PREMIER TRANSFORMING HEALTHCARE TOGETHER®

Statement for the Record

Submitted by

The Premier Inc. healthcare alliance

Implementing the 21st Century Cures Act: Making Electronic Health Information Available to Patients and Providers

Senate Committee on Health, Education, Labor and Pensions

March 26, 2019

The Premier healthcare alliance appreciates the opportunity to submit a statement for the record on the Senate Health, Education, Labor and Pensions (HELP) Committee hearing titled "Implementing the 21st Century Cures Act: Making Electronic Health Information Available to Patients and Providers." We applaud the leadership of Chairman Alexander, Ranking Member Murray and members of the Committee for holding this hearing to consider data access and availability for patients and providers and to ensure implementation of the 21st Century Cures Act (Cures) as envisioned by the Committee.

Premier is an alliance of more than 4,000 U.S. hospitals and more than 165,000 other providers and organizations united to transform healthcare. Premier, a 2006 Malcolm Baldrige National Quality Award recipient, maintains the nation's most comprehensive and largest healthcare databases in the industry. Premier works with its members on utilizing informatics, analytics and data to improve care quality and patient safety, while achieving cost efficiencies. Premier continues to advocate for, develop and implement innovative solutions and policies to achieve open data access across health IT systems and technologies to support the industry's value-based care transition across the care continuum.

Premier is encouraged that the Centers for Medicare & Medicaid Services (CMS) and the Office of the National Coordinator for Health Information Technology (ONC) have taken steps called for in the 21st Century Cures Act to achieve nationwide interoperability. ONC's proposal to adopt open, publicly available and standardized application programming interfaces (APIs) will help providers access data at the point of care and within workflow. Recognition and adoption of standards is important to ensure data liquidity and will help providers implement tools such as predictive analytics, clinical decision support and clinical surveillance. We particularly appreciate ONC's proposed enhancements to the Conditions and Maintenance of Certification and the proposed requirement that EHR vendors publish the terms and conditions applicable to their API technology.

Furthermore, CMS' proposal to require commercial insurers within federal healthcare programs to implement open APIs will help ensure that patient claims and health information will be more readily available to innovate in these programs. Future efforts to address data sharing and exchange from commercial insurers is also important in order to achieve nationwide interoperability.

While Premier is optimistic that the rules, once finalized, will help foster increased access to data for both providers and patients and ongoing innovation and competition in the health IT marketplace, we are carefully evaluating several aspects of the proposed rules for potential unintended consequences and proposals that could be strengthened. These include:

Data Access and Availability at the Point of Care and within Workflow

Data are essential to achieve the vision of a consumer-centered and healthcare provider-driven healthcare system. Premier wholeheartedly supports expanding patients' access to their healthcare data. We are concerned, however, that the proposed rules emphasize data access to patients and consumers without ensuring that providers have unfettered access to their patients' health data.

Healthcare providers need data at the point of care and within workflow to deliver informed, high-quality, safe, coordinated and cost-effective care. The inability to access and integrate timely and complete data across the care continuum from multiple sites of service, diverse providers and various data sources

threatens quality of care, patient safety and efficiency. The lack of access to complete and timely data adds inefficiencies and costs to the healthcare system and hampers population health efforts, public health surveillance and reporting.

Healthcare providers (especially under risk-based care and advanced payment models) have inadequate and limited access to timely and complete Medicare, Medicaid, Children's Health Insurance Program (CHIP), Veteran's Affairs (VA) and TriCare data. Missing and lagged data prevent providers from treating and managing care for individuals, populations and communities.

The proposed rules help advance the adoption of data and interoperability standards although they do not adequately address adoption of standards to move data into and out of EHRs (read-write capabilities) which are needed to ensure that applications can be easily used within the clinical workflow. For example, EHRs should be able to transmit data to and receive data from third party applications, including registries, clinical surveillance, clinical decision support and electronic prior authorization.

Ongoing and Additional Provider Burdens

We are pleased that CMS and ONC continue to articulate their commitment to reduce unnecessary regulatory data collection and documentation and reporting burdens and to reduce related costs for providers. Nevertheless, we believe that the proposed rules could compromise efforts to reduce provider burdens and could actually result in greater burdens and costs. For example, the proposed ONC information blocking rule creates related and potentially overlapping or conflicting requirements on providers such as those under Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Substance Abuse Confidentiality Regulations (42 CFR Part 2 regulations). Vigilance around alignment of federal programs and their requirements is needed to help reduce provider burden and eliminate redundant and unnecessary reporting.

In addition, the additional Conditions of Participation (CoPs) that CMS proposes for hospitals, psychiatric hospitals and critical access hospitals (CAHs) would create additional burdens on providers, in spite of CMS' noting several challenges (i.e., identifying who has current relationships with the patient and their ability to receive ADT notifications). CoPs create an extreme penalty (i.e. potential exclusion from Medicare). The proposed CoP would require hospitals to demonstrate that their EHRs are generating patient event notifications. Premier appreciates that CMS is seeking to improve interoperability; however, CoPs are not an effective lever to achieve interoperability. CMS could easily align and use existing mechanisms, such as ONC's CEHRT and the CMS Promoting Interoperability programs to achieve ADT functionality within certified EHRs. On the other hand, we are encouraged that in its proposed rules, CMS notes that it continues to consider creating a set of priority health IT activities as alternatives to the traditional Promoting Interoperability measures. To the extent that CMS allows providers greater flexibility to use various health IT technologies and activities, provider burdens can be reduced, duplicative reporting can be eliminated and interoperability can be further advanced.

Need for Clarification of Terms and Terminology.

The proposed rules present and define various terms and terminology in broad and potentially ambiguous and inconsistent ways. Of chief concern is ONC's proposed rule that offers a broad and expansive definition of electronic health information (EHI). This definition encompasses health information that is created or received by healthcare providers and those operating on their behalf, health plans, healthcare clearinghouses, public health authorities, employers, life insurers, schools or universities. Additionally, ONC proposes to add a new certification criterion for "EHI export" to the 2015 Edition and to the 2015 Edition Base EHR definition. The scope of the criterion would encompass all EHI that a health IT system "produces and electronically manages" for a patient or a patient group and applies to that health IT product's entire database, including clinical, administrative, and claims data and data stored in separate data warehouses and those outside of EHRs. There are significant technical, operational, and legal concerns about the proposed broad definition of EHI and the related EHI export function criterion that should be carefully considered, including how failure to provide EHI would implicate the information blocking rule.

Conclusion

In closing, the Premier healthcare alliance appreciates the opportunity to submit a statement for the record on the Senate HELP Committee's hearing on interoperability and data access for providers and patients. As an established leader in using data and analytics to improve healthcare delivery, treatment and population health, Premier is available as a resource and looks forward to working with Congress as it considers policy options to continue to address this very important issue.

If you have any questions regarding our comments or need more information, please contact Meryl Bloomrosen, Senior Director of Federal Affairs, at meryl_bloomrosen@premierinc.com or 202-879-8012.