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December 31, 2019

Centers for Medicare & Medicaid Services

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To Whom It May Concern:

The Rural Policy Research Institute Health Panel (Panel) was established in 1993 to provide science-based, objective policy analysis to federal policy makers. The Panel is pleased to provide comments on the proposed rule Modernizing and Clarifying the Physician Self-Referral Regulations.

The Panel is encouraged by CMS's recognition throughout the proposed rule of the unique rural health care environment. The Panel agrees that circumstances exist in which it is appropriate to treat rural providers differently than other kinds of providers.

Rural Providers and Value-Based Entities

The Panel is supportive of the new opportunities in value-based care created in the proposed rule. However, the value-based opportunities for rural providers may be limited. Providers in rural and underserved areas may not have enough resources or infrastructure to participate fully in the described value-based models. Specifically, these providers may not be able to participate in value-based models and programs that require adopting full financial risk if it jeopardizes their essential role in providing access and a health care "safety net." The goals of value-based arrangements are readily applicable and important to rural areas despite lower-resourced providers in these areas. Rural providers should not be excluded from participating in value-based arrangements solely because of inability to assume full financial risk. Instead, they should be offered options that scale risk as a function of the financial profile of the participating practices, including scaling to zero downside risk.

Defining "Rural Provider" in the Final Rule

The Panel appreciates that CMS is seeking input on the best means to define "rural provider" within the proposed rule. The Panel recommends adopting the definition currently utilized in 42 CFR § 411.356(c)(1). Specifically, the Panel thinks it most appropriate for the proposed Stark Law changes to maintain consistency with the existing exceptions to referral prohibitions. Using the same definition as appears in 42 CFR § 411.356(c)(1) will make compliance with the new exceptions easier for rural providers. The definition allows CMS to define "rural provider" without adding additional compliance burden and confusion that an alternative definition may cause.

Exempting Rural Providers from Contribution Requirement

Rural and other lower-resourced providers face a large burden when trying to adopt EHR and other technological advances because of the large costs required for implementation and to sustain their

use. The Panel recognizes the value of allowing donations from other systems or providers (e.g., community affiliate versions of EHRs), especially in the context of cybersecurity. The Panel believes as many barriers as possible that remain in adopting EHR technology and enhancing cybersecurity should be removed to enable improved care and patient protections. Accordingly, the Panel recommends that rural providers be exempt from any potential CMS imposed contribution requirements. The Panel appreciates that CMS is concerned about potential fraud and abuse should it remove the contribution requirement altogether, but in the Panel's view the advantages and opportunities to enhance EHR adoption and cybersecurity by removing a potential barrier outweighs fraud and abuse concerns in this context.

Monitoring Donor Imposed Contribution Requirements

The Panel supports the requirement that donor-imposed contribution requirements not consider the volume and value of referrals. This requirement is critical to maintaining the integrity of the rule and reducing the risk of fraud and abuse. Donating cybersecurity technology to enhance overall health ecosystem security for the donor should not require differentiation based on referrals. Omitting this requirement may incentivize donation of technology for competitive advantage and referral capture instead of the goal in reducing the risk of cyberattack.

The Panel commends CMS' continued work on these important issues and we thank you for the opportunity to submit comments prior to the finalization of this proposed rule.

Sincerely,

The Rural Policy Research Institute Health Panel

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