September 2, 2014

Marilyn Tavenner
Administrator
Centers for Medicare and Medicaid Services (CMS)
445-G Hubert H. Humphrey Building
Department of Health and Human Services
200 Independence Ave S.W.
Washington, DC 21201

Re: RIN 0938-AS15; CMS 1613-P; Proposed Rule — Medicare and Medicaid Programs: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Physician-Owned Hospitals: Data Sources for Expansion Exception; Physician Certification of Inpatient Hospital Services; Medicare Advantage Organizations and Part D Sponsors: Appeals Process for Overpayments Associated with Submitted Data

Dear Administrator Tavenner:

The Emergency Department Practice Management Association (EDPMA) is one of the nation's largest trade associations supporting the delivery of emergency medical care to all Americans. Together, **EDPMA's members deliver (or directly support) health care for over half of the 130 million patients who visit U.S. emergency departments each year**. Our members include physician groups, billing and coding companies, and others who support health care provided in the Emergency Department and work collectively to deliver essential services often unmet elsewhere.

The American College of Osteopathic Emergency Physicians (ACOEP) represents over 5,200 Emergency Physicians and provides oversight to 56 Emergency Medicine Residency Programs. The ACOEP, founded in 1975, exists to support high quality emergency care, promote and protect the interests of osteopathic emergency physicians, ensure the highest standards of postgraduate education, and provide leadership in research through the Foundation for Osteopathic Emergency Medicine, in a distinct, unified profession.

On behalf of all our members, we appreciate the opportunity to provide comments on the Proposed Rule for Medicare and Medicaid Programs: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Physician-Owned Hospitals: Data Sources for Expansion Exception; Physician Certification of Inpatient Hospital Services; Medicare Advantage Organizations and Part D Sponsors: Appeals Process for

Overpayments Associated with Submitted Data as published on July 14, 2014 (79 Fed. Reg. 40916). EDPMA and ACOEP understand the significant challenges posed in implementing reforms that will further enable millions of Americans to access medical care through the Medicare program. Both of our organizations **generally support** the changes to the outpatient prospective payment system outlined in the Proposed Rule, but urge you to recognize the differences that exist between emergency medical care and basic medical care.

Important Role of Emergency Physicians

Emergency physicians and Emergency Departments are often the first point of access for individuals needing acute care visits. These physicians and facilities, handle 28% of the 354 million visits made annually in the United States, including millions of indigent individuals and Medicare beneficiaries.[1] Assuring the ongoing availability of quality emergency services is an important part of maintaining the safety net for Medicare beneficiaries. Our position at the nexus of care provides us with a unique perspective on how proposed changes to the Medicare program will affect the ability of Medicare beneficiaries to receive emergency services – an essential health care service.

Response to Proposed Rule

EDPMA and ACOEP would like to thank CMS and offer their continued support for a number of provisions in the Proposed Rule.

In the Proposed Rule, CMS indicated it considered collapsing the emergency department visit codes into a single code in 2014 and, after consideration, chose not to. For 2015, CMS has again delayed taking any action, as it intends to conduct "additional study . . . to assess the most suitable payment structure for ED visits." 79 Fed. Reg. 41009. CMS plans to "further explore the issues . . . related to ED visits, including concerns about excessively costly patients, such as trauma patients." *Id.*

We thank CMS for deciding **not to collapse** emergency department visit facility codes, particularly, as CMS recognized, in light of the impact of excessively costly cases. We agree with CMS' approach to obtain additional information and analysis about emergency departments. While we appreciate the agency's need to continue to update and revise its payment policies in light of changing practice structures, budget pressures, and other external factors, ensuring a robust emergency department care remains a critical component of our nation's healthcare system, particularly for the most acutely ill or injured and some of our most marginalized citizens. We look forward to continuing to work with CMS on any proposed payment policies it may develop related to emergency medicine in the future.

EDPMA and ACOEP also support CMS' decision to eliminate the requirement of a physician certification for inpatient admissions for most stays. In so doing, CMS is embracing the

[1] Pitts, S., Carrier, E., Rich, E., & Kellermann, A. (2010). Where Americans get acute care: Increasingly, it's not at their doctor's office. Health Affairs, 29(9), 1620-1629. doi: 10.1377/hlthaff.2009.1026.

government's wider goal of eliminating duplicative and unnecessary paperwork and regulatory hurdles. CMS noted in the Proposed Rule that it intends to withdraw inpatient admission certification requirements because "the admission order, medical record, and progress notes will contain sufficient information to support the medical necessity of an inpatient admission without a separate requirement of an additional, formal, physician certification." 79 Fed. Reg. 41057. We believe this is a significant step in the right direction. However, we would recommend CMS clarify and reinforce the proper division of physician responsibilities when considering admission orders and inpatient admission from the emergency department.

As you know, when patients are seen in the emergency department, they are not considered "officially admitted to a hospital." However, the emergency physician seeing the patient must make significant health care decisions regarding the patient. He or she must determine the scope of the problem bringing the patient to the Emergency Department (ED); whether the patient requires immediate treatment, clinical observation or admission to the hospital. He or she must then contact an admitting physician, usually an internist or hospitalist, to officially admit the patient with an admitting order. EDPMA and ACOEP remain concerned that emergency physicians, in light of the 2-midnight rule as finalized in CMS' inpatient prospective payment system rule, will be pressured to identify clinical criteria to support admissions, rather than focusing on the immediate needs of the patient in the emergency situation. We therefore request clarification on the legal responsibilities associated with admitting patients to a hospital now that the physician certification element is removed.

Conclusion

EDPMA and ACOEP support and encourage the ongoing efforts by CMS to revise its outpatient payment policies. Given the present-day reality of resource constraints and revolutions in the way health care is provided and administered, CMS has a lot of key policy questions to answer. In light of these important challenges, EDPMA and ACOEP are committed to working toward effective solutions, and believe we are in a unique place to assist in the development of relevant policies. We stand ready to assist CMS in these efforts in any way we can.

Thank you again for the opportunity to provide information to assist you in developing this important regulation. Please feel free to contact Elizabeth Mundinger, EDPMA's Executive Director, at 703 610-9033 if we can be of any assistance on this topic or in any other area.

Sincerely,

James A. Kolka, D.O., FACEP
Chair, EDPMA Board of Directors

Mark Mitchell, DO, FACEOP
President, ACOEP