



**American Hospital
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May 18, 2015

The Honorable Fred Upton
Chairman
U.S. House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Re: Interoperability Provisions of the 21st Century Cures Legislation

Dear Chairman Upton:

On behalf of our of nearly 5,000 member hospitals, health systems and other health care organizations, and our 43,000 individual members, the American Hospital Association (AHA) would like to affirm our commitment to interoperability. Hospitals and health systems across the country are actively engaged in building their information infrastructures and view information exchange as vital to care improvement, as well as to successful implementation of new models of care.

We appreciate the inclusion of provisions to further interoperability in Subtitle A of Title III of the 21st Century Cures legislation. However, we are concerned that the heavy-handed and duplicative enforcement mechanisms contemplated for providers could have significant unintended consequences, including undermining new models of care and setting up an environment where well-intentioned providers face significant penalties for small mistakes.

Among other items, the bill includes a number of enforcement mechanisms against those who engage in information blocking. On the provider side, we believe that the use of Medicare fraud and abuse mechanisms, such as investigations by the Office of the Inspector General, imposition of civil monetary penalties or exclusion from the Medicare program, is unnecessary and inappropriate to address the concerns that the legislation seeks to remedy. We recommend that you use the existing structures of the meaningful use program to promote information sharing. To that end, the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) already has established a new requirement for health care providers to make an affirmative attestation to the government that they have not taken steps to limit the interoperability of their electronic health records (EHRs) as part of the requirements of meaningful use. As currently drafted, the Cures act would add an attestation that a provider has not engaged in information blocking. We believe that having both of these attestations is duplicative and unnecessary.



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We appreciate your intent to hold vendors accountable for the design and marketing of interoperable products, and recommend that you ask the Federal Trade Commission to conduct a study of anti-competitive behavior by EHR vendors. The language also includes decertification as a sanction for vendors that engage in information blocking. Decertification would be disruptive to hospitals and physicians that have invested in and deployed an EHR that is later decertified. However, the inclusion of provider protections against meaningful use penalties if their EHR is decertified makes it more reasonable. We appreciate, that those protections may last for more than one year, as it takes a hospital or other provider considerable time to identify a new EHR, contract for it, be added to the vendor queue, conduct the installation and ramp back up to meet the meaningful use performance requirements. For complex hospital information systems, this process can take two or three years.

Finally, we are concerned that the definition of information blocking included in the legislation is overly broad and could result in reasonable business practices or customization of software systems leading to charges of Medicare fraud. We look forward to working with you to refine that definition in a way that prevents true information blocking without criminalizing actions that are needed to establish a solid information system to support good care and new models of care.

Hospitals and health systems face an increasing confluence of pressures to share information. They must meet the requirements of the meaningful use program, build new approaches to care delivery, and respond to growing consumer expectations that their health information will follow them through the health system and be available to access online. However, we still lack significant technical capabilities and infrastructure to support efficient and effective health information exchange. We believe that there are positive steps that would further our shared goals, such as more robust testing of health information technology products and greater commitment to developing and maturing data standards. We look forward to working with Congress to explore such positive, rather than punitive, approaches to making progress.

Thank you in advance for your consideration of these issues. If you have any questions, please contact Aimee Kuhlman, senior associate director, at 202-626-2291 or akuhlman@aha.org.

Sincerely,



Rick Pollack

Executive Vice President