



POLICY & ACTION FROM CONSUMER REPORTS

July 16, 2014

Submitted electronically

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS–0052–P
Room 445-G, Hubert H. Humphrey Building
200 Independence Avenue SW
Washington, DC 20201

RE: Notice of Proposed Rulemaking–CMS–0052–P—Medicare and Medicaid Programs; Modifications to the Medicare and Medicaid Electronic Health Record Incentive Programs for 2014; and Health Information Technology: Revisions to the Certified EHR Technology Definition

Dear Dr. DeSalvo:

Consumers Union, the policy and advocacy division of Consumer Reports, appreciates the opportunity to provide input on proposed modifications to the Medicare and Medicaid Electronic Health Record Incentive Programs for 2014 and Revisions to the Certified EHR Technology Definition. This and other Health Information Technology (Health IT) programs are key drivers to improve health outcomes, empower patients to participate actively in their care, generate research data to improve population health, and enhance the effectiveness of the American health system. Given the promise health IT offers for American health care, delays like the one proposed here should be unacceptable. However, we understand with great reluctance the need to do so at this point in implementation. We therefore urge restraint in such delays and diligence in using the additional time to bolster the program for the benefit of patients and consumers.

Delaying Stage 2 will impact consumers and their families. This stage focuses on improving health care through better clinical decision support, care coordination, and consumer/family engagement. Among other advances, Stage 2 promises improvements for consumers such as:

- The ability to view, download, and transmit (V,D,T) consumer health records.
- The ability to securely message with providers electronically.

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- Access to imaging results and explanations or other accompanying information through electronic health records.
- Recording of valuable health information on state cancer and specialized registries.

Stage 2 of the program also holds providers to a more rigorous framework with more mandatory objectives and less flexibility in the menu objectives.

Despite our eagerness to usher providers and hospitals into Stage 2 of the program, we agree that forcing program participants to advance when the technology is not ready would be a waste of money and would impact the long-term success of the program. As CMS states in the proposed rule, there is both a shortage of EHR vendors able to meet the Stage 2 certification deadline of Health IT products and also a backlog for installing and implementing versions that are updated. As a result, some program participants may be unable to effectively adopt 2014 Edition CEHRT and satisfy the requirements to demonstrate Stage 2 meaningful use in 2014.

Although we agree that the program should not be prematurely advanced, we also have reservations about delaying the program. In addition, respect for those who have worked hard to meet existing deadlines warrants minimizing delay. We, therefore, urge CMS to offer a timeline delay only to participants that can demonstrate they encountered product availability issues not of their own making and to ensure this extension is limited to this year only.

While this delay is a setback for consumers, it also provides an opportunity for CMS to strengthen the program. For example, Consumers Union urges CMS to re-evaluate the recent decision against requiring patient reminders for preventative or follow-up care. Patient reminders are essential to patient engagement. CMS should also require that these reminders be generated and delivered in both the patient and, where one exists, the caregiver's preferred language *and* preferred mode of communication to be fully effective.¹ CMS should also use this opportunity to reduce health disparities by accelerating the inclusion of patient language and communication preferences in health records so messages can target relevant populations and ensure no consumers are left in the dark on their health care because of language or access barriers.

CMS must also take a step back and respond to an overarching problem that impacts the long-term success of this program as a whole: interoperability failures. True interoperability offers the promise of improved patient safety. For example, improving care through immediate electronic transmittal of lab test results and orders, as well as

¹ A patient reminder provided in a language the patient/caregiver does not adequately understand, or in a format that is inaccessible, fails to serve the very purpose for which it was designed. Research indicates that some underserved populations with the most health risks have significant difficulty communicating with their providers, mostly due to language issues (irrespective of the availability of interpreter services), leading to worse health outcomes. Collins KS, Hughes DL, Doty MM, Ives BL, Edwards JN, Tenney K. Diverse Communities, Common Concerns: Assessing Health Care Quality for Minority Americans, The Commonwealth Fund, March 2002. Available at <http://www.commonwealthfund.org/Publications/Fund-Reports/2002/Mar/Diverse-Communities--Common-Concerns--Assessing-Health-Care-Quality-for-Minority-Americans.aspx>; Hablamos Juntos and Robert Wood Johnson Foundation. Physician Perspectives on Communication Barriers: Insights from Focus Groups with Physicians Who Treat Non-English Proficient and Limited English Proficient Patients. March 2004. http://www.hablamosjuntos.org/pdf_files/lsp.report.final.pdf.

the ability to check for counter-indications and reconcile medications prescribed by multiple providers. We strongly urge CMS to use this extension before the third and final stage of the program to demand Health IT developers design truly interoperable health data systems. CMS must also take advantage of this extended period by starting on Stage 3 regulations well before 2017. Otherwise, this program is simply funding the creation of and widespread use of a fax system in the digital age. When professionals cannot seamlessly integrate information into their systems from professionals in separate systems, consumers lose and the mission of the meaningful use program is missed.

Health IT can deliver needed benefits to individual and population health: better health outcomes for individuals, better decision-making and care coordination by providers, and greater engagement of patients and families in their care. But these benefits can be realized only if the right technology is in place and providers are integrating the new systems into their infrastructure and their practice. Although there may be legitimate need for an extension for some program participants, we strongly urge on behalf of consumers that any delay be limited in scope and duration, and that the lengthened timeline be used to pursue the best technology so consumers and their families will not have waited in vain.

Sincerely,

A handwritten signature in cursive script that reads "Dena B. Mendelsohn".

Dena B. Mendelsohn, JD, MPH
Health Policy Analyst
Consumers Union