

August 26, 2014

Marilyn Tavenner
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-1612-P
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

Re: File Code-CMS-1612-P; Payment Policies under the Physician Fee Schedule and Other Revisions to Part B for CY 2015; Proposed Rule; (July 11, 2014).

Dear Administrator Tavenner:

The American Academy of Ophthalmology (the Academy) appreciates the opportunity to comment on the Centers for Medicare and Medicaid Services (CMS) Notice of Proposed Rule Making (NPRM) on the revisions to Medicare payment policies under the Physician Payment Schedule for calendar year 2015, published in the July 11, 2014 Federal Register. The Academy is the worlds largest association of eye physicians and surgeonsEye M.D.swith 19,000 members in the United States. We are pleased to provide our input on the provision in this rule that proposes to remove provisions related to continuing medical education (CME) in the CMS Open Payments program.

CMS states that the intent of removing preamble language that excluded certain indirect payments or other transfers of value was because it was redundant and unnecessary language. CMS states that an unattended consequence of the language it proposed to remove was that it appeared to be favoring some certification entities over others. However, for the Academy as for every major medical specialty society and continuing medical education accrediting body, we believe CMS characterized this issue correctly in the original exemption at 403.904(g)(1) and in the preamble to the Physician Payments Sunshine Act. There CMS explained that if an applicable manufacturer conveys full discretion to the continuing education provider, those payments are outside the scope of the rule.

The strict separation between commercial support and CME program content and speakers is the core requirement of the accreditation bodies such as ACCME that govern each of the Academys medical education programs. Providing these programs is one of the Academys most important functions. Whether these are at our annual meeting or online, they provide ophthalmologists from residents to those with years of experience with the latest research, surgical developments, and patient safety information. The Academy is the primary source for ophthalmologists ongoing medical education and skills development.

Additionally, we agree with the American Medical Association comments that support extending the CME exception to other independent continuing education programs or entities that meet the same strict criteria as provided for CME. Those include:

Does not pay covered recipient speakers or attendees directly;
Does not select covered recipient speakers or provide a third party (such as a continuing education vendor) with a distinct, identifiable set of individuals to be considered as speakers or attendees for

the CE program; and
Does not control the program content.

As a nonprofit, dues-based membership society, the Academy cannot bring to its members and their patients these rich educational offerings by itself. Thus we do seek and receive outside support. Each and every commercial support grants we accept states that if an education program is involved, the grantor can have no knowledge, influence or input over the content or speakers. This is in keeping with ACCME guidelines. In addition each speaker or author must disclose his or her financial interests according to Academy rules.

Open Payments is a new program, and understandably it is causing concern among physicians and manufacturers alike. We do not want to add an additional, intimidating burden to the already busy speakers and authors who provide our CME and who do not receive honorariums per Academy practice. Although no money ever passes from commercial support grants to our speakers, we could not guarantee our speakers that a commercial grantor would not interpret the end of the exclusion as requiring it to report some allocation of an event grant to an individual physician speaker. The end of the exclusion would be a great discouragement to our volunteer colleagues, who are participating in the Academy's CME as a service to their profession.

We respectfully ask that CMS retain the exemption to reporting requirements for compensation of speakers at accredited or certified CME programs.

Sincerely,

David W. Parke II, MD
CEO and Executive Director