



Government and External Affairs
1776 West Lakes Parkway, Suite 400
West Des Moines, IA 50266
unitypoint.org

January 2, 2024

Secretary Xavier Becerra
Department of Health and Human Services
Office of the National Coordinator for Health Information Technology
Attention: 21st Century Cures Act: Establishment of Disincentives for Health Care Providers That Have
Committed Information Blocking Proposed Rule
Mary E. Switzer Building
Mail Stop: 7033A
330 C Street SW
Washington, DC 20201

RE: RIN 0955-AA05 – 21st Century Cures Act: Establishment of Disincentives for Health Care Providers That Have Committed Information Blocking; published at Vol. 88, No. 210 Federal Register 74947-74970 on November 1, 2023.

Submitted electronically via <http://www.regulations.gov>

Dear Secretary Becerra,

UnityPoint Health appreciates this opportunity to provide comments on this proposed rule related to the establishment of disincentives for health care providers that have committed information blocking. UnityPoint Health is one of the nation's most integrated health care systems. Through more than 32,000 employees and our relationships with 370+ physician clinics, 36 hospitals in urban and rural communities, and 13 home health agencies throughout our eight markets, UnityPoint Health provides care throughout Iowa, central Illinois, and southern Wisconsin.

UnityPoint Health appreciates the time and effort of the Department of Health and Human Services (HHS) in developing this proposed rule. As a member of the American Hospital Association (AHA), Iowa Hospital Association (IHA), Premier, Inc., and National Association of Accountable Care Organizations (NAACOS), UnityPoint Health supports their formal comment letters. Additionally, we respectfully offer the following input.

GENERAL PROVISIONS

HHS proposes to establish disincentives for health care providers that have committed information blocking as set forth in the 21st Century Cures Act. This proposal applies disincentives to certain Medicare-enrolled providers or suppliers, provides non-binding information on OIG investigation practices, and sets forth a process to publicly post information on bad actors.

Comment: While UnityPoint Health supports the goals of advancing CEHRT utilization, data sharing and health information exchange, care coordination and health care efficiency, we have reservations about

the proposed disincentives approach to information blocking. As an integrated health system which includes all three categories¹ of health care providers targeted for disincentives, we can attest to the significant resources expended by our organization on behalf of providers to comply with information blocking regulations. We also continue to put forth best efforts to assure that patients and individuals have timely access to their personal health information and work with our vendors to achieve interoperability. As proposed, we are concerned that HHS can levy heavy-handed penalties while providers are still learning how to implement voluminous and ever-changing interoperability and information blocking rules. While we do not believe it is the intent of HHS to close hospitals or discourage providers from participating in Medicare, particularly in rural areas, the further erosion of Medicare providers may result as an unintended consequence.

We request that HHS consider an approach that:

- Partners with health care providers prior to issuing penalties. We encourage HHS to produce more educational and compliance materials to heighten regulatory understanding; offer corrective action pathways to enable provider self-help; and, rather than posting individualized actor information, publicly post di-identified information at least initially to serve as an educational guide for providers to learn from OIG investigations.
- Scales financial penalties. Should financial penalties be issued, we urge CMS to scale the amount based on the impact of the infraction and not based on a provider’s Medicare patient volume as this may discourage care for Medicare patients.
- Clarifies the process and timeframes² for OIG investigations. As the rule references a non-binding OIG investigation process, we encourage OIG to engage in meaningful discussions with providers during the investigation, including determinations of intent, and to clearly define an appeals process. While CMS would apply penalties to the calendar year in which the OIG referral occurs, it is unclear how far in arrears OIG will conduct investigations.
- Applies universally to all health care providers, instead of targeting disincentives to providers in specific value programs first. Starting with certain hospitals, MIPS eligible clinicians, and some Medicare ACOs that have committed to CMS value propositions to impose potential penalties – reduction in Medicare payments and expulsion from value programs – further discourages participation in these programs.
- Encourages rural providers to participate consistently in interoperability standards before imposing selective penalties. Many individual rural health providers fall under a MIPS reporting exemption and would not be subject to this proposal, whereas all Critical Access Hospitals would be subject to reduced cost-based reimbursement for information blocking.
- Monitors beneficiary access to care, especially in rural area and for those with chronic conditions,

¹ Hospitals, Merit-Based Incentive Payment System (MIPS) clinicians and Accountable Care Organizations (ACOs)

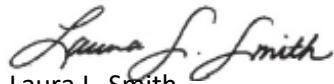
² On page 74961, it states that “. . . a *significant period of time* could pass between the date when the MIPS eligible clinician is determined to have committed information blocking, and the date when OIG makes a referral to CMS . . .”. However, a potential remedy for this concern was only in relation to ACOs – “We are particularly concerned about situations in which many years have passed since an ACO participant or ACO provider/supplier was found to be an information blocker and such an issue had long been remediated” on page 74966.

to prevent unintended reductions in Medicare-enrolled providers and suppliers.

In addition, information blocking assumes that health care providers utilize electronic health records (EHRs). Interoperability standards have come a long way but there continues to be opportunities to define and clarify interoperability standards. **Prior to imposing information blocking penalties, HHS should continue to encourage the adoption of EHRs and promotion of interoperability.** As patients and providers are more mobile and Medicare beneficiaries increase in acuity and complexity with multiple health care conditions treated by multiple providers, the need for a comprehensive medical record to be readily accessible by clinicians increases. UnityPoint Health supports efforts to improve EHR adoption.

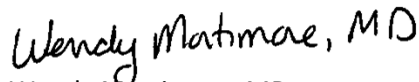
We are pleased to provide input on this proposed rule and its impact on our hospitals and health system, our beneficiaries, and communities served. To discuss our comments or for additional information on any of the addressed topics, please contact Cathy Simmons, Executive Director, Government & External Affairs at cathy.simmons@unitypoint.org or 319-361-2336.

Sincerely,



Laura L. Smith

SVP, Chief Information Officer



Wendy Mortimore, MD

Chief Medical Information Officer



Cathy Simmons, JD, MPP

Executive Director, Government & External Affairs