American College of Emergency Physicians®
ADVANCING EMERGENCY CARE

ACEP 50 YEARS
Making Every Moment Count

August 24, 2018

Seema Verma, MPH
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
PO Box 8013
Baltimore, MD 21244-1850

Re: CMS-1720-NC

Re: Medicare Program; Request for Information Regarding the Physician Self-Referral Law

Dear Administrator Verma:

On behalf of over 39,000 members of the American College of Emergency Physicians (ACEP), we greatly appreciate the opportunity to provide our comments on the Physician Self-Referral law and the effects the law has on participation in alternative payment models (APMs).

Emergency physicians play a vital role in their communities, serving as safety net providers who care for people at their greatest time of need. As they treat each patient, emergency physicians must make the critical decision about whether the patient should be kept for observation, admitted to the hospital, or discharged. Fundamentally, they act as a gateway to the hospital for many patients. Emergency physicians are therefore in a prime position to be meaningful participants in APMs that attempt to shift our health care system to one that rewards value over volume. However, while many emergency physicians are ready to take on downside risk and participate in Advanced APMs, there simply are not any opportunities to do so. We therefore strongly encourage the Center for Medicare & Medicaid Innovation (CMMI) to consider developing models geared towards emergency physicians. ACEP has developed its own proposed physician-focused payment model that is currently being considered by the Physician-Focused Payment Model Technical Advisory Committee (PTAC), called the Acute Unscheduled Care Model (AUCM). We are willing and eager to discuss this model with you as it continues to go through the PTAC process.

With respect to the Physician Self-Referral law, it is often unclear whether many of the new value-based arrangements are legally permissible. With all the consolidation in health care, especially with health systems purchasing provider practices, it is difficult for the average physician to know for sure whether some of the care coordination they are providing is permissible. In order for emergency physicians to actively participate in value-based models and coordinate care for patients that come to the emergency department (ED), we need to be assured that we are in compliance with all federal laws and regulations, especially those regarding referral patterns of care. For all current and future APMs, CMS should allow a wide range of referrals from physicians based in external locations, such as skilled nursing facilities (SNFs) to the ED. Likewise, CMS should allow all referrals of care to take place from the ED to observation and inpatient hospitalists as wells as referrals from the ED or inpatient setting to post-acute physicians and facilities like SNFs and home health agencies.

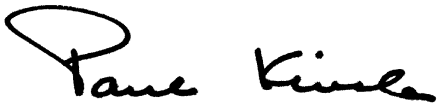
WASHINGTON, DC OFFICE
2121 K Street NW, Suite 325
Washington, DC 20037-1886

202-728-0610
800-320-0610
www.acep.org

ACEP believes that there is a lot of potential for new APMs that allow emergency physicians to coordinate a patient's care with other providers in other healthcare settings. The goal of these APMs would be to potentially keep a patient out of the ED in the first place or to ensure that the patient receives the appropriate follow-up treatment after an ED visit and avoids having to go back to the ED. Restricting the ability for emergency physicians and other providers to refer patients to the most appropriate healthcare providers or facilities would significantly limit the potential for these APMs to be successful. ACEP is eager to work with CMS going forward on specific ways to modify the Physician Self-Referral law that would facilitate the development and implementation of APMs focused on emergency care.

We appreciate the opportunity to share our comments. If you have any questions, please contact Jeffrey Davis, ACEP's Director of Regulatory Affairs at jdavis@acep.org.

Sincerely,



Paul D. Kivela, MD, MBA, FACEP
ACEP President