May 28, 2019

Seema Verma, Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244-1850

Submitted via the Federal Regulations Web Portal, www.regulations.gov

RE: 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 (CMS–9115–P)

Dear Administrator Verma:

I am writing on behalf of the Workgroup for Electronic Data Interchange (WEDI), the nation's leading nonprofit authority on the use of health IT to create efficiencies in health care information exchange. We want to commend you for the work the Centers for Medicare & Medicaid Services (CMS) has undertaken to advance the interoperability of electronic health information. The 21st Century Cures Act pushed the issues of information blocking and lack of interoperability to the forefront of the industry and this proposed rule is a step towards addressing these issues.

As CMS further develops their approach to advancing interoperability, we encourage the collaboration with the Office of the National Coordinator for Health Information Technology (ONC), as well as industry stakeholders such as WEDI. As an advisor to the Secretary of the Department of Health and Human Services (HHS) and a multi-stakeholder organization comprised of health plans, providers, vendors and SDOs, WEDI offers the structure for intra-industry collaboration. WEDI has proven leadership engaging the industry to address the most impactful changes of our time, including the National Provider Identifier, ICD-10, health claim attachments and prior authorization.

WEDI supports this proposed rule, which is CMS' initial phase to advance interoperability across the United States health care system, and specifically within the Medicare and Medicaid programs, the Children's Health Insurance Program (CHIP) and issuers of qualified health plans (QHPs). This letter focuses our comments on those provisions specifically of interest to WEDI's membership.

The comments contained herein have been reviewed and approved by the Executive Committee of the WEDI Board on May 28, 2019. On behalf of the WEDI Board of Directors, I am sending them to you for review and consideration. WEDI appreciates the opportunity to collaborate with CMS and stands ready to assist in clarifying the attached as needed. Charles Stellar, President and CEO of WEDI, or I would be pleased to answer any questions pertaining to WEDI's recommendations, which are enclosed herein.

Sincerely,

/s/

Jay Eisenstock
Chair, WEDI

cc: WEDI Board of Directors

About WEDI

WEDI was formed in 1991 by then-Secretary of HHS Dr. Louis Sullivan. Named in the bipartisan Kassebaum-Kennedy HIPAA legislation as an advisor to the HHS Secretary, we have worked closely with every Administration. WEDI is a multi-stakeholder organization, whose membership includes ambulatory providers, hospitals, health systems, health plans, health information technology standards organizations, health care information technology vendors and government entities. We continue our role of working with both the public and private sectors to reduce health care administrative costs and facilitating improvements in information exchange through voluntary collaboration.

WEDI has been an instrumental force in establishing and later enhancing HIPAA standards for electronic administrative transactions, data privacy and data security; driving down the costs associated with manual, paper-based transactions and increasing the confidentiality of patient information. Our robust workgroups, white papers and other industry guidance, informative conferences, surveys and online webinars provide critical industry education and foster collaborative partnerships among diverse organizations to solve practical, real-world data exchange challenges.

We have also worked closely with both the Centers for Medicare & Medicaid Services and the Office for Civil Rights on industry outreach and education.

Workgroup for Electronic Data Interchange (WEDI)

WEDI Comments on the Proposed Rule
"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" (CMS–9115–P)

As approved by the
Executive Committee of the WEDI Board May 28, 2019

This document contains comments developed by WEDI in response to the recent "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" Notice of Proposed Rulemaking (NPRM) (CMS–9115–P).

Section III. Patient Access Through APIs: The rule proposes new provisions that would require Medicare Advantage (MA) organizations, state Medicaid FFS programs, Medicaid managed care plans, CHIP FFS programs, CHIP managed care entities and QHP issuers in Federally-Facilitated Exchanges (FFEs) (excluding issuers of Stand-Alone Dental Plans (SADPs)) to implement, test and monitor an openly-published API that is accessible to third-party applications and developers. The rule also proposes that the API would be required to meet certain interoperability standards, consistent with the API technical standards in the ONC NPRM, as well require the use of content and vocabulary standards adopted by HHS and that the use of these standards would be applicable across specific entities.

> **WEDI Comment: WEDI supports** the requirement that health plans implement, test and monitor an openly published API, accessible to third-party applications and developers as it promotes the future of data exchange. However, it should be recognized that this proposed rule and the ONC proposed interoperability rule in response to the 21st Century Cures Act are complex and include many inconsistencies with terminology, principles and concepts.
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> While much has been done to move towards the standardization of APIs, WEDI stands ready to assist CMS as work continues with stakeholders to develop standards that will advance interoperability.
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> As proposed, the timeframe for implementation is very aggressive. Health plans that offer MA plans and QHPs would have to comply with the new rule's API requirements beginning on or after January 1, 2020. All other entities, Medicaid and CHIP managed care organizations and state Medicaid and CHIP agencies, would have an additional six months, until July 1, 2020, to come into compliance. Given the information technology enhancements, process changes, resource constraints and testing requirements necessary for organizations to meet this mandate, WEDI proposes CMS work with the industry to determine a more reasonable timeframe to ensure successful implementation.

Additionally, we recognize that with the ONC proposed definition of electronic health information (EHI), those sharing information in health information networks (HINs) will not always be subject to HIPAA requirements. Others, such as mobile application developers may be subject to the Federal Trade Commission (FTC) or other rules. Many of these developers may not fully understand the implications and potential consequences of the use of consumer health information obtained through these APIs.

WEDI has a history of education and outreach to the industry in support of HIPAA and other regulations. We stand ready to assist CMS to offer information and education as appropriate.

Section IV. API Access to Published Provider Directory Data: The rule proposes making required provider directory information available to enrollees and prospective enrollees through an API, potentially supporting development of applications (whether standalone or integrated with providers' EHR technology) that would pull in current information about available providers to meet enrollees' current needs.

WEDI Comment: WEDI supports the inclusion of the provider directory information being available through the API. We encourage, however, the use of content standards for this purpose once they are published and available.

WEDI membership has key constituents with provider information expertise that can be leveraged and we are well positioned to gather industry feedback and provide education on requirements and best practices for provider directories to meet the industry's needs.

Section V. Electronic Health Information Exchange and Care Coordination Across Payers: Establishing a Coordination of Care Transaction to Communicate Between Plans: The rule proposes a new requirement for MA plans, Medicaid managed care plans, CHIP managed care entities, and QHPs in the FFEs, requiring these plans to maintain a process to coordinate care between plans by exchanging, at a minimum, the United States Core Data for Interoperability (USCDI) at enrollee request, for specific timeframes identifies within the proposed rule.

WEDI Comment: WEDI supports the coordination of care across payers, but would defer to the payer community to provide specific feedback on the detailed provisions proposed.

Section VI. Care Coordination Through Trusted Exchange Networks The rule proposes to require MA plans, Medicaid managed care plans, CHIP managed care entities, and QHPs in the FFEs (excluding SADP issuers) to participate in trust networks in order to improve interoperability in these programs.

WEDI Comment: WEDI supports using trusted exchange networks that adheres to the Trusted Exchange Framework and Common Agreement (TEFCA) or other trusted network framework to facilitate care coordination in federal health care programs. Care coordination is critical to reducing gaps in care for all consumers, not just those covered under federal programs. Making relevant health care information available to providers, consumers and their caregivers is not only key to

facilitating coordination of care, but can lead to a reduction in duplication of services. All stakeholders in the care continuum must be allowed to participate in the exchange of information. Payers hold longitudinal data for patients, which is useful to other providers across a patient's care team. Exchanging this data under a trusted exchange network is important to build upon the provisions already in place under HIPAA for Protected Health Information (PHI) as new stakeholders will begin to participate that may fall outside of HIPAA, e.g. API vendors supporting consumer access to the data. Implementing these new methodologies should be approached with a desire to move forward in a way that allows for appropriate planning and evaluation, and with timeframes that are reasonable and achievable.

Section IX. Provider Digital Contact Information: The rule proposes to increase the number of providers with valid and current digital contact information available through the National Plan and Provider Enumeration System (NPPES) by publicly reporting the names and National Provider Identifiers (NPIs) of those providers who do not have digital contact information included in the NPPES system. We propose to begin this public reporting in the second half of 2020, to allow individuals and facilities time to review their records in NPPES and update the system with appropriate digital contact information. This is based on the June 2018 update to NPPES to include the capability to capture one or more pieces of digital contact information that can be used to facilitate secure sharing of health information, which CMS indicates means all individual health care providers and facilities can take immediate action to update their NPPES record online to add digital contact information.

WEDI Comment: WEDI supports making provider digital contact information available to facilitate interoperability. We encourage CMS to further evaluate the appropriate entity to collect and maintain this information for several reasons:

- While the NPI was intended to enumerate health care providers in a consistent, if not singular fashion, our members have reported that providers often enumerated based on how they were contracted across payers and may have NPIs, which are used with some but not all payers. Whether it is another provider or a consumer application attempting to obtain the digital contact information, having multiple NPIs available creates potential misrouting of consumer data.
- Maintaining accurate provider data is historically a challenge for the industry, regardless of the provider repository involved. While health care providers are required to update information changes with NPPES within 30 days of a change, it is difficult to monitor whether changes are submitted timely. Not all health care providers enumerated in NPPES are enrolled by Medicare, so those provider records are not revalidated as is required by Medicare processes. As digital contact information can be used to exchange PHI, the potential for privacy issues rises significantly when the database is not kept up to date.
- NPPES never implemented issuing numbers for atypical providers as was considered at one time. Using NPPES as the source of digital contact information excludes a sector of the provider community for which digital contact information may be needed and beneficial.

WEDI, working closely with CMS, conducted extensive education and outreach during the NPI implementation period. We have subject matter experts who can once again work with CMS to evaluate NPPES or other solutions for accomplishing the goal of making providers' digital contact information readily available.

Section XII. Privacy Advancing Interoperability in Innovative Models: The proposed rule requests public comment on several general principles around interoperability within Innovation Center models for integration into new models, through provisions in model participation agreements or other governing documents.: 1. Provide Patients Access to Their Own Electronic Health Information. 2. Promote Trusted Health Information Exchange. 3. Adopt Leading Health IT Standards and Pilot Emerging Standards

WEDI Comment: WEDI supports CMS' plan to use the Center for Medicare & Medicaid Innovation (CMS Innovation Center) to conduct pilots and testing related to interoperability and health data sharing for new payment and service delivery models. It is critical to test new processes prior to their broad scale implementation to validate their effectiveness, ensure consistency across multiple platforms and verify adherence with privacy and security regulations.

The following comment is in response to the Request for Information (RFI) within the proposed rule.

Section XIII. Policies to Improve Patient Matching: This RFI seeks comment on how CMS may leverage their program authority to provide support to those working to improve patient matching, posing questions around how to approach patient matching, e.g. patient matching algorithm, patient matching software solution, other data element standardization,

WEDI Comment: WEDI supports the industry-desired goal of and need for improved patient matching. While some recent reports, such as the PEW Charitable Trust and the recent U.S. Government Accountability Office (GAO) Report, offer additional options for consideration, WEDI is not promoting any one particular model at this time.

We offer our assistance in convening industry stakeholders to explore patient matching methodologies.