

United States Senate

WASHINGTON, DC 20510-3309

September 30, 2014

COMMITTEES:
ARMED SERVICES
BANKING, HOUSING, AND
URBAN AFFAIRS
HEALTH, EDUCATION, LABOR,
AND PENSIONS
SMALL BUSINESS AND
ENTREPRENEURSHIP

Marilyn Tavenner
Administrator
Centers for Medicare & Medicaid Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Administrator Tavenner:

I write to ask that you refrain from assessing penalties on health care providers who sought to attest to the meaningful use of electronic health records (EHRs) by October 1 but were unable to do so because of technical problems encountered on the website of the Centers for Medicare and Medicaid Services (CMS). Affected health care providers in North Carolina may be subject to these costly penalties through no fault of their own and as a direct result of technology problems at CMS.

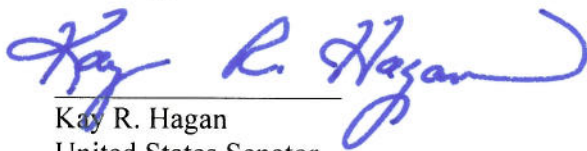
For example, Morganton Eye Physicians is an eye care practice that serves patients in four counties in western North Carolina and employs 23 doctors and 165 staff members. Over the past few years, the practice has invested \$1.3 million in new health information technology so that it can participate in the EHR Incentive Program, including purchasing and installing software and computers, hiring two full-time IT professionals, and adding \$250,000 to its annual operating budget.

As you know, on August 29, CMS finalized a rule that allows eligible providers to attest to meaningful use using 2011 technology if they do so by October 1. However, when Morganton Eye Physicians attempted to attest on September 4 and 8, it was unable to do so. CMS stated that its website would not be prepared to accept the practice's attestation until mid-October—or after the October 1 deadline. Morganton Eye Physicians now faces a one percent reduction in its Medicare reimbursements in 2015, or a \$65,000 penalty.

I appreciate the hard work being done by CMS to encourage the use of EHRs and increase participation in the EHR Incentive Program. However, it is unacceptable for health care providers like Morganton Eye Physicians to be penalized for failing to comply with program requirements because of a technological failing by CMS. Morganton Eye Physicians, like providers nationwide, has already made a substantial investment to participate in the meaningful use program, and it is particularly troubling that it now faces the additional and unanticipated burden of cuts in reimbursement solely because of an error with the CMS website.

I request that you withhold from implementing the one percent reimbursement penalty for providers facing this situation. Thank you for your attention to this important matter.

Sincerely,



Kay R. Hagan
United States Senator

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