



David Harlow JD MPH
Chair, Public Policy Committee

c/o The Harlow Group LLC
31 Olde Field Road
Newton MA 02459
Phone: 617.965.9732
Email: david@harlowgroup.net
www.participatorymedicine.org

May 20, 2015

SUBMITTED ELECTRONICALLY VIA REGULATIONS.GOV

Secretary Sylvia Matthews Burwell
Acting Administrator Andy Slavitt, Centers for Medicare and Medicaid Services
National Coordinator Karen DeSalvo, M.D., Office of the National Coordinator for Health IT
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, D.C. 20201

Re: Meaningful Use Stage 2
CMS-3311-P
RIN: 0938-AS58

Dear Secretary Burwell, Acting Administrator Slavitt, and Dr. DeSalvo:

On behalf of the Society for Participatory Medicine, we are writing to express our concern about the proposed evisceration of the patient engagement measure under Meaningful Use and to propose that the measure be strengthened instead.

The Society for Participatory Medicine has individual and institutional members nationwide comprising patients, non-professional caregivers, and clinicians. It was founded to study and promote participatory medicine, which is centered around networked patients shifting from being mere passengers to responsible drivers of their health, and providers who encourage and value them as full partners. For further background on the Society and its tenets, we invite you to peruse the Society's website (<http://participatorymedicine.org>), its online journal, The Journal of Participatory Medicine (<http://jopm.org>) and its blog, e-patients.net (<http://e-patients.net>).

As the Meaningful Use regulations have been implemented over the past several years, the regulated community has objected to the standards as written and as applied in a variety of ways. For example, complaints have included: (i) the combination of core and menu standards is confusing; (ii) it is difficult to attest to compliance for a full year and (iii) relying on the actions

of patients (to view, download or transmit EHR data) in order to achieve Meaningful Use is unfair to providers, since providers do not control patient behavior.

While providers surely do not control patient behavior, they do bear responsibility for working together with patients to satisfy process and outcome measures across a whole range of domains – not only in the regulatory arena, but in the clinical arena as well.

The agency has accommodated the regulated community to such a great extent that it sometimes appears that the main thrust of the program is to deliver incentive dollars to providers rather than to change the ways in which providers operate, despite the fact that the justification for the program has always been that it exists for the benefit of patients and, in the long run, the public fisc. The proposed revisions to the Stage 2 regulations include a departure from the longstanding concept that Meaningful Use must include a growing percentage of patients who view, download or transmit their EHR data. The originally proposed levels have been cut over time so that Stage 2 requires only that 5% of a provider's patients seen in an attestation period view, download or transmit ("VDT") their data.

The currently proposed revisions to Stage 2 suggest that the measure may be satisfied by a provider if *a single patient* views, downloads or transmits her EHR data (and that if 50% of the provider's patients do not have access to a broadband internet data connection that the provider be exempt from this measure), and that secure messaging capabilities need only be turned on, and not even used at all.

We find both the proposed measure and the philosophy behind the proposal to be highly problematic.

Meaningful Use, to date, has benefitted both the patient and the provider communities. The agency began with conservative objectives in Stage 1, and has ramped them up ever so slightly in Stage 2. In particular, the Stage 1 requirement to make electronic information accessible to patients resulted in two-thirds of successful "meaningful use" attestors claiming exclusions for zero denominators (i.e., claiming that no patients asked for electronic copies of their records). However, research has demonstrated that a majority of patients want electronic access to their health information and electronic communication with their providers. Ratcheting this measure all the way back would be counterproductive and would serve to undo progress that has been made to date in terms of engaging patients in their own care through the use of modern information systems.

Patient engagement is a cornerstone of the Affordable Care Act and is a key component of so many public and private health care initiatives. In fact, many provider organizations report rates of engagement higher than the 5% threshold, as noted in the commentary to the proposed Meaningful Use Stage 3 regulation (80 FR at 16756, March 30, 2015) ("Stage 2 median performance for an EP on this measure is 32 percent and 11 percent for eligible hospitals." (Citation omitted)).

Pulling back from patient engagement in the Meaningful Use measures is a nonstarter.

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Please do not hesitate to contact us should you or your staff wish to discuss these recommendations further.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nick Dawson', with a stylized, sweeping flourish at the end.

Nick Dawson, MHA
President

A handwritten signature in black ink, appearing to read 'David Harlow', with a large, circular initial 'D' and a long horizontal stroke extending to the right.

David Harlow, JD MPH
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