

June 3, 2019

Seema Verma
Administrator of the Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9115-P
P.O. Box 8016
Baltimore, MD 21244

BY ELECTRONIC SUBMISSION

Re: Consumer Technology Association Public Comments in Response to Centers for Medicare & Medicaid Services Proposed Interoperability and Patient Access Rule

Dear Administrator Verma:

The Consumer Technology Association (CTA™) appreciates the opportunity to submit comments in response to the Centers for Medicare & Medicaid Services (CMS) Interoperability and Patient Access proposed rule, published in the Federal Register on March 4, 2019. CTA fully supports CMS' efforts to eliminate barriers to the open exchange of health care information and empower patients with control and access over their health data.

About CTA

CTA is the trade association representing the \$398 billion U.S. consumer technology industry, which supports more than 15 million U.S. jobs. More than 2,200 companies—80 percent are small businesses and startups; others are among the world's best-known brands—enjoy the benefits of CTA membership including policy advocacy, market research, technical education, industry promotion, standards development and the fostering of business and strategic relationships. CTA also owns and produces CES® – the world's gathering place for all who thrive on the business of consumer technologies. Profits from CES are reinvested into CTA's industry services.

General Comments

Consumers have come to expect that by using constantly evolving consumer technology, they can access a wealth of information, including sensitive personal information. CTA fully supports

CMS' proposal to require a number of categories of health plans to offer APIs that will enable consumers to access their claims history as readily as they currently can access their bank account information—and to promote patient matching efforts to facilitate improved exchange of electronic health information.

Technical Standards Related to Interoperability

CMS proposes that Medicare, Medicaid, the Children's Health Insurance Program (CHIP) and qualified health plans (QHPs) in federally-facilitated exchanges (FfEs) adopt and implement openly-standardized and openly-published APIs. The available data sets would be the same as those contained in the U.S. Code Data for Interoperability (USCDI) standard, and the technical standard would be the Fast Healthcare Interoperability Resources (FHIR) standard. CTA supports CMS' proposed adoption of these standards and believes that it is imperative that CMS and the Office of the National Coordinator for Health Information Technology (ONC) coordinate their rulemaking efforts to adopt common standards.

FHIR Release 4

With respect to the technical standards, CTA supports the use of the FHIR Release 4, as this release is more stable and has less bugs than Releases 2 or 3. By the time CMS publishes a final rule and its compliance date arrives, mandating the use of anything less than FHIR Release 4 would constitute a step back for the health care sector. CMS should also consider either: (a) indicating that the adoption of FHIR version Release 4 is not indefinite; or (b) providing an option for adoption of future releases without having to engage in formal notice-and-comment rulemaking.

USCDI

For the data set standard, CMS should provide clarity on the relationship between the data that patients are required to be able to access and the USCDI—since many of the categories of data in the USCDI are not generally available in claims data.

Approved Apps

CTA recommends that apps approved by CMS to access the CMS Blue Button API be approved to connect to all APIs created by the plans governed by this rulemaking and publish this list of approved apps. This will ensure that apps only need to meet a single set of criteria (and only do so once) to be able to access data from all of the plans that are governed by this rulemaking. CTA believes that plans governed by this rulemaking should not only be required to publish APIs for all claims—but should also be required to make those claims available to CMS so that they will also be accessible through the CMS Blue Button API. We believe this will be beneficial to the development of more robust consumer apps, as it will reduce the current number of APIs to which app developers must connect from 349 to 1.

Compliance Deadline

Overall, CTA is supportive of CMS' push to enable patient access to health data via the implementation of technical and data standards. We believe that the rule will propel the health care sector towards more innovation and modernization. We note, however, that the timeframe for compliance is aggressive, providing less than one year for some health plans governed by this rulemaking to become compliant with the API rules.

Patient Matching

CTA supports the adoption of a universal patient identifier (UPI) that will increase security protections for health information. We think there are advancements in technology, such as blockchain, that provide a viable option to address the privacy and security concerns previously expressed with the introduction of a new identifier. We recommend that the public be engaged in providing feedback regarding any options CMS contemplates before any options are ruled out by the agency. In the absence of a UPI, we answer the specific questions posed by CMS below with respect to patient matching.

- *Should CMS require Medicare FFS, MA Plans, Medicaid FFS, Medicaid managed care plans (MCOs, PIHPs, and PAHPs), CHIP FFS, CHIP managed care entities, and QHP issuers in FFEs (not including SADP issuers), use a patient matching algorithm with a proven success rate of a certain percentage where the algorithm and real world processes associated with the algorithm used are validated by HHS or a 3rd party?*

Answer: No. CTA recommends that CMS provide the regulated entities with flexibility regarding patient matching, rather than requiring the use of a particular patient matching algorithm—as different use cases may merit different levels of confidence with respect to patient matching. That being said, we support CMS highlighting patient matching algorithms that have been validated.

- *Should CMS require Medicare FFS, the MA Plans, Medicaid FFS, Medicaid managed care plans, CHIP FFS, CHIP managed care entities, and QHP issuers in FFEs to use a particular patient matching software solution with a proven success rate of a certain percentage validated by HHS or a 3rd party?*

Answer: No. CTA recommends that CMS provide the regulated entities with flexibility regarding patient matching software, rather than requiring the use of a particular patient matching software solution—as different use cases may merit different levels of confidence and different technologies with respect to patient matching. That being said, we support CMS highlighting patient matching software solutions that have been validated.

- *Should CMS expand the recent Medicare ID card efforts by requiring a CMS-wide identifier which is used for all beneficiaries and enrollees in health care programs under CMS administration and authority? Specifically, should it require use of the Medicare ID by any or all of the following:*
 - *MA organizations, Part D prescription drug plan sponsors, entities offering cost plans under section 1876 and other Medicare health plans.*
 - *State Medicaid and CHIP agencies for dual eligible individuals (when feasible).*
 - *QHP issuers in FFEs for their enrollees in the administration of their plans.*

Answer: Yes, CMS should expand the recent Medicare ID card efforts by requiring a CMS-wide identifier. This will provide an additional patient identifying data point and, therefore, improve interoperability.

- *Should CMS advance more standardized data elements across all appropriate programs for matching purposes, perhaps leveraging the USCDI proposed by ONC for HHS adoption at 45 CFR 170.213?*

Answer: Yes, CTA recommends that CMS advance more standardized data elements, as that will add a layer of assurance that the information being requested and received is for the correct patient.

- *Should CMS support connecting EHRs to other complementary verifying data sources for identity proofing? What potential data source should be considered? What are possible restrictions or limitations to accessing such information?*

Answer: Yes, CTA believes that providing a mechanism to confirm information will promote the security of the exchange. Potential data sources could be patient-provided information.

- *To what extent should patient-generated data complement the patient-matching efforts?*

Answer: CTA believes that patient-generated data has the potential to significantly improve care coordination and health care outcomes, and that the ability to match patient-generated data with other data sources should be a priority. Accordingly, we believe that patient-generated data is complementary to patient-matching efforts, and that any patient-matching initiatives consider how patients can be matched to their data in a manner that allows them to import their patient-generated information into the correct record.

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Given the increasingly critical role consumer technology plays in health care, CTA commends CMS for using its authority to meaningfully advance interoperability and patient access to health information. CTA believes that the combination of technology and health data can lead to improved patient care and reduced costs.

CTA thanks CMS for the opportunity to comment and we welcome the opportunity to discuss these issues in more depth. If you have any questions, please do not hesitate to contact us.

Respectfully submitted,

Consumer Technology Association

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