

HHS Proposals Aim to Boost Patient Access to Medical Records (1)

By James Swann

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- *Proposed rule would expand health-data exchange among patients and doctors*
- *Second proposal would offer limited exceptions to ban on information blocking*

The federal government is going all in on its goal of electronically sharing medical records with a proposal that would require all Medicare and Medicaid managed care plans to build out app-based systems for accessing the records.

A second proposed rule would provide limited exceptions to an overall ban on blocking the exchange of health records. In addition to the exceptions the proposal calls for publicly identifying all doctors and hospitals who are engaged in prohibited information blocking, Centers for Medicare & Medicaid Services Administrator Seema Verma said on a Feb. 11 press call.

The push for a value-based health-care system can't succeed without the advanced health-care information technology contained in the two proposals, Deputy Health and Human Services Secretary Eric Hargan said on the call.

The so-called application programming interfaces are already required under the Medicare fee-for-service program, according to the proposed rule released Feb. 11 by the Centers for Medicare & Medicaid Services.

APIs are the backbone of apps and allow electronic health records to communicate with other programs and computer systems. The proposal would require an open API system, meaning it would be open to all app developers. More than 1,500 developers are already working on patient records apps for the Medicare fee-for-service program, for example.

All Medicare Advantage and Medicaid managed care plans will be required to share electronic medical claims data through APIs by 2020, Verma said.

"if we look at meaningful use as the first attempt to marry EHRs to the practice of medicine, then these regulations might be the attempt at a second marriage," Colin Zick, a health-care attorney with Foley Hoag LLP in Boston, told Bloomberg Law.

Everyone's hopeful that there's some regulatory solution to solve the crushing burden of EHRs on physicians and ease their struggle for health-care data exchange, Zick said.

More Information Needed

The proposal also contains two requests for information focused on advancing electronic health-data exchange.

One request seeks comments on how to better match patients with their electronically exchanged records, also known as patient matching. The other focuses on how the CMS can boost electronic data sharing in a variety of different care settings, including post-acute and long-term care and behavioral health.

Information Blocking

The second proposed rule would allow seven exceptions to the information blocking ban originally contained in the 21st Century Cures Act, including in cases where exchanging the data would lead to patient harm.

Hospitals and their electronic health record vendors sometimes restrict the electronic exchange of patient data with other institutions. They do this for a variety of reasons—fear of losing the patient, privacy concerns, or technology mismatches.

One reason for blocking for example is, patients could be harmed if inaccurate or corrupted medical data is added to their record, and in such cases, blocking the free flow of electronic health-care data would be acceptable.

The other proposed exceptions include:

- situations where a patient refuses to authorize the disclosure of their medical records;
- situations where information blocking is necessary to protect the security of medical records;
- situations where providing patient records electronically isn't feasible;
- situations where medical records are licensed in a non-discriminatory fashion;
- situations where information blocking is necessary to improve health IT performance; and
- situations where a provider charges a reasonable fee for the exchange of health-care records with the intention of recovering the costs of data exchange.

The Cures Act provided for civil monetary penalties of as much as \$1 million per information blocking violation, but the proposal didn't include any penalty structure, Ashley Thomas, a health-care attorney with Baker, Donelson, Bearman, Caldwell & Berkowitz, PC in Washington, told Bloomberg Law.

"According to the proposed rule, information blocking cases will be considered on the individual facts and circumstances of that unique situation and whether an exception applied," Thomas said.

(Updated with additional reporting throughout.)

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