



December 8, 2020

Alexandra Mugge
Deputy Chief Health Informatics Officer
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

RE: Electronic Event Notifications Hospital Condition of Participation (CoP)

Dear Ms. Mugge:

The National Association of ACOs (NAACOS) greatly appreciates the Centers for Medicare & Medicaid Services' (CMS) work to ensure patients and vital players of their health teams have secure access to necessary electronic health information in order to improve patient care. Creating a truly interoperable health system has been a goal of every administration since President George W. Bush. Furthermore, the bipartisan goal of shifting to a value-based payment system won't be possible without improving the flow of health information among patients, providers, and payers. The accountable care organization (ACO) model is a market-based solution to fragmented and costly care that empowers local physicians, hospitals, and other providers to work together and take responsibility for improving quality, enhancing patient experience, and reducing waste. Importantly, the ACO model also maintains patient choice of clinicians. In order to ensure patients receive the right care, at the right time, in the right setting, ACOs need to know about a patient's care inside and outside of the network. That's why we embrace many of the policies in CMS's Interoperability and Patient Access [Final Rule](#) (CMS-9115-F), published in the Federal Register on May 1, including one that would require hospitals share electronic notifications of patients' admission to, discharge from, or transfer between inpatient hospitals.

As the largest association of ACOs, NAACOS and its ACO members serve more than 12 million beneficiary lives through hundreds of organizations participating in population health-focused payment and delivery models in Medicare, Medicaid, and commercial insurance. NAACOS and its members are deeply committed to the transition to value-based care. NAACOS is an ACO member-led and member-owned non-profit organization that works on behalf of ACOs across the nation to improve the quality of Medicare delivery, population health and outcomes, and healthcare efficiency.

However, we are concerned that CMS's new Conditions of Participation (CoP) requirements in the final rule won't fulfil the agency's [stated goal](#) of improving health outcomes, bettering care coordination and reducing costs through better access for patients to their health information and

improved interoperability. Specifically, the final rule may harm the ability of ACOs and other population-health, accountable care entities to care for their patients since language in the preamble of the final rule unintentionally prohibits ACOs from gaining access to important electronic notifications about patients' health status. We request CMS act swiftly to correct implementation issues before the CoPs take effect on May 1. We outline below some steps the agency can take to ensure the important Interoperability and Patient Access Final Rule will work as intended.

Addressing the “Entitlement” Reference

On page 25599 of the final rule regarding the role of ACOs in receiving admission, discharge, and transfer (ADT) notifications, CMS stated that the CoP “does not create an entitlement for any specific provider or intermediary to receive patient event notifications.” This one sentence has halted ACOs' ability to work with their hospital and electronic health record (EHR) partners who believe CMS's intention was not to have this information shared with them. The sentence sends the signal that hospitals and EHR vendors can simply ignore ADT requests from ACOs and other partners working to ensure patients' care coordination.

This phrase directly contradicts CMS's stated purpose of the CoP, which is to improve care coordination and health outcomes through sharing of electronic ADT alerts. In the preamble of the final rule, CMS acknowledged there are numerous peer-reviewed studies that link improved patient outcomes with the sharing of ADT alerts. While we appreciate the efforts of CMS to create as little burden as possible on the hospital community, NAACOS believes this “entitlement” language goes too far by allowing hospitals and EHR partners to refuse providing this critical information to ACOs. This undermines the work of more than 500 Medicare ACOs who today collectively care for more than 20 percent of all Medicare beneficiaries. **NAACOS asks that CMS clarify this “entitlement” sentence to be narrower and refer to community providers, who are making patently unreasonable requests, not to thwart the work of true patient care coordination.**

Patient Attribution Requirement

In §482.24 and related regulations for psychiatric and critical access hospitals, CMS makes it clear that hospitals must make a “reasonable effort” to send ADT notifications to post-acute care service providers and other entities that “need to receive notification of the patient's status for treatment, care coordination, or quality improvement purposes.” NAACOS believes this clearly includes ACOs and others population-health providers who are accountable for patients' long-term care coordination as well as their overall quality and cost of care.

NAACOS offers a solution that will simplify implementation of the CoP while meeting the final rule's goal of improved care coordination: use CMS-generated rosters of ACOs' assigned beneficiaries as acceptable lists for whom hospitals must share ADT notifications. All Medicare ACOs are given a list of beneficiaries — either prospectively assigned or preliminarily assigned that may be updated later — for which their ACO is accountable. These lists can be submitted to community hospitals so ADT alerts can be sent in the spirit of the CoP to area ACOs. Using these lists will both reduce administrative burden for hospitals and give ACOs the patient information they need for proper care coordination.

Conclusion

NAACOS understands the need to grant necessarily flexibility in the Interoperability and Patient Access Final Rule, and our members have benefited from the allowances CMS has granted during the COVID-19 public health emergency. As we've learned in the several months since the rule was first released, this policy, while seemingly straightforward, is complex to operationalize. NAACOS requests CMS take the time before the CoP becomes effective on May 1 to provide much needed clarification on these issues. We believe this can be done through sub-regulatory guidance and doesn't need another formal notice-and-comment period. Without such clarification, CMS's work to improve patient outcomes and reduce costs will be undermined and much of its hard work will be all for naught. NAACOS welcomes an opportunity to further discuss the importance of ADT alerts to ACOs and to provide input on the implementation of these rules. Should you have any questions about this letter, please contact David Pittman at dpittman@naacos.com. Thank you for your consideration of these comments.

Sincerely,



Clif Gaus, Sc.D.
President and CEO
National Association of ACOs