



AMERICAN BENEFITS
COUNCIL

June 3, 2019

Submitted electronically via <http://www.regulations.gov>

Department of Health and Human Services
Office of the National Coordinator for Health Information Technology,
Attention: 21st Century Cures Act: Interoperability, Information Blocking, and the ONC
Health IT Certification Program Proposed Rule [RIN 0955-AA01]
Mary E. Switzer Building
Mail Stop: 7033A
330 C Street, SW
Washington, DC 20201

**Re: 21st Century Cures Act: Interoperability, Information Blocking, and the ONC
Health IT Certification Program Proposed Rule [RIN 0955-AA01]**

Dear Sir or Madam,

We write on behalf of the American Benefits Council (“the Council”) to provide comment in connection with the 21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program Proposed Rule (“Proposed Rule”) published in the Federal Register on March 4, 2019, by the Office of the National Coordinator for Health Information Technology (ONC), Department of Health and Human Services (HHS) (84 Fed. Reg. 7424).

The American Benefits Council is a Washington D.C.-based employee benefits public policy organization. The Council advocates for employers dedicated to the achievement of best-in-class solutions that protect and encourage the health and financial well-being of their workers, retirees and families. Council members include over 220 of the world's largest corporations and collectively either directly sponsor or administer health and retirement benefits for virtually all Americans covered by employer-sponsored plans.

The Council appreciates the opportunity to provide comment with respect to the Proposed Rule, specifically on the transparency of price information, which is an area of critical importance for employer plan sponsors and health plan participants across America.

On March 4, 2019, HHS' ONC issued a proposed rule implementing certain provisions of the 21st Century Cures Act. The proposed rule updates the 2015 Edition health information technology ("health IT") certification criteria and sets out conditions and maintenance requirements for the ONC Health IT Certification Program. The proposal also provides examples of prohibited information blocking and adopts exceptions to the information blocking rule.

Generally, information blocking is a practice that is likely to interfere with, prevent, or materially discourage access, exchange, or use of electronic health information (EHI). The information blocking prohibition applies to health care providers, health IT developers of certified health IT, health information exchanges, and health information networks (referred to in the rule as "actors"). The proposed rule defines EHI to mean: (1) electronic protected health information; and (2) any other information that is transmitted or maintained in electronic media; identifies an individual or that can be used to identify an individual; and relates to the past, present, or future health care or payment for the provision of health care to an individual. Under the proposed rule, this definition provides for an expansive set of EHI, which could include information on an individual's health insurance eligibility and benefits, billing for health care services, and payment information for services to be provided or already provided, *which may include price information*.

As discussed in the proposed rule, HHS is soliciting information as it considers future rulemaking "to expand access to price information for the public, prospective patients, plan sponsors, and health care providers."¹ Pricing information continues to grow in importance with the increase of high deductible health plans and surprise balance billing, which have resulted in an increase in health plan participants' out-of-pocket health care spending. Price information is also relevant to developing value-based benefit designs that provide incentives for the use of high quality providers at the lowest cost.

The Council supports increased price transparency and access to data for employer plan sponsors.

Increased access to price data will enable market forces to work more effectively and efficiently, ultimately leading to better cost and quality outcomes. Many employers that have had success decreasing the rate of health care spending have done so by analyzing

¹ 84 Fed. Reg. 7,424, 7,513 (March 4, 2019).

their plan data to better understand how much is being spent on health care services. This is particularly the case with health care services delivered in various clinical settings for which the plan can encourage enrollees to select higher-value providers operating in higher-value settings.

Programs that are focused on value-based benefit design and value-based payment reform have the potential to transform our system by realigning incentives that keep participants healthier – while at the same time lowering costs. Increased price transparency and plan sponsor access to price data will help facilitate the development and expansion of such programs.

The Council supports establishing parameters for including price information within the scope of EHI for purposes of information blocking.

HHS notes that “price information impacts the ability of patients to shop for and make decisions about their care.” HHS seeks information on the parameters for including price information within the scope of EHI for purposes of information blocking. In order for price information included in EHI to be meaningful for employers and group health plan participants, it should:

- Reflect the amount to be charged to and paid for by the participant’s health plan and the amount to be charged to and collected from the participant, including for prescription drugs or medical devices;
- Provide the “allowed amount” (i.e., the maximum amount a plan will pay for a covered health care service) in an easy to understand manner, specific to individual health care providers and group health plans;
- Include a reference price as a comparison tool, for example, Medicare rates or another similar reference is price based on commercial rates by geography; and
- Be reasonably available to the participant in advance of a health care service, as well as at the point of service.

HHS notes that the “complex and decentralized nature of how price information is created, structured, formatted, and stored presents many challenges to achieving price transparency.” HHS requests information on how price information will vary based on the type of health insurance and/or payment structure being utilized, and what, if any, challenges would such variation create to identifying the price information that should be made available for access, exchange, or use.

For price information to be useful, plan sponsors and health plan participants must have the ability to make price comparisons for comparable health care services. For plan

sponsors and participants to make such comparisons, they need to understand the underlying payment structure that is being utilized and to have a reference price as a point of comparison. Price information included in EHI should include an enrollee's out-of-pocket costs (*e.g.*, deductible, coinsurance, copayment, facility fees, etc.) for items and services specific to his or her plan and to health care providers. The Summary of Benefits and Coverage (SBC) under the Public Health Service Act Section 2715 provides some out-of-pocket cost information, but does not provide information to participants in real-time or tailored to specific health care providers and health care services. Thus, the Council supports initiatives that would facilitate the provision to health plan participants of this type of real-time, service-specific pricing information.

The Council supports changes that will facilitate the sharing of pricing information with health plan participants.

HHS states that “increased consumer demand, aligned incentives, more accessible and digestible information and the evolution of price transparency tools are critical components to moving to a health care system that pays for value.” HHS is seeking comment on, for the purpose of informing referrals for additional care and prescriptions, requiring health IT developers to include in their platforms a mechanism for patients to see price information, and for health care providers to have access to price information, tailored to an individual patient, integrated into the practice or clinical workflow through APIs.

The Council supports policies that will facilitate the sharing of price information with health plan enrollees. Under the current system, there is a lack of accessible information that is necessary for health plan participants to make informed decisions about the health care services they receive, including from which providers (in-network vs. out-of-network provider), the cost of the services offered by a given provider (*i.e.*, the likely billed charges), and whether lower cost, high-quality providers may be available to the participant.

The Council also supports rules that would incentivize increased pre-service disclosure by providers to health plan participants of the services included in their treatment plan and the pricing for the services. Providing participants with pre-service notice, in good faith, of the expected services will give plan participants more knowledge and better information to determine whether certain providers (for example, all providers in the expected continuum of care) are in-network, as well as the participant's estimated financial obligation for the health care services to be received.

The Council supports disclosure of price information to help prevent surprise balance billing.

HHS is requesting comment on surprise balance billing, specifically, if price information is included in EHI, could that information be useful in subsequent rulemaking that HHS may consider in order to reduce or prevent surprise medical billing.

Employers are very concerned about the burden that unexpected medical bills from out-of-network providers place on employees and their families. In surprise medical billing, the patient lacks a meaningful choice between receiving treatment from a provider who is in their health plan's network, and thereby subject to contracted cost and quality requirements, or one who is outside the network.

The Council provided testimony to the U.S. House of Representatives Committee on Education and Labor, Subcommittee on Health, Employment, Labor and Pensions regarding surprise billing.² The Council's recommendations included support for requiring hospitals and other providers to disclose upfront information to patients about pricing, including out-of-pocket costs, and out-of-network care. Patients should be informed about out-of-network care and cost at the time of scheduling non-emergency care at an in-network facility and follow-up care from emergency treatment at an out-of-network facility. The Council also supports a change that would require providers at an in-network facility to accept in-network rates for all care delivered at the hospital or facility by all providers practicing at the facility. When a plan contracts with a hospital, it stands to reason that a patient would expect that essential services provided at the facility, for which the participant had no choice in selecting the provider – such as emergency, anesthesiology, radiology, and pathology – would be included in the network. Market failures have resulted in these specialty services being able to set their rates or elect not to participate in networks.

The Council believes greater transparency in price information is vital to the ability of employers and group health plan participants to make well-informed, value-based health care decisions. As the surprise billing practices have demonstrated, the variation and lack of transparency in price information for health care services can have substantial untoward financial consequences for employers and health plan participants. Increasing the availability of price information can inform health care purchasing and decisions relating to benefits, and reduce costs for our health care system.

* * * * *

²

<https://www.americanbenefitscouncil.org/pub/?id=7f0ac050%2Da9a0%2D22ba%2Ddeb5b%2D5676ac43bffc>.

The Council looks forward to working with the Administration and other stakeholders to bring the voice of employer plan sponsors to the price transparency issue. Thank you for considering these comments. If you have any questions or would like to discuss these comments further, please contact us at (202) 289-6700.

Sincerely,

Ilyse Schuman



Senior Vice President,
Health Policy
ischuman@abcstaff.org

Kathryn Wilber



Senior Counsel,
Health Policy
kwilber@abcstaff.org