

June 3, 2019

## **PUBLIC COMMENT LETTER**

Department of Health and Human Services  
Office of the National Coordinator for Health Information Technology  
Mary E. Switzer Building  
Mail Stop: 7033A  
330 C Street SW  
Washington, DC 20201  
*Submitted Electronically: regulations.gov*

Re: RIN 0955-AA01; Comments on 21<sup>st</sup> Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program Proposed Rule

Dear Sir or Madam:

On behalf of our over 460 member hospitals and health systems, the Texas Hospital Association (“THA”) appreciates the opportunity to provide comments on the above-referenced Proposed Rule, published in March 2019. THA and its members are committed to increasing access to appropriate healthcare, advancing health information technology interoperability, and the appropriate increased access, exchange and use of electronic health information. We appreciate your time and efforts in working through these issues.

THA believes patients should be empowered to make informed, value-based decisions about their healthcare – and some THA member hospitals are actively developing price-estimation tools for that purpose. However, our members’ expertise is providing medical and healthcare services, not the development of complex price-estimate tools. To that end, health insurers are in the best position to actively monitor patient coverage and reimbursement levels, and insurers are equipped to provide real-time, personalized responses regarding a patient’s policy. Numerous insurers currently maintain phone lines, online portals, and/or mobile apps allowing for their insured to research services, costs, and network participation.

Furthermore, existing price comparison tools – such as *Texas PricePoint* – acknowledge the current limited usefulness of generic data by clarifying that a patient’s insurance coverage may modify the patient’s ultimate financial responsibility. CMS also provides online databases allowing the public to compare national, state, and provider-specific data for over 700 inpatient, over 2 dozen outpatient, and certain physician services. This CMS database shows that aggregate information is best obtained from the payor for such services and is currently available to the

public. Adding yet another database, developed by the parties least equipped to provide such data, would lead to conflicts with other information available from insurers.

THA suggests a moratorium on penalties for providers and facilities until such time as the technology to accurately and reliably decipher a patient's price information is widely available. Hospitals continue to work on price transparency tools, but the current technology, combined with the potential for a patient's individualized context (such as specific applicable CPT or DRG codes) or a provider's network status to modify the estimate, leads to insufficient results. In turn, this will lead to incorrect estimates for patients and the potential for a "surprise bill" that does not comport with an estimate. Providers work diligently with a patient's insurer to obtain accurate information from the insurer. A provider should not be penalized where a patient can easily obtain the desired information from their insurer – this would allow providers and facilities to focus on their expertise: providing high-quality care.

Finally, THA urges the ONC to consider additional protections for intellectual property developed by facilities and providers in their attempts to increase transparency and interoperability. Technology developed at great time and expense should not be easily available to others who seek to build off the original. The original developer's product and property rights should be adequately protected to continue ongoing efforts to advance this technology, and express, written consent from the original developer should be required prior to any other party's use.

Thank you for the opportunity to comment and participate in this process, and for your time and attention to this matter. We look forward to working with you, and please feel free to contact me at (512) 465-1027 or clopez@tha.org with any questions, comments, or if there is anything else THA can assist with.

Very Truly Yours,



Cesar J. Lopez  
Associate General Counsel