November 12, 2012

The Honorable Kathleen Sebelius
Secretary
Department of Health and Human Services
200 Independence Ave., S.W.
Room 445-G
Washington, DC 20020

The Honorable Eric H. Holder, Jr.
Attorney General
Department of Justice
950 Pennsylvania Ave., N.W.
Washington, DC 20530

Dear Secretary Sebelius and Attorney General Holder:

This letter follows on the American Hospital Association's (AHA) letter of September 24, which highlighted both the important role of electronic health records and the nation's hospitals' commitment to compliance with Medicare's and Medicaid's complex billing requirements while questioning any suggestion that more accurate documentation and coding equates to fraud. Specifically, we write now to suggest specific, collaborative actions to advance the use of electronic health records (EHRs) in billing for hospital services. The AHA appreciates the opportunity to work with you to improve the use of EHRs and other automated tools to document care and support hospital claims submitted to Medicare and Medicaid.

America's hospitals take seriously their obligation to bill properly for the services they provide to Medicare and Medicaid beneficiaries. Hospitals have a longstanding commitment to compliance, establishing programs and committing resources to ensure that they receive only the payment to which they are entitled.

This letter highlights three areas where additional discussions and cooperative actions would lead to greater mutual understanding of the rules and how they are enforced:

- development of national guidelines for hospital coding of evaluation and management (E/M) services provided in clinics and emergency departments (EDs);

- greater understanding of functionalities that vendors embed into EHRs and other automated tools used by hospitals; and

- further discussion of law enforcement concerns, with the goal of jointly developing compliance guidance for hospitals.

Our detailed comments follow.

NATIONAL GUIDELINES FOR HOSPITAL CODING FOR CLINIC AND ED SERVICES
As we noted in our September 24 letter, the AHA repeatedly has called for national guidelines for hospital ED and clinic visits, and we stand ready to work with the Centers for Medicare & Medicaid Services (CMS) in the development and vetting of such guidelines. We feel confident that joint efforts could build on the work of the previous independent panel that made recommendations in 2003 and establish a set of national hospital E/M guidelines to support both claims submitted by hospitals and audits or other enforcement activities conducted by CMS.

Once national guidelines are developed, we recommend that a formal proposal be presented to the American Medical Association's CPT® Editorial Panel to create unique CPT® codes for hospital reporting of ED and clinic visits based on the national guidelines. These codes then could be reported by hospitals to all payers. The AHA willingly would assist CMS in identifying national experts with relevant experience in coding, health information management, documentation, billing, finance, auditing, nursing and clinical care.

GUIDANCE FOR EHRS AND OTHER AUTOMATED TOOLS
Electronic health records hold great promise for improving the efficiency and effectiveness of care. Hospitals have made great strides to comply with the administration's regulations for implementing this technology and other automated tools that enhance their ability to correctly document and code the care a patient has received. As you noted, there is a crucial link between clinical documentation and the coding for claims. As more physicians use EHRs to document their work, EHR vendors are developing tools for physicians and other clinicians to ensure their clinical documentation is complete. These tools may embed rules engines and other logic that is not transparent to the end user. As adoption of these tools increases, the AHA would like to work with the Department of Health and Human Services (HHS) to develop mechanisms that vendors could use to demonstrate that the tools they embed in their products promote clinical documentation that complies with current coding conventions and future national coding guidelines for E/M services.

We recommend that HHS take immediate steps to develop mechanisms to ensure these new technologies are consistent with existing coding conventions. These mechanisms should later be expanded to incorporate national guidelines for coding of E/M services once they are developed. For example, CMS and the Office of the National Coordinator for Health Information Technology (ONC) could work together to provide a voluntary "test bed" for vendors to ensure that their products are producing clinical documentation that supports accurate, complete, and consistent E/M service coding that meets the high bar set by existing coding conventions. Numerous private-sector parties could run the test beds, such as the entities that have been selected to test and certify EHRs for the meaningful use program.

HHS should also consider urging vendors to adopt and adhere to a code of ethics similar to that to which coding professionals adhere. The American Health Information Management Association's Standards of Ethical Coding, maintains such a code, which states, among other things, that all those who engage in or manage coding shall: "Assign and report only the codes and data that are clearly and consistently supported by health record documentation in accordance with applicable code set and abstraction conventions, rules, and guidelines" (see

http://www.ahima.org/about/ethicsstandards.aspx). Such a code for vendors could, for example, be incorporated into the certification for meaningful use, and thereby would allow vendors to demonstrate transparency for how documentation tools in EHRs map to coding for all services, and how they support compliance with existing coding conventions. As new or revised national coding guidelines are developed, they also could be incorporated.

COMPLIANCE GUIDANCE FOR HOSPITALS

As our September 24 letter affirmed, hospitals take seriously their obligation to bill properly for the services they provide to Medicare and Medicaid beneficiaries. Our letter also highlighted particular difficulties our members have long confronted in coding and billing for hospital services. Notwithstanding those difficulties, our members would like to work with the Departments of Justice and HHS to guard proactively against and prevent the abuse of EHRs for unlawful financial gain. In many instances, hospitals, as consumers of software and data processing services, could serve as a first preventive defense to abusive billing submitted in their name.

The AHA requests a meeting to discuss law enforcement concerns with the goal of jointly developing compliance guidance for hospitals. We would like to work with the agencies – law enforcement and health policy – to develop a better understanding of your concerns and of the risks implicated by the intersection of computerized systems and EHRs. We would like to explore the possibility of convening a study group under the two departments' auspices that would include representatives from the hospital field, among others, to identify and articulate risks and develop meaningful guidance. The effort would be similar to compliance guidance the Office of Inspector General issued for various categories of health care businesses in years past and would enable hospitals to monitor for problems and issues of concern from the outset in order to improve compliance.

Hospitals share the administration's goal of a health system that offers high-quality, affordable care and work hard to ensure billing is correct the first time. Working together, we can undertake a set of activities to provide national guidelines for E/M coding by hospitals, create greater certainty that products sold by the vendors of EHRs and other automated tools promote compliance with those guidelines, and develop meaningful guidance on compliance. On behalf of our more than 5,000 member hospitals, health systems and other health care organizations, and our 42,000 individual members, we look forward to working with you and other stakeholders as we continue to improve health care for patients.

Sincerely,

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Rich Umbdenstock
President and CEO