

October 17, 2018

The Honorable Alex Azar
Secretary
Department of Health and Human Services
200 Independence Ave., S.W.
Room 445-G
Washington, DC 20201

Dear Secretary Azar:

On behalf of associations representing hospitals and health systems, we appreciate the opportunity to share directly our views concerning the request for information on the use of the Medicare and Medicaid Conditions of Participation (CoPs) and Conditions for Coverage (CfCs) to promote interoperability of health information. **While we applaud the agency's work to promote interoperability, we believe that revisions to the CoPs that require health information exchange between hospitals and community providers and between hospitals and patients are not the appropriate mechanism to advance interoperability.**

- **We appreciate the work of the administration to relieve administrative and regulatory burden on providers.** As part of the Patients over Paperwork initiative, the administration has been asking for ways to reduce regulatory burden on providers. We applaud the administration's efforts to allow providers to focus more of their time and resources on patient care instead of onerous, administratively burdensome actions. Counter to that goal, the addition of new CoPs would represent a new administrative challenge for providers while not providing any additional benefit to patients.
- **We support the Department of Health and Human Services' (HHS) efforts to advance a framework for interoperability so that the technology and rules governing the exchange of health information are universally and consistently implemented, and implementation can be clearly demonstrated.** Hospitals and health systems strongly support the creation of an efficient and effective infrastructure for health information exchange, which is central to providing high-quality coordinated care in addition to engaging patients and their caregivers.

As a result of their investments and concerted efforts, hospitals across the country are making significant progress on information exchange between providers and clinical registries/public health entities and, most importantly, between providers and patients and their families. We are active and committed participants in HHS initiatives to promote the use of certified electronic health records (EHRs) and the interoperable access, exchange and use of health information. According to survey data,¹ 93 percent of hospitals and health systems

¹ Sharing Health Information for Treatment. <https://www.aha.org/guidesreports/2018-03-01-sharing-health-information-treatment>

provide patients with the ability to access their health records online, up from only 27 percent in 2012. Survey data² also show that hospitals and health systems have deployed systems to share health records with other care providers to better support care coordination and transitions across settings of care. For example, 71 percent of hospitals and health systems share clinical or summary of care records with ambulatory care providers outside their system, up from 37 percent in 2012.

We urge HHS to consider ways to work with the provider community to bolster the advances already underway in information exchange among providers, between providers and community entities, and with patients and their families, rather than imposing new regulatory requirements on providers. Our specific concerns with the adoption of new interoperability CoPs/CfCs and our recommendations regarding ways to build upon the substantial progress already made in interoperability are provided below.

- **We urge HHS to refrain from implementing new CoPs/CfCs for health information exchange.** We believe that further advancing interoperability through the use of the CoPs/CfCs runs counter to the administration's important efforts to reduce regulatory burdens and advance patients' access to information, improve quality and reduce costs.

Health care organizations view compliance with the CoPs/CfCs as a foundational aspect of their obligation to the patients and families they serve. Yet, to comply, they must have a clear and unambiguous understanding of what is expected and how they are to be judged as being in compliance. Furthermore, survey teams must have access to clear and unambiguous evidence when assessing a facility's compliance. However, given the current dynamic nature of the development, adoption and utilization of health information technology (IT) systems across the health care continuum, there is no basic clarity that would justify a new requirement or condition. As we note above, the journey for hospitals and health systems towards interoperability is still underway. To reach our shared goals of advancing interoperability, enhancing the patient experience, improving quality and reducing costs, the technical and organizational infrastructure must be available to allow for efficient exchange. Furthermore, all parties to exchange must be using technology in consistent ways; and the free flow of information to others with a legitimate reason to have the information must be allowed, while protecting the information from hackers and others with nefarious intent. Until these infrastructure elements are in place, new regulatory requirements will simply take important resources away from patient care, rather than promoting patient choice, health and safety.

- **We urge HHS to focus on reducing existing barriers to health information exchange and expanding opportunities for exchange.** Despite the substantial progress made by hospitals and health systems to strengthen their interoperability capacity, barriers still exist,

² Expanding Electronic Patient Engagement. <https://www.aha.org/guidesreports/2018-03-01-expanding-electronic-patient-engagement>

particularly in the electronic exchange of patient information between hospitals and health systems and community providers. These barriers are experienced by providers using the same technology platform; providers using different platforms due to differences in their core patient populations and/or services, such as a pediatric hospital and a community-based family practice; providers that participate in the Promoting Interoperability Programs, formerly the EHR Incentive Programs; and those that were ineligible to participate in the programs, such as post-acute care and behavioral health providers.

In particular, it can be difficult, if not almost impossible to exchange information across different vendor platforms. Those differences can impede the identification of the correct patient, treatment plans and modalities when information is exchanged between systems. Barriers to interoperability also exist as a result of the need for some specialized providers, such as children's hospitals, to customize existing standardized platforms to reflect the unique pediatric-specific services they provide, which existing systems often do not accommodate.

There are also additional and often significant costs beyond the EHR to purchase specific software, services or support necessary to enable information exchange. Some provider organizations, particularly those that are small or serve a large number of patients with limited insurance coverage, simply do not have the resources to invest in expensive EHR systems, additional interfaces and continual software updates. On average, surveyed hospitals spend \$760,000 annually meeting regulatory requirements, with additional IT regulatory investments averaging \$411,000 annually. This investment is more than 2.9 times larger than that made in any other area of hospital administration³ and may require the diverting of limited resources away from patient care.

- **We note that HHS already has mechanisms to hold hospitals accountable for interoperability.** Currently, CMS holds hospitals accountable for supporting interoperability and sharing health information under the Promoting Interoperability Program. The agency also requires hospitals to attest that they have not taken steps to limit or restrict health information exchange. The attestations achieve the purpose of requiring health information exchange without the administrative burden that a new CoP would initiate. Additionally, the Office of the National Coordinator for Health Information Technology has initiatives underway to advance the health information exchange infrastructure. As drafted, the Trusted Exchange Framework and Common Agreement (TEFCA) is intended to advance the health information exchange infrastructure. We believe the current regulations and the anticipated TEFCA will advance the goal of information sharing in a consistent and transparent manner.

³ Regulatory Overload. Assessing the Regulatory Burden on Health Systems, Hospitals and Post-Acute Providers. <https://www.aha.org/system/files/2018-02/regulatory-overload-report.pdf>

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We look forward to working with HHS to further our ongoing efforts to collaboratively advance a health IT infrastructure that can efficiently and effectively allow for health information exchange that supports patients and their families.

Sincerely,

America's Essential Hospitals
American Hospital Association
Association of American Medical Colleges
Catholic Health Association of the United States
Children's Hospital Association
Federation of American Hospitals
National Association for Behavioral Healthcare

cc:

Seema Verma
Administrator, Center for Medicare and Medicaid Services

Don Rucker, M.D.
National Coordinator, Office of the National Coordinator for Health Information Technology