



The Alliance for
Continuing Education in the
Health Professions

August 29, 2014

Marilyn Tavenner
Administrator
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Administrator Tavenner:

Thank you for the opportunity to provide input on the proposed changes to guidance provided for Physician Payment Sunshine legislation. We applaud your efforts to increase transparency, improve overall health outcomes and rein in healthcare costs.

The Alliance for Continuing Education in the Health Professions (ACEHP) is an international membership organization of more than 2,200 professionals. Founded in 1975, the Alliance is the recognized leader and trusted partner striving to close gaps in health care delivery by translating the best science and knowledge into effective professional development. Alliance constituents and stakeholders include the broadest universe of medical and health care professions, including physicians, nurses, nurse practitioners, physician assistants, pharmacists, technologists, and technicians, among others. Members also include representatives from academic medical colleges, hospitals and health systems, medical specialty societies, medical education companies, government entities, and pharmaceutical and device companies. The Alliance provides professional development opportunities for CME/CE professionals, advocates for CME/CE and the profession, and strives to improve health care outcomes. For more than 30 years the Alliance has been the recognized leader and educational resource regarding issues related to professional medical education as well as continuing education for other health care providers. As CME/CE professionals we espouse the concepts of transparency and disclosure, especially as they relate to the interplay of medical practice, clinical education and industry.

We are writing to express our deep concern with changes proposed in the Medicare Physician Fee Schedule for 2015 in which the Centers for Medicare and Medicaid Services (CMS) has proposed revoking the existing Sunshine Act exclusion for continuing medical education (CME). We understand that the intent of the proposed change to the reporting requirement is to expand the exemption to a broader range of educational opportunities accredited by a broader range of accrediting bodies (e.g. nursing, physician assistant, pharmacy, dentistry, etc.). We also understand that CMS is not interested in engaging in the process of vetting all of the accrediting bodies to add to the five already listed in the existing rule.

Accredited and certified CME/CE activities are vital components of our healthcare system and this education allows our nation's healthcare team to remain up-to-date with the latest in medical science. Accredited and certified CME/CE is the gold standard with strict requirements to guarantee independence from commercial influence. It is imperative that the distinction between certified CME/CE activities provided by accredited providers and promotional programming provided by industry continue to be recognized by CMS as it relates to the Sunshine Act.

In CMS' February 2013 Final Rule on Sunshine Act implementation, your agency created a bright line "CME exemption" that made it clear to physician participants that they could present at, and attend, accredited continuing medical education programs without concern that this would result in



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their being listed in the Open Payments system, thereby avoiding the potential intimation that they had been improperly influenced by commercial interests.

We understand that the proposed revision to the rule would mean that exempt third party transfers to continuing CME/CE only when an industry donor is unaware of physician participation (as speakers, faculty, or attendees) in a continuing education activity either before or after the activity takes place. This raises serious concerns for us because this type of information is readily available through brochures, program books, and through other communication methods. As such, it would be difficult for funders to claim that they are not “willfully ignorant” about this information during or after the program. Indeed, this information is often freely available well before a CME or CE activity takes place through marketing materials for the activity.

In order to support your intention to expand the field for the exemption while at the same time avoiding the unintended consequence of making funders “willfully ignorant” of the names of speakers/faculty/attendees, we believe there is a compromise solution. We recommend that you modify the language in the proposed rule to add language that clarifies that the exemption applies under section 403.904(g)(1)(i) when an applicable commercial supporter provides funding or in-kind support to a CME/CE provider but does not select or pay the covered recipient speaker/faculty/attendee directly, or provide the CME/CE provider with a list in any format of individuals to be considered as faculty/speakers/attendees for the activity. This could be addressed by the agency providing guidance that the above mentioned is achieved if the commercial supporter is unaware of the speakers/faculty/specific attendee names before signing an agreement to commit to providing the commercial support for a specific activity. Further, this guidance should clarify that if a commercial supporter becomes aware of the names of speaker/faculty/attendees after the commitment to support the activity was made, the activity would remain exempt. Otherwise, it is our contention that the revised language would negate rather than expand the current exemption that is in place for accredited and certified CME. We are confident that this is not your intent.

We strongly urge you to ensure that indirect commercial support for accredited and certified CME and CE programs, where the accredited provider exercises complete control over the content and speakers/faculty, remains exempt from reporting under the Open Payments system. It is vital to America’s patients that their healthcare providers remain well educated and informed on the latest medical science in their field, and therefore, we must encourage, rather than discourage, participation in CME and CE.

Sincerely,

Destry Sulkes, MD
President