



December 19, 2023

Micky Tripathi
Office of the National Coordinator for
Health Information Technology
Department of Health and Human Services
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330 C Street, SW
Washington, DC 20201

Chiquita Brooks-LaSure
Centers for Medicare & Medicaid
Services
Department of Health and Human
Services
7500 Security Boulevard
Baltimore, MD 21244-1850

Attention: RIN 0955-AA05 – 21st Century Cures Act: Establishment of Disincentives for Health Care Providers That Have Committed Information Blocking Proposed Rule

Dear Dr. Tripathi and Administrator Brooks-LaSure:

Thank you for soliciting feedback on the proposed regulations issued by the Office of the National Coordinator for Health Information Technology (ONC) and the Centers for Medicare and Medicaid Services (CMS) to update health care provider payment policies and reporting programs. We appreciate your leadership on advancing public policies to improve the nation's health. We support ONC and CMS in finalizing provisions in the proposed rule that will establish robust disincentives for health care providers that have committed information blocking. The updates proposed by the agencies have important implications for improving data exchange between health care providers and public health agencies.

The Pew Charitable Trusts is a non-profit research and policy organization with several initiatives focused on improving the quality and safety of patient care. Specifically, Pew's Public Health Data Improvement project conducts research, provides technical assistance, and advocates for policies, resources, and public



health practices to enable the rapid and effective use of health care data to advance all Americans' health and well-being.

Thank you again to ONC and CMS for the opportunity to provide input and for your continued dedication to this issue. Please contact Kyle Kinner (kkinner@pewtrusts.org) in our Government Relations practice for additional information or questions.

Sincerely,

A handwritten signature in black ink that reads "Lilly Kan" with a long, sweeping horizontal line extending to the right.

Lilly Kan
Project Director, Public Health Data Improvement
The Pew Charitable Trusts

Comments on Proposed Appropriate Disincentives for Health Care Providers and Transparency on Those That Have Committed Information Blocking

Pew commends the U.S. Department of Health and Human Services' (HHS) significant progress in implementing the 21st Century Cures Act policies and provisions that advance interoperability and support electronic health information access, sharing, and use. In relation to the proposed rule, Pew supports the disincentives for information blocking and actions to publicly post information about health care providers, certified health information technology (IT) developers, health information networks or health information exchanges that have committed information blocking. Pew further recommends that CMS and ONC jointly review current Promoting Interoperability exclusions with information blocking exceptions to ensure alignment that fosters effective implementation of the proposed disincentives.

Pew agrees that if the HHS Office of the Inspector General (OIG) has determined that an eligible hospital, critical access hospital, or clinician has committed information blocking, CMS should not consider that hospital or clinician to be a meaningful electronic health record (EHR) user within the Medicare Promoting Interoperability Program or Quality Payment Program. Pew also agrees that if the OIG has determined that a health care provider operating as, or with, an accountable care organization (ACO) within the Medicare Shared Savings Program has committed information blocking, then that provider is not sufficiently leveraging technologies like EHRs for care coordination or quality improvement activities and services. Furthermore, publicly posting information about individuals or groups that have committed information blocking not only provides appropriate transparency into such practices but also can provide greater visibility to regulators and other health system stakeholders on the gaps and barriers to information sharing as well as helping inform approaches to address them.

The proposed disincentives and transparency standards for entities that have committed information blocking represent additional important steps toward maintaining a strong foundation that enables electronic health information exchange. Improving interoperability that facilitates electronic information exchange for health care purposes also benefits population and public health.^{1,2} Public health agencies critically rely on health care data to detect diseases,

characterize health conditions, and inform prevention efforts³⁻⁵ but also have historically faced challenges in accessing these data.⁶⁻⁸ Advancements in nationwide health IT infrastructure have highlighted the potential for public health agencies to leverage these capabilities and access timelier, more complete data.^{9,10} Public health agencies are capitalizing on opportunities to connect data systems and there are measurable benefits from those efforts.¹¹⁻¹⁵ While much work remains to establish fully interoperable networks that enable seamless data exchange between health care providers and public health systems, overall progress toward this aim relies on well-functioning health care data systems that are appropriately sharing electronic health information.

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