

Centers for Medicare & Medicaid Services
Department of Health & Human Services
Attn: CMS-1612-P
P.O. Box 8013
Baltimore, MD 21244-8013

Submitted electronically

Aug. 29, 2014

RE: CMS-1612-P

RE: Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule, Clinical Laboratory Fee Schedule, Access to Identifiable Data for the Center for Medicare and Medicaid Innovation Models & Other Revisions to Part B for CY 2015

The Coalition for Healthcare Communication (CHC) appreciates the opportunity to file comments and make recommendations regarding the continuing medical education (CME) exemption from Sunshine Act reporting, which was established under the Physician Payment Sunshine Act final rule.

CMS Should Retain CME Exemption

Accordingly, it is the CHCs position that CMS should retain the CME exemption from Sunshine Act reporting and allow industry members to provide grants that accredited CME providers can utilize to support programs and compensate speakers of the CME providers choosing. The CHC recommends that the CME exemption move forward using a four-part rule that would exempt all continuing education (CE) or CME programs that are offered by accredited bodies. This four-pronged approach would strengthen the original exemption language by stipulating that:

- (1) Accredited bodies must be recognized by a federal or state government to offer CE or CME programs;
- (2) CME grantors must not pay speakers directly;
- (3) CME grantors must not recommend speakers or faculty for educational programs; and
- (4) CME grantors must not select or recommend attendees.

The CHC also would like to recommend that CMS clarify that CME attendee tuition and materials are excluded from Sunshine Act reporting, and that no application of the awareness standard applies under Section 403.902.

Change Awareness Standard under Indirect Payment Provision

In the alternative, if CMS does not retain the CME exemption, the CHC would advise the agency to rework or abandon the awareness standard of Section 403.902 to measure awareness of speakers, faculty and attendees at the time of the grant. Indeed, awareness is not the issue. Instead the issue is control of program content and choice of speakers as implemented by the ACCME. However, if CMS chooses to retain awareness as the standard, attempting to preserve a window of awareness of events after the funds have been provided creates an unworkable standard whereby companies purportedly and unrealistically would have to put their heads in the proverbial sand to try to avoid hearing or reading about CME events in their community or industry.

In their Aug. 5 letter, the medical associations and specialty groups voice their concern that this indirect payment provision allows exemptions through third-party transfers only where an industry donor is unaware of the recipients/beneficiaries before and up to 18 months after the funds are transferred. Our organizations believe that this raises concerns, as industry could learn the identities of speakers/faculty and potentially participants after the funds have been transferred through brochures, program and other publications, as well as other means, the medical group letter states. Additionally, the medical community letter states that if CMS does rely on the indirect payment provision, it should include guidance stipulating that industry donors must be unaware of the speakers/faculty/participants before committing to fund the activity. This accomplishes CMS goal while eliminating the potential for negatively impacting CE, the groups assert.

While the CHC understands CMS primary objective that companies should not influence the choice of speakers for or the attendees of CE or CME events when they provide CME grants, the proposed standard for knowledge after the funds have been given (and during a timeframe in which companies cannot influence speaker selection or attendee lists), would surely have a negative effect on the entire CME process.

In summary, in eliminating the CME exemption from Sunshine Act reporting CMS would create unnecessary and significant obstacles to providing important educational opportunities to physicians and other medical professionals who care for the nations patients, which is not a positive outcome. However, if the agency chooses to pursue this exemption elimination, it should set a more reasonable standard for companies knowledge after funding for CME programming has taken place.

Again, the Coalition for Healthcare Communication appreciates this opportunity to comment on these matters and stands ready to offer additional information at your convenience.

Sincerely,

John Kamp
Executive Director
Coalition for Healthcare Communication