June 3, 2019

Submitted via Regulations.gov

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9115-P
P.O. Box 8016
Baltimore, MD 21244-8016

Re: (CMS-9115-P; 84 FR 7610) 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 and Health Care Providers; Comments of the American College of Radiology

The American College of Radiology (ACR)—a professional association representing over 38,000 diagnostic radiologists, interventional radiologists, radiation oncologists, nuclear medicine physicians, and medical physicists—appreciates the opportunity to comment on the notice of proposed rulemaking (NPRM) from the Centers for Medicare and Medicaid Services titled, "*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 and Health Care Providers*" (CMS-9115-P). ACR supports the federal government's efforts to promote patient access to their health information, advance interoperability, reduce information blocking, and require payers and plans to facilitate access to provider directories and cost data.

Patient Access Via Open Application Programming Interfaces (APIs)

CMS proposed to require Medicare Advantage (MA) organizations, Medicaid managed care plans, CHIP agencies/managed care entities, and Qualified Health Plans (QHPs) in Federally-Facilitated Exchanges (FFEs) to implement, test, and monitor openly-published APIs accessible to third party apps and developers for the purpose of enabling enrollees' access to pertinent information. As proposed, the scope and volume of the information to be made accessible would include: adjudicated claims (including cost), encounters with capitated providers, provider remittances, enrollee cost-sharing, and clinical data (where available). CMS also proposes that these programs and organizations, except for QHPs in FFEs, would need to make available information regarding provider directories and formularies.

ACR supports CMS' proposal for certain payers/plans to enable patient access to pertinent information via open APIs that meet standards identified by the Office of the National Coordinator for Health IT (ONC). We agree that app-enabled patient access to up to date cost information and in-network provider directories could help address issues such as out-of-network/surprise billing. We encourage CMS to also work with private payers toward nationwide implementation of these concepts.

Care Coordination Via Trusted Exchange Networks

CMS proposed to require MA organizations, Medicaid managed care plans, CHIP agencies/managed care entities, and QHPs in FFEs to participate in trusted exchange networks by January 1, 2020. As part of those requirements, payers/plans must have the capability to connect to inpatient and ambulatory EHRs.

ACR recommends that CMS require payers to have the ability to connect with all standardized health IT solutions—including certain practice management systems and "non-EHR" specialty IT—that can facilitate providers' participation in trusted exchange networks. Payer-to-provider connectivity should not be limited to inpatient and ambulatory EHR technology in terms of enabling access to cost and coverage information. Moreover, payers should not be able to require participating providers to join specific health information networks as a prerequisite to accessing the payer-managed data.

Online Notification of Information Blocking Attestations

CMS proposed to publicly post information about negative attestations to information blocking as part of the Quality Payment Program (QPP) or the Medicare FFS Promoting Interoperability Program on appropriate CMS websites. Eligible hospitals and CAHs who have attested negatively to the statements under 42 CFR 495.40(b)(2)(i)(I)(1) through (3) would have this posted on an unspecified future CMS website. Physicians who have attested negatively or left blank the attestation statements required under 42 CFR 414.1375(b)(3)(ii)(A) through (C) for the Promoting Interoperability performance category would have this publicly posted on the Physician Compare website.

ACR recommends that CMS work closely with the Office of Inspector General (OIG) and Office of the National Coordinator for Health IT (ONC) to develop a range of penalties for hospitals that would serve as a more effective deterrent to information blocking than public notification. ACR provided ideas to ONC for a two-tiered system of provider penalties in our comments on the proposed rule, "*21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program*" (RIN 0955-AA01; 84 FR 7424). We recognize that CMS' proposal does not represent the full scope of the penalties for hospitals found by OIG to be in violation of the information blocking provision under Section 4004 of the 21st Century Cures Act, and that it is intended to be additive to disincentives specified through future HHS rulemaking. Nonetheless, public notification of violations is an exceedingly underwhelming deterrent given various other regulatory levers available to CMS and OIG, and it is certainly not commensurate with the financial benefits accrued to the hospital or with the many problems information blocking creates for patients and the healthcare system.

Additionally, ACR recommends that CMS consider how to avoid penalizing physicians with special statuses in the QPP who do not participate in the Promoting Interoperability category, and thus would not typically report the attestation statements regarding information blocking in 42 CFR 414.1375(b)(3)(ii)(A) through (C). Physicians who are reweighted/exempted from the Promoting Interoperability category should not be unfairly and inaccurately portrayed on the Physician Compare website.

Missing Provider Digital Contact Information

CMS proposed to publicly identify providers who have not submitted their digital contact information for the National Plan and Provider Enumeration System (NPPES).

ACR supports ongoing efforts to increase the percentage of providers with digital contact information listed in NPPES. However, we recommend that CMS engage in proactive efforts to contact providers whose digital contact information is still missing prior to public identification.

RFI - Advancing Interoperability in Innovative Models

CMS requested comments on ideas for using Center for Medicare and Medicaid Innovation to advance interoperability in Innovation Center models.

ACR recommends that CMS work with the radiology community to explore incorporation of image sharing without physical media into future Innovation Center models. Electronic image exchange would minimize duplicative imaging, improve the quality and safety of care, facilitate earlier diagnoses, and reduce costs.

The American College of Radiology welcomes continued dialog with CMS on issues of shared interest. Please contact Gloria Romanelli, JD, ACR Senior Director of Legislative and Regulatory Relations, and Michael Peters, ACR Director of Legislative and Regulatory Affairs, at (202) 223-1670 or mpeters@acr.org with questions or concerns.

Sincerely,

Geraldine B. McGinty, MD, MBA, FACR
Chair, Board of Chancellors
American College of Radiology