PROPOSED HEALTH IT "INFORMATION BLOCKING" RULES: WHAT ACOS NEED TO KNOW

OVERVIEW

On February 8, 2019, the U.S. Department on Health and Human Services (HHS) published a pair of proposed rules that in tandem aim to expedite the flow of patients' health records and data among health care providers, plans, and patients. The proposed rule from the Centers for Medicare & Medicaid Services (CMS) focuses on providers and health plans, while the proposed rule from HHS's Office of the National Coordinator for Health Information Technology (ONC) deals with health information technology (IT) systems. Many of the policies, particularly in the CMS rule, try to promote better care coordination through improved information sharing. The rules' intended effects stand to help the work of accountable care organizations (ACOs).

Most of the policy changes set forth in the rules stem from 21st Century Cures Act of 2016. Part of the law sought to improve health IT, including the lack of interoperability among electronic health records (EHR) systems. The Senate Health, Education, Labor, and Pensions Committee held six hearings on the topic in 2015, following more than $35 billion in incentive payments to doctors and hospitals to adopt EHRs through the meaningful use program. Improving the interoperability of the health system is a goal of CMS Administrator Seema Verma, who has publicly stated the importance of enabling patients by offering them better access to their medical information. HHS expects to make additional changes in future rulemaking as well.

Below is a summary NAACOS compiled to help ACOs understand the implications for their work. Much of the rules' content hopes to improve care coordination. ONC's 724-page rule can be found here, along with a press release and two-pager on implementation of the 21st Century Cures Act. CMS's fact sheet and 251-page rule is here. Comments on both proposed rules are due May 3, and NAACOS plans to submit a response. If you wish to share your comments about anything in either proposal, please email advocacy@naacos.com.

SHARING OF ADMISSION, DISCHARGE, AND TRANSFER FEEDS

CMS is proposing to require Medicare- and Medicaid-participating hospitals and Critical Access Hospitals that utilize EHR systems to send electronic notifications of a patient's admission, discharge, and/or transfer (ADT) to another health care facility or to another community provider. The notification must contain "minimum patient health information," including patient name, treating practitioner name, sending institution name, and, if not prohibited by other applicable laws, patient diagnosis. Notifications could be sent through an intermediary, like a health information exchange (HIE), or directly to community providers. CMS is seeking comment on the technical feasibility of including diagnosis information. The notifications would be required immediately prior to or at the time of the patient's discharge or transfer from the hospital. CMS states patient safety is the reason for making this a required condition of participating in Medicare and Medicaid.

Under CMS's proposal, a hospital would only need to send notifications to those practitioners who have an "established care relationship" with the patient relevant to his or her care and for whom the hospital has "reasonable certainty of receipt." CMS wants to limit the requirement to hospitals with the technical capacity to generate such electronic event notifications. The requirement would take effect 60 days after the final rule is published.

This proposed addition to Medicare and Medicaid conditions of participation follows NAACOS advocacy in 2018 on the requirement. NAACOS at that time called on CMS to include presentations to emergency departments as part of the requirement as well as including discharge instructions to patients. While CMS didn't include either in its proposal, the agency does seek comment on whether to include a broader set of patients in ADT feeds, not just inpatients.

INFORMATION BLOCKING

The 21st Century Cures Act directs ONC to define what activities shouldn't be considered "information blocking." Under the law, the HHS Inspector General can fine providers, health IT developers, HIEs and health information networks for practices it deems as intentionally hindering the flow of patient records, or information blocking. ONC's proposed rule outlines seven allowable exceptions: preventing harm; promoting privacy; promoting security; recovering costs reasonably incurred; responding to requests that are infeasible; licensing of interoperability on reasonable and non-discriminatory terms; and maintaining and improving health IT performance. For infeasible requests, ONC says stakeholders must provide a reasonable, alternative way to access the electronic health data. Fact sheet.

In its rule, CMS proposed to publicly report providers who submitted a "no" response to any of the three information blocking attestation questions asked of providers.

PROVIDER DIRECTORIES

Per the 21st Century Cures Act, CMS is required to create a centralized provider digital contact information index, and last summer CMS updated the National Plan and Provider Enumeration System to include providers' digital contact information. The move would in theory make it easier to find others to share patient information with when needed and make it less necessary to exchange records through fax machines. Now, CMS proposes to publicly report the names and National Provider Identifiers of those who have not added their digital contact information by the second half of 2020.

ADVANCING INTEROPERABILITY IN INNOVATION CENTER MODELS

The Center for Medicare and Medicaid Innovation is seeking comment on ways to promote interoperability in future models, for example, by incorporating the piloting of emerging standards; leveraging non-traditional data like that from schools, or about housing and food insecurity; and leveraging technology-enabled patient engagement platforms. CMS's rule notes CMMI has incorporated non-clinical data in prior models but anticipates addressing additional uses and types of non-clinical data in future models. The agency wants to know what interoperability requirements should look like.

HEALTH PLANS AND DATA EXCHANGE

CMS's rule contains five proposals specific to health plans the agency regulates, including Medicare Advantage plans, Medicaid managed care plans, state Medicaid programs, Children's Health Insurance Program (CHIP) plans, and Obamacare exchange plans. All would be required to provide customers with access to their claims data by 2020 through the use of third-party apps like Blue Button. CMS would additionally require health plans to forward patient information including claims data and utilization history to new plans for the last five years if asked by patients. Plans must further participate in a trusted health information exchange network. CMS hopes to promote care coordination when patients switch health plans.

Additionally, states would be required to exchange daily "buy-in" data on dual eligibles with CMS by April 2022. This would help patients who change health plans take their records with them and promote payer-to-payer care coordination.

To help patients and providers understand what providers are in-network when making or seeking referrals, plans must make provider directories available to both prospective enrollees and the public.

OTHER REQUESTS FOR INFORMATION (RFIs)

CMS is seeking ideas on how to encourage EHR adoption among long-term and post-acute care providers, behavioral health, those settings serving dual eligibles and/or receiving home and community-based services. CMS is fielding ideas on how to measure interoperability in these settings, if not through EHR adoption. CMS also asks if hospitals and physicians should collect and electronically exchange a subset of the same post-acute care data elements (for example, functional status, pressure ulcers/injuries) in their EHRs to encourage information exchange with these providers.

ONC's proposed rule also includes an RFI on how standards-based application programming interface (API) could support improved information exchange between a healthcare provider and a registry in support of public health reporting, quality reporting, and care quality improvement.

FUTURE POSSIBILITIES

CMS suggests it will include more interoperability measures around Promoting Interoperability in the 2020 inpatient hospital payment rule. CMS sought comment on, but did not include in this rule, such actions as participation in a health information network, maintaining an open API, and participating in testing new standards that support interoperability.

OPEN APIs

The 21st Century Cures Act said health IT developers should make health information available through published APIs so that data could be accessed, exchanged, and used without special effort. ONC proposed a set of certification requirements to focus on standardized, transparent, and pro-competitive API practices to support the access, exchange, and use of electronic health information by patients and providers. Fact sheet.

ONC proposes to place limits on fees charged for access to APIs. Money can't be charged for "value-added services" or in connection with activities that relate to patients' ability to access, exchange or use the medical records. Fees can be charged if they reasonably cover the cost of technology of APIs. Fact sheet.

CONDITIONS AND MAINTENANCE OF CERTIFICATION

ONC's proposed rule outlines criteria for health IT developers to meet in order to keep EHR certification. The criteria include assurances that developers won't information block, a ban on gag clauses that inhibit providers from talking about EHRs, the use of open APIs, attestations every six months, real world testing of products, and a forthcoming EHR reporting program. Fact sheet.

ELECTRONIC HEALTH INFORMATION (EHI) EXPORT

ONC acknowledges that switching EHR systems is time consuming and expensive for providers and that it's difficult for patients to access their medical information. To address this, ONC proposes to require health IT developers to provide the capability to electronically export all EHI they produce and electronically manage in a computable format. ONC proposes to make this criterion part of the 2015 Edition Base EHR definition, and for providers and developers to implement this within 24 months of the final rule's effective date. The proposed EHI export certification requires that all EHI produced and electronically managed by a developer's health IT be readily available to export for a single patient upon request for their health data, and for all patients when a provider seeks to change health IT systems. Fact sheet.