking prior to the imposition of any disincentive.
- The Agencies should clarify important details regarding the disincentives' effective dates, potential look-back periods, and time limits for information blocking referrals.

Transparency:

- Physicians subject to education or a corrective action plan should not be listed publicly as information blockers. Similarly, physicians should not be listed publicly as information blockers until after they have had an opportunity to appeal the determination and any associated disincentives.
- The Agencies should also establish a process to confirm the accuracy of the information being posted before a physician's name or practice entity is publicly displayed.

We appreciate the opportunity to provide comments on the aforementioned issues of importance to our members. Should you have any questions, please contact Sheila Heitzig, Director of Practice and Policy, at sheitzig@aaaai.org or (414) 272-6071.

Sincerely,

A handwritten signature in black ink that reads "Jonathan Bernstein". The signature is written in a cursive style with a large initial 'J' and a long, sweeping underline.

Jonathan A. Bernstein, MD FAAAAI
President, American Academy of Allergy, Asthma & Immunology