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**Statement
of the
American Hospital Association
for the
Committee on Health, Education, Labor and Pensions
of the
United States Senate
“Implementation of the 21st Century Cures Act: Achieving the Promise of Health
Information Technology”**

October 31, 2017

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, and our clinician partners – including more than 270,000 affiliated physicians, 2 million nurses and other caregivers – and the 43,000 health care leaders who belong to our professional membership groups, the American Hospital Association (AHA) appreciates the opportunity to submit comments on the importance of achieving the promise of health information technology (IT).

The AHA strongly supports the creation of an efficient and effective infrastructure for health information exchange that facilitates the delivery of high-quality, patient-centered care across health care settings. America’s hospitals and health systems are actively engaged in building their IT systems and view information exchange as vital to care improvement and consumer engagement. Greater flexibility in the prescribed use of health IT will support this transformation.

REGULATORY RELIEF

A recent [AHA report on the regulatory burden faced by hospitals](#) indicates that the burden is substantial and unsustainable. Health systems and hospitals spend nearly \$39 billion a year solely on administrative activities related to regulatory compliance. In addition, the analysis found that



an average-sized hospital dedicates 59 full-time equivalent employees (FTEs) to regulatory compliance; one-quarter of those employees are physicians, nurses and other health professionals who would otherwise be caring for patients.

The study examined nine areas in order to assess the administrative impact that existing federal regulations have on providers, ranging from quality reporting to mandatory recordkeeping and meaningful use of electronic health records (EHRs). The analysis found that providers are required to comply with 629 discrete regulatory requirements across nine areas from four different federal agencies.

In addition, an average-sized community hospital spends \$7.6 million annually to comply with this subset of federal regulations – this equates to \$1,200 every time a patient is admitted. Reducing the administrative burden will enable providers to focus more on patient care and reinvest resources to improve care, improve health and reduce costs.

We appreciate the Committee's commitment to reducing the documentation burden of using EHRs. Section 4001 of the 21st Century Cures Act, which became law in December 2016, specified that the Secretary of Health and Human Services (HHS) must establish a goal, strategy and recommendations to reduce the regulatory or administrative burdens related to the use of EHRs no later than one year after the date of enactment. The law laid out that the strategy should include incentives for the meaningful use of certified EHRs in the EHR Incentive Program, Merit-based Incentive Payment System (MIPS) and value-based programs; health IT certification; standards and implementation specifications; activities that provide individual access; and activities related to protecting the privacy and security of electronic health information. Reducing administrative complexity in health care would save billions of dollars annually and allow providers to spend more time on patients, not paperwork.

MEANINGFUL USE OF EHRs

Hospitals and physicians made great strides in implementing EHRs over the past five years. The EHR Incentive Program spurred the provider investment in IT systems that led to widespread EHR adoption, but exorbitant costs, excessive regulatory burdens and ongoing interoperability issues remain. Specifically, the average-sized hospital spends nearly \$760,000 annually to meet the administrative requirements of meaningful use. In addition, they invest \$411,000 in related upgrades to systems during the year, more than 2.9 times larger than the IT investments made for any other domain studied in our regulatory burden report.

Regulatory compliance for meaningful use requires extensive investment in health IT systems, process redesign and significant reporting on use of EHRs with no clear benefit to patient care. These requirements are set to become even more onerous when Stage 3 begins. Stage 3 also will raise costs by forcing hospitals to spend large sums upgrading their EHRs solely for the purpose of meeting regulatory requirements.

The AHA appreciates the decision to make Stage 3 optional in 2018 but we urge the Administration and Congress to consider cancelling Stage 3 of meaningful use altogether. We also support instituting a 90-day reporting period in every future year of the program, eliminating the requirement for more stringent measures over time, eliminating the all-or-nothing approach,

and gathering input from stakeholders on ways to further reduce the burden of the meaningful use program from current requirements. At a minimum, the program must better align hospital requirements with those for clinicians, and remove any requirements that rely on standards or functionalities that have not yet been proven ready for nationwide use.

The AHA is particularly concerned about current Stage 3 requirements that could create significant security vulnerabilities for hospitals by requiring them to connect their systems to any “app” of the patient’s choice. Given the alarming trend in cyber attacks in health care, providers must be granted the right to control the technology that is connected to their systems in order to keep them secure. Furthermore, the majority of patient-facing apps are not covered by the HIPAA privacy and security requirements governing health care providers. Therefore, consumers may be surprised when the marketers of health apps share their sensitive health information obtained from providers in ways that are not allowed by HIPAA. Recent studies have shown that the majority of health apps on the market today do not have adequate privacy policies and routinely share sensitive health information with third parties (see, for example, Privacy Policies of Android Diabetes Apps and Sharing of Health Information, JAMA, March 8, 2016, available at <http://jama.jamanetwork.com/article.aspx?articleid=2499265>).

INFORMATION BLOCKING

The 21st Century Cures Act laid out a definition for information blocking, set forth mechanisms for reporting and investigation of information blocking actions, and established penalties for entities and individuals (Section 4004). The AHA supports undoing agency over-reach on so-called “Information Blocking.” Hospitals want to share health information to support care and do so when they can. But technology companies and the federal government have so far failed to create the infrastructure to make sharing information electronically easy and efficient. The Centers for Medicare & Medicaid Services (CMS) is asking hospitals to attest to three separate statements indicating that they:

- did not “knowingly and willfully take action to limit or restrict the compatibility or interoperability” of their certified EHR;
- have implemented the technology to support “secure and trusted bidirectional exchange” of health information; and
- have “responded in good faith and in a timely manner” to requests for exchange information from others.

The last two of the three attestations go beyond both statutory intent and the current capability of the technology hospitals have available to them. That unfairly places hospitals at risk of payment penalties for technical issues outside of their control.

The AHA urges removing the second two attestations, keeping only the statutory requirement that hospitals did not knowingly or willfully take action to limit or restrict the compatibility or interoperability of their EHRs.

INTEROPERABILITY

The creation of a nationwide approach to efficient and effective sharing of health information is central to the efforts of hospitals and health systems to provide high-quality coordinated care, support new models of care and engage patients in their health. For the end-users of health IT systems, the goal of exchange is simple: to connect once to the exchange network of their choice, which then becomes a gateway to all of the other networks that may have information pertinent to the care of an individual or a population.

We recognize that today's health information exchange landscape is comprised of a complex set of existing networks that include large national networks, regional and state networks and networks maintained by individual electronic health record vendors. Some of the networks are already working to connect. And, importantly, there are also initiatives that have working frameworks in place to connect across networks.

As the Office of the National Coordinator for Health IT (ONC) contemplates the requirement in 21st Century Cures to develop or recognize parameters of a trusted exchange framework and common agreement, the AHA recommends that the agency avoid disrupting existing, working exchanges and focus on creating a more seamless network-of-networks approach. Specifically, ONC should work with the private sector to accelerate nascent attempts while promoting mature efforts with demonstrated success for existing networks to connect across platforms. The provider community has a sense of urgency to accomplish this work, but also understands that starting from scratch would likely create even more delays than working to align existing efforts. Any framework and common agreement must specify minimum standards and essential elements needed to facilitate exchange so that end-users have assurance that all health information exchange networks are following the same rules of the road to ensure that exchange is trustworthy, reliable and efficient. The framework and common agreement should address, among other things:

- the minimum standards and implementation requirements that must be met to ensure efficient exchange, including standards to secure information;
- the permitted purposes for exchange;
- a clear understanding of the means to identify and authenticate participants of an individual exchange;
- a clear understanding of how the identity of individuals will be matched and managed across networks; and
- assurance that each network will be transparent in the terms and conditions of exchange, including any technical prerequisites and costs of participating in exchange.

CONCLUSION

We appreciate the Committee's focus and oversight on these important provisions included in the 21st Century Cures Act. As laid out in the AHA's recent report, [Regulatory Overload: Assessing the Regulatory Burden on Health Systems, Hospitals and Post-acute Care Providers](#), providers spend nearly \$39 billion a year solely on administrative activities related to regulatory compliance. While some regulation is clearly necessary to ensure safe and accountable care to patients, close to 24,000 pages of hospital-related federal regulations were published in 2016 alone. We look forward to working with the Committee and the Administration on the commitment to reduce regulatory burdens to allow providers to focus on high-quality patient care.