The Honorable Jack Reed  
United States Senate  
Washington, DC  20510  

Dear Senator Reed:

Thank you for your recent letter regarding your concerns with the Medicare and Medicaid Electronic Health Record (EHR) Incentive Programs.

The American Recovery and Reinvestment Act of 2009 (ARRA) provides authority to exempt eligible professionals (EPs) from the application of the payment adjustments under Medicare if the Secretary determines that compliance with the requirement for being a meaningful EHR user would result in a significant hardship. Hardship applications are reviewed on a case-by-case basis and are subject to annual renewal. However, the law also prohibits an EP from being granted a hardship exception for more than 5 years.

To accommodate specialties such as pathology, which may face a significant hardship in demonstrating meaningful use of certified electronic health record technology (CEHRT), CMS provided regulatory clarification at 42 C.F.R. § 495.102(d)(4)(iv), for EPs whose primary specialty is listed in the Provider Enrollment, Chain and Ownership System (PECOS) as anesthesiology, radiology, or pathology 6 months prior to the first day of the year in which payment adjustments would apply. We do not intend to limit this exception to the 2015 payment adjustment year. Pathologists who meet the criteria for this exception may be exempted from the payment adjustments in future years, although we note as required by ARRA, this will be determined on a case-by-case basis, subject to annual renewal and the 5-year limitation.

Thank you for your continued interest in the Medicare and Medicaid EHR Incentive Programs. I will also provide this response to the co-signers of your letter.

Sincerely,

Marilyn Tavenner