TO: CHA Member Hospitals

FROM: Alyssa Keefe, Vice President Federal Regulatory Affairs, and Megan Howard, Senior Policy Analyst

SUBJECT: Member Letter Template

The Centers for Medicare & Medicaid Services (CMS) and the Office of the National Coordinator for Health Information Technology (ONC) are accepting public comments on two proposed rules on interoperability and information blocking. Both proposed rules include provisions significant to hospitals, and CHA encourages member hospitals to comment so both agencies understand the impact of their proposals.

CHA has provided the attached letter template so that members can insert examples that are specific to their hospitals and that support CHA’s policy positions. **Please place the letter on your hospital letterhead and replace areas highlighted in yellow with hospital-specific information. Before you submit your letter, please be sure to delete any yellow highlighted areas that you do not fill in.**

**To be considered, you will need to submit a PDF of your letter to both agencies at**:

CMS Proposed Rule: [www.regulations.gov/document?D=CMS-2019-0039-0001](http://www.regulations.gov/document?D=CMS-2019-0039-0001)

ONC Proposed Rule: [www.regulations.gov/document?D=HHS-ONC-2019-0002-0001](http://www.regulations.gov/document?D=HHS-ONC-2019-0002-0001)

**Comments are due by 2 p.m. (PT) on June 3**. If you submit comments, please share with CHA. For questions, or to share comments, contact Megan Howard, senior policy analyst, at [mhoward@calhospital.org](mailto:mhoward@calhospital.org).

<DATE>, 2019

Seema Verma

Administrator

Centers for Medicare & Medicaid Services

Department of Health & Human Services

200 Independence Avenue, SW

Washington, DC 20201

Don Rucker, MD  
National Coordinator for Health Information Technology  
Department of Health and Human Services

330 C Street, SW  
Washington, DC 20201

***Subject:*** ***CMS–9115–P; Medicare and Medicaid Programs; Patient Protection and Affordable Care Act; Interoperability and Patient Access for Medicare Advantage Organization and Medicaid Managed Care Plans, State Medicaid Agencies, CHIP Agencies and CHIP Managed Care Entities, Issuers of Qualified Health Plans in the Federally-Facilitated Exchanges and Health Care Providers; Proposed Rule; and RIN 0955–AA01; 21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program; Proposed Rule; Federal Register (Vol. 84, No. 42), March 4, 2019***

Dear Ms. Verma and Dr. Rucker:

<HOSPITAL NAME> is committed to providing high-quality patient care to all who walk through our doors. To do so, we rely on important health information technology — technology that improves care delivery, positively impacts patients’ experience, and helps patients become more engaged in their health care. Proposed rules recently issued by the Centers for Medicare & Medicaid Services (CMS) and the Office of the National Coordinator (ONC) take important steps toward improving the interoperability of health information. We are pleased to see the federal government’s support of policies that increase the seamless flow of health information and reduce burden on patients and providers, and urge the agencies to avoid imposing additional regulatory burden on the health care system as they develop these important policies. **We stand aligned with the California Hospital Association’s previously submitted comments on this topic, and offer the following additional feedback for your consideration.**

In summary, we:

* Urge CMS and ONC to reconsider their proposed implementation timelines to ensure newly adopted policies do not create additional unintended burden.
* Oppose CMS’ proposed revision to the Medicare and Medicaid Hospital Conditions of Participation (CoP) and urge CMS to consider alternative mechanisms for promoting admission, discharge, and transfer (ADT) notifications
* Are concerned by ONC’s proposed definition of electronic health information (EHI) — particularly its inclusion of payment and price information — which, we believe, goes far beyond congressional intent under the 21st Century Cures Act.
* Ask ONC to implement information blocking provisions via an interim final rule with a comment period that is effective no earlier than 18 months following its publication, including a significant period of education and non-enforcement.

Our detailed comments are provided below.

Reconsider Implementation Timelines

The proposed rules represent a sea change in the framework under which health care providers, health insurance plans, and health information technology (HIT) developers and vendors capture and exchange highly sensitive health information. It is imperative that policymakers and stakeholders exercise caution to avoid unintended consequences that could arise if implementation of such policies is not thoughtfully and appropriately timed. We urge CMS and ONC to reconsider their proposed implementation timelines, allowing appropriate time to advance the exchange of health information without creating unintended consequences of additional burden. In particular, ONC must allow adequate time for HIT developers to implement certification criteria change — generally 18 to 24 months following publication of a final rule — and allow providers at least an additional year to upgrade their CEHRT.

MEMBERS: INSERT SPECIFC EXAMPLES OF HOW LONG EHR UPGRADES TAKE, THE COSTS OF UPGRADING EHR SYSTEMS, OTHER BURDENS

In addition, we urge ONC to reconsider its timeline for implementation of information-blocking provisions. As proposed, these would be effective the day of the final rule’s publication. We urge ONC to issue an interim final rule with comment period and clarify that information-blocking provisions are effective no earlier than 18 months following publication of the interim final rule; ONC should also include a period of education and non-enforcement.

MEMBERS: INSERT EXAMPLES OF BURDEN ASSOCIATED WITH IMPLEMENTING INFORMATION BLOCKING PROVISIONS

Consider Alternative Mechanisms for ADT Notifications

ADT notifications are an important tool to advance clinically appropriate exchange of information. However, we believe that ADT notifications as a CoP requirement — with the possible noncompliance penalty of decertification — are unworkable and inappropriate due to a number of operational concerns. In particular, the proposal’s broad scope would place a significant burden on hospitals to determine the appropriate recipients for each individual patient, especially in states like California that do not have a single, statewide HIE.

MEMBERS: INSERT EXAMPLES OF OPERATIONAL BURDEN ASSOCIATED WITH ADT NOTIFICATIONS AS A COP

**We urge CMS to not finalize its proposal. We ask the agency to work with stakeholders to consider** **modifying the measures under the Health Information Exchange objective of the Hospital and Critical Access Hospital Promoting Interoperability Programs to promote ADT notifications, adding appropriate time for vendors to update and test EHR systems.**

Revise Proposed Definition of Electronic Health Information

ONC proposes an expansive definition of EHI that goes beyond Congress’ intent of the scope of information required to be shared, and conflicts with the permissive use provisions of HIPAA. In particular, we oppose the inclusion of payment information within the definition of EHI; this will only complicate and slow the progress toward greater pricing transparency made to date. **We ask that ONC revise this definition to remove “price” information and focus the definition of EHI on a narrow set of data — e.g., the US Core Data for Interoperability — that will help providers deliver the best clinical care to patients.**

MEMBERS: INSERT SPECIFIC EXAMPLES OF POSITIVE STEPS YOU TAKE TO MAKE PRICE INFORMATION AVAILABLE TO CONSUMERS AND WHY ADDITIONAL REGULATION IN THIS AREA IS NOT NEEDED

Reconsider Misalignment of Information-Blocking Provisions and HIPAA

Health Insurance Portability and Accountability Act of 1996 (HIPAA) regulations allow covered entities to rely on professional ethics and best judgments in relation to permissive uses and disclosures of protected health information. **These important safeguards for patient privacy would be effectively eliminated by the proposed rule.** Under the proposal, any hospital that — based on professional judgment allowed under HIPAA — declines to provide access to a patient’s information could be accused of information blocking. **We urge the agency to align its proposals for the disclosure of EHI with the policies currently established under the HIPAA regulation for mandatory and permissive disclosures by health care providers.**

Further, the 21st Century Cures Act represented a major shift in the health information-sharing framework. California hospitals are committed to sharing health information that leads to more informed patients and higher-value, more efficient, and better coordinated care. Unfortunately, the currently proposed information-blocking provisions would add significant regulatory burden

**The proposed rule identifies seven exceptions with which providers must demonstrate compliance.** Each exception that ONC states would not implicate information blocking is subject to strict conditions that place the burden of proof in demonstrating compliance on the hospital. This would impose significant administrative burden on providers.

MEMBERS: INSERT EXAMPLES OF BURDEN OF COMPLIANCE

To assist providers in understanding compliance with this rule, we ask that OIG consider providing sub-regulatory guidance describing additional specific examples of actions that would fall into exceptions categories most likely to be used by providers, such as preventing patient harm, promoting the privacy or security of EHI, and responding to infeasible requests.

<HOSPITAL NAME> appreciates the opportunity to provide comments on the proposed rules. If you have questions, please contact me at <EMAIL ADDRESS> or <PHONE NUMBER>.

Sincerely,

NAME

TITLE

HOSPITAL NAME