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October 11, 2016

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**New York State Department of Health**  
**Bureau of House Counsel**  
**Room 2438, Corning Tower**  
**Albany, NY 12237**

**Re: HLT-35-16-00018-P – All Payor Database Proposed Regulations**

Dear Ms. Ceraolo:

We are writing to you to express our strong concerns with the above referenced proposal that would create an All-Payor Claims Database, and permit public access to individual hospital practitioner quality and payment information.

We agree with the importance of collecting and analyzing information from health insurance companies to investigate trends in care delivery, with the purpose of uncovering best practices that will lead to recommendations for improving the quality of care delivered. However, we are very concerned that a database that consists only of claims information and which does not include other aspects of care delivery contained in the medical records could result in presenting misleading information to the public. Moreover, it is unclear how such data will be appropriately risk-adjusted to account for patients with more intensive care needs or physicians that treat a high percentage of non-compliant patients. It is also unclear how such reports will assure that patient care delivered will be attributed to the correct physicians. While we have strong concerns with the posting of any incomplete quality information, at the very least, the manner by which the data will be risk-adjusted and attributed must be clearly defined in the proposed regulation.

Furthermore, we are greatly concerned that the regulation does not only contemplate release of quality data, but also potential includes the release of payment and fee data. This also can be highly misleading. Indeed, we already see with the public release of Medicare payment data that improper conclusions are being drawn about physicians whose nature of practice (such as ophthalmologists and oncologists) requires the use and reimbursement for very expensive injectable medications that have absolutely nothing to do with actual physician reimbursement. Additionally, fee and charge data can be extremely misleading because health insurers greatly discount the fees they pay for care delivered to patients. Therefore, we strongly urge against making individual fee, charge and aggregated payment data publicly available.

Moreover, while the regulations provide the authority for the State to create an advisory group to provide guidance on data release and data aggregation, other states such as Vermont and Maine have gone much further and established by regulation a formal committee of individuals representing physicians, hospitals, health plans and consumers to review requests by groups for such data. Therefore, we believe that the proposed regulation should be amended to require the use of such committee to review requests to obtain APD data, and to assure representations of appropriate provider associations on such body.

Thank you for your attention to these comments.

Sincerely,

A handwritten signature in black ink, reading "Morris M. Auster". The signature is fluid and cursive, with a long horizontal stroke at the end.

MORRIS M. AUSTER, ESQ.

