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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 3
CMS-3310-P
RIN: 0938-AS26

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.

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 Stage 3 regulations respect the longstanding concept that Meaningful Use must include a growing percentage of patients who view, download or transmit ("VDT") their EHR data. However, this positive trajectory is undercut by two of the elements of Objective 6 – Coordination of Care Through Patient Engagement: First, the measure does not apply to providers serving rural areas: 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. Second, through linguistic sleight of hand, the agency proposes to count communications from any health care provider that is not an Eligible Provider or Eligible Hospital under Meaningful Use as "data obtained from a non-clinical setting" (80 FR at 16757, March 30, 2015), thus virtually ensuring that no provider organization will even attempt to build the interfaces necessary to receive patient-generated health data ("PGHD") from patients.

We applaud the higher standards incorporated in the measure for VDT, and vigorously support Measure 1, Option 1, wherein 25% of patients must VDT their records in order for the provider to meet the measure. We also applaud the use of APIs in Option 2. However, we note that given the nature of data delivery via APIs to smartphone applications, and the near-universal availability of cellular network coverage, broadband connectivity is not a prerequisite to its availability, and we therefore propose eliminating the rural exception for Option 2.

We support the 35% threshold for secure messaging in Measure 2. Again, given the shift from desktop to handheld devices, and the attendant shift away from reliance on broadband networks, we propose eliminating the rural exception.

We oppose the proposed Measure 3 as written, since on the one hand it purports to bring data from non-clinical settings – including PGHD – into the EHR, to the significant benefit of the patient, while on the other hand it offers such a broad definition of non-clinical (including all clinical providers and settings other than EPs and eligible hospitals) that it undercuts the promise of incorporating PGHD into the EHR. Since Stage 3 is presented as the "permanent" version of the Meaningful Use regulations, it is important to get this part right. We agree that sending all PGHD to the EHR and expecting a clinician to digest it is unreasonable. However, there are many use cases and many tools that make clear that incorporation of a subset of the "firehose" of data could be easily accomplished and clinically relevant. For these reasons, we propose that Measure 3 require that providers both (a) incorporate PGHD into the EHRs of 15% of patients and (b) incorporate data sent by other providers not participating in Meaningful Use into the EHRs of 15% of patients.

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We also support the idea of making data available to patients at no cost via APIs.

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 'ND', with a stylized, sweeping flourish extending to the right.

Nick Dawson, MHA
President

A handwritten signature in black ink, appearing to read 'D Harlow', with a long horizontal line extending to the right.

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