



June 3, 2019

Submitted via www.regulations.gov

Dr. Don Rucker
National Coordinator for Health Information Technology
Office of the National Coordinator for Health Information Technology
330 C Street, SW, 7th Floor
Washington, D.C. 20201

RE: RIN 0955-AA01; 21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program

Dear Dr. Rucker:

Thank you for the opportunity to provide feedback on the proposed rule implementing the information blocking provisions of the 21st Century Cures Act and making other changes to modernize the ONC Health IT Certification Program. We are keenly interested in this proposed rule given that information sharing is critical to value-based care, as well as functioning, competitive provider markets.

The Partnership to Empower Physician-Led Care (PEPC) is a membership organization dedicated to supporting value-based care to reduce costs, improve quality, empower patients and physicians, and increase access to care for millions of Americans through a competitive health care provider market. We believe it is impossible to achieve truly value-based care without a robust independent practice community. Our members include Aledade, American Academy of Family Physicians (AAFP), California Medical Association (CMA), Florida Medical Association, Medical Group Management Association (MGMA), and Texas Medical Association's PracticeEdge. We also have individual and small medical group supporters across the country, many of whom are independent physicians or practices.

We believe that the physician-patient relationship is most transformative when there is patient choice and provider competition within local markets. Independent physicians and practices are a key part of any value-based care system, and health information exchange – especially exchange across organizational boundaries – helps spur competition while improving quality, encouraging coordination, and reducing costs. Timely access to critical health information is also fundamental to value-based care, and independent physicians and practices seeking to adopt these models must have access to important clinical information about their patients to succeed under new models.

Our specific comments on ONC's proposals are outlined in more detail below. In general, we strongly support efforts to discourage information blocking and streamline other regulatory requirements to make it easier for small, independent practices and providers to move to value-based care. We look forward to working with you on these ideas.

ONC Health IT Certification Program

We believe that the ONC Health IT Certification Program should be a platform for ensuring that certified products have functionality needed to support physicians practicing in a variety of different employment arrangements and practices sizes. To that end, we offer several comments below on proposed modifications to the program that we believe are supportive of this goal.

First, we support adoption of the U.S. Core Data for Interoperability (USCDI) data set. We recommend that ONC prioritize data elements necessary for value-based care for future versions, and that ONC include in the final rule greater specificity about the process and timeline for incorporating new data elements into USCDI so that providers have time to plan accordingly.

Second, we support inclusion of electronic health information (EHI) export criteria as a tool to enable EHR switching. We encourage ONC to consider implementing this in a standards-based way to reduce burden on providers. Without a standard, developers of certified EHR technology are likely to implement this requirement in a patchwork manner which could place more burden on independent practices and physicians who don't have the resources or time to comply with vendor-specific export approaches.

Information Blocking

We strongly support efforts to discourage anti-competitive information blocking. We do not believe that patient information should ever be used for the purpose of gaining or maintaining "control" over patient lives, and encourage ONC to explicitly state that providers who choose not to share information with other providers for competitive reasons are information blocking. We also urge ONC to consider an information blocking exception for small practices that are acting in good faith.

Definitions

We appreciate ONC's efforts to balance the need to capture a range of actors and behaviors with the practical realities of implementation. We believe that there are a few areas where ONC could modify its proposals to improve their workability.

First, we recommend that ONC explicitly clarify that health care providers are not captured in the definitions of health information network (HIN) and health information exchange (HIE). Health care providers are a separate category of actor in 21st Century Cures legislation, and should continue to be so under the implementing regulations. We are concerned that some value-based care entities comprised entirely of physicians (e.g., accountable care organizations) could be captured as an HIE/HIN despite the fact that all of its participants are regulated as providers.

Second, with respect to the definition of EHI, we suggest that ONC consider a phased in approach to information sharing, focusing first on information needed to support value-based care (e.g., USCDI). We support the concept of price transparency, but encourage ONC to ensure any policies requiring sharing of pricing information is implemented in a way that is not overly burdensome on providers.

RFI on Provider Disincentives

In determining "appropriate disincentives" for providers who are information blocking, HHS should take care not to duplicate disincentives. For example, providers may already be subject to a penalty under the Merit-based Incentive Payment System (MIPS) if they do not attest to the required information blocking statements. If CMS determines it necessary to implement new disincentives specifically for information blocking, we recommend that HHS ensure the disincentive is appropriate given the size and reach of the provider organization, and that HHS consider stronger disincentives for providers who information block to obtain or retain a competitive advantage over another provider.



Finally, we recommend that ONC provide technical assistance to support small and mid-sized practices in understanding and navigating these new requirements. This should be coupled with a communications campaign to ensure that providers understand what is permitted for other providers, IT vendors and other stakeholders. Without additional support from HHS, small practices and independent providers are unlikely to be able to fully benefit from the new requirements.

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Please do not hesitate to reach out to me if the Partnership to Empower Physician-Led Care can be a resource to you. I can be reached at kristen@physiciansforvalue.org or 202-640-5942.

Sincerely,

Kristen McGovern
Executive Director