



June 20, 2023

Submitted via www.regulations.gov

Dr. Micky Tripathi
National Coordinator for Health Information Technology
Office of the National Coordinator for Health Information Technology
U.S. Department of Health and Human Services
330 C Street, SW, 7th Floor
Washington, D.C. 20201

RE: RIN 0955-AA03; Health Data, Technology, and Interoperability: Certification Program Updates, Algorithm Transparency, and Information Sharing

Dear National Coordinator Tripathi:

Thank you for the opportunity to provide feedback on the proposed rule, *“Health Data, Technology, and Interoperability: Certification Program Updates, Algorithm Transparency, and Information Sharing.”*

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) and Medical Group Management Association (MGMA). We also have individual and small medical group supporters across the country, many of whom are independent physicians or practices.

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 appreciate your efforts to develop FAQs and other sub-regulatory guidance documents for providers, and urge you to consider additional mechanisms for providing technical assistance and guidance to providers on a number of topics, including federal activities related to the regulation of AI, information blocking, and emerging health data privacy restrictions.

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 v3 of the U.S. Core Data for Interoperability (USCDI) data set. As noted by ONC, v3 includes Sexual Orientation, Gender Identity, Functional Status, Disability Status, Mental/Cognitive Status, and Social Determinations of Health data elements, including SDOH assessment, SDOH goals, SDOH interventions, and SDOH problems/health concerns. We agree that access, exchange, and use of these data elements can support more information for and care of patients. We recommend



that ONC prioritize data elements necessary for value-based care for future versions, potentially considering whether there is an opportunity to partner with the Centers for Medicare and Medicaid Services (CMS) or another federal partner on a USCDI+ initiative.

Second, we wanted to share comments on the Request for Information on Users of Certified Health IT and Predictive Decision Intervention Management. While we support greater transparency and accountability around the use or predictive decision support interventions (DSIs) and directionally agree that implementation of fair, appropriate, valid, effective, and safe DSI (FAVE DSI) is a shared responsibility, we note that different providers have different abilities and sophistication levels regarding the use and implementation of various IT systems and components. A large provider with a dedicated IT department might have a greater resources, competencies and/or expertise to assess whether predictive DSI is trustworthy or the model is FAVES. This is an area where we believe that education and more technical assistance would be very important, particularly for small, independent practices.

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.

We continue to recommend that ONC provide additional 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.

With respect to proposed updates to the Manner Exception related to TEFCRA Reasonable and Necessary Activities, we note that policies that push providers to one exchange mechanism over another remove choice and optionality that may be important to reflect the differences between various providers and provider practices. We have heard anecdotally that several QHINs have adopted an “opt out” approach to TEFCRA participation, and note that such an approach – coupled with the proposed exception – could potentially eliminate or discourage use of other exchange options, such as FHIR APIs, that might be preferred by some providers. We urge you to consider the unintended consequences of this proposal.

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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