



January 29, 2016

The Honorable Lamar Alexander
U.S. Senate
Chair, Committee on Health, Education, Labor,
and Pensions
Washington, DC 20510

The Honorable Patty Murray
U.S. Senate
Ranking Member, Committee on Health,
Education, Labor, and Pensions
Washington, DC 20510

Dear Chairman Alexander and Ranking Member Murray,

On behalf of the 120,900 members of the American Academy of Family Physicians, I write to share our comments regarding the draft electronic health records technology legislation. We appreciate having an opportunity to engage you and other members of the Senate Health, Education, Labor and Pensions (HELP) Committee on this important national priority. We commend the Committee for its dedication to improving and thoroughly examining the state of our nation's health IT system. We appreciate your concern about ensuring the *Health Information Technology for Economic and Clinical Health Information* (HITECH) Act fully achieves its purpose of increasing health IT (HIT) and improving patient health, care delivery, and efficiency. We look forward to working with you on the legislation as the process continues.

Section 2, Assisting Doctors and Hospitals in Improving the Quality of Care for Patients

The AAFP is pleased the Committee included policy language requiring the Department of Health and Human Services (HHS) to engage health care providers, health professional societies, public health entities and others to reduce regulatory or administration burdens associated with using electronic health records. The legislation also requires HHS and stakeholders to develop a strategy to address the regulatory and administrative challenges associated with federal programs, such as Meaningful Use, Alternative Payment Models, and other value-based payment programs, that have significant HIT components.

This requirement is consistent with the AAFP's 2015 [testimony](#) in which we highlighted the administrative burdens that federal HIT requirements impose on physicians without producing better health care for their patients. The legislation would require HHS to develop strategies and recommendations for addressing several important priorities, including aligning quality measures and physician payments. The AAFP has actively [supported](#) and consistently [requested](#) such alignment. The AAFP has been actively resolving these issues on behalf of our members. For example, we conducted a survey of family physicians about the benefits and

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burdens associated with the Meaningful Use Program. This survey, as well as other physician engagement activities, would be valuable resources for the HHS engagement process.

Recommendations:

- The AAFP encourages policymakers to include more prescriptive language for how HHS' will conduct its stakeholder engagement process such as requiring listening sessions and public forums.
- Under Strategy Development, the AAFP also encourages the Committee to include "care coordination," "clinical decision support," and "workflow" within the list of issues under Subsection 2 that would be reviewed for regulatory and administrative burdens.
- Under Recommendations, the AAFP encourages the inclusion of "actions that eliminate waste and distract from the triple aim of health delivery, patient satisfaction and cost efficiency" [page 4, line 15].

Section 2, (c), Application of Certain Regulatory Requirements

The bill says, "Notwithstanding any other provision of law, clinical documentation requirements that are imposed by HHS may be delegated to non-physicians members of the care team as permitted by State licensure and state medical and professional board regulations, except as required for program integrity, including the prevention of waste, fraud or abuse."

While we are pleased the Committee addressed this issue which AAFP highlighted during its 2015 testimony, and the organization has begun to address this clinical documentation on behalf of our members. It is unclear if the current language goes far enough to achieve that goal because a substantial proportion of documentation is required by law as part of Medicare's waste, fraud and abuse efforts. The AAFP would like to work with the Committee on this provision to determine if it is possible to reduce *unnecessary* burdens that will significantly benefit physicians without negatively modifying Medicare's program integrity requirements.

Section 3, Transparent Rating on Usability and Security to Transform Information Technology

We are pleased the legislation would strengthen certification standards, require interoperability, and addresses information blocking practices. The bill also would allow the Office of the National Coordinator (ONC) for Health Information Technology to make certification criteria or other requirements publicly available. We also commend the Committee for including usability and user-centered design as part of the reporting criteria. This language reflects AAFP's recommendations at the 2015 hearing and in subsequent health IT engagement efforts.

Recommendations:

- The AAFP urges the Committee to consider a five-star rating system. Establishing a quality rating system should provide as much information as possible and to distinguish clearly between strong and poor performers. Also, AAFP encourages the Committee to include vendor practices as part of the ratings.
- Under Section 3009A, "Health Information Technology Rating Program," the legislation would establish a council to rate health information technology. We are pleased the legislation includes both primary care and specialty care. The AAFP urges the Committee to expand the participants to include public health and/or state information technology officials.

- Under “Conditions for Considering Criteria,” the legislation includes clinician-led clinical data registries. It mentions assessing and exchanging information held by federal, state and local agencies or other entities. The AAFP commends that the Committee for this language and encourages it to add “submitting, editing and retrieving public health registry data” and “facilitating clinical decision support” as part of the criteria. The ability to interface with public health data registries is essential for primary care physicians. Standards that require efficient clinical decision making has tremendous potential to improve usability for physicians and to promote patient health and safety. Unfortunately, this is a serious flaw in many EHR systems.
- The AAFP also urges the Committee to include “enabling care coordination” within its rating criteria. Improving interoperability will require improving technical standards for exchanging information throughout the health care system.
- The section also includes standards for patient records and the requirement to provide the patient or an authorized designee with a complete copy of their health information from an electronic record in a computable format. The AAFP supports the spirit of this recommendation, but we would recommend inserting the term, “clinical health information” to reflect the importance of providing patients with their health information rather than billing information, which can be confusing and extensive. This recommendation is consistent with the AAFP’s testimony in which we described how physicians often wade through dozens of pages of patient records that include very little actual patient health information.

Section 3, (I), Hardship Exemption

The legislation would allow eligible professionals (EPs) to seek hardship exemptions if their electronic health record software is decertified and establishes a user compensation fund to help physicians purchase certified system. We are supportive of this provision and urge policy makers to ensure that patient data is protected and that those EPs, who choose to change products, can do so with as few burdens as possible.

Section 4, Information Blocking

The draft language requires HHS to engage in a rulemaking process to identify reasonable and necessary activities that do not constitute information blocking. It also requires the federal government to identify actions that meet the definition of information blocking with respect to health care providers. The legislation also authorizes the Inspector General to investigate claims of information blocking. We encourage policymakers to protect physicians from unfair burdens or penalties.

Section 5, Interoperability

The legislative language includes several provisions that encourage the development of model frameworks and common agreements for the secure exchange of health information across existing networks. The draft language creates a digital provider directory. It also requires HHS to prioritize private sector standards and a process for streamlining health systems data.

System interoperability, which is the ability to share and utilize information between two or more information systems, is critical in today’s health care environment. Yet significant challenges continue to impede true information reciprocity across the spectrum of care. The AAFP understands that removing these roadblocks and eliminating isolated data silos are essential steps toward improving care quality, safety, and efficiency. We support ongoing efforts aimed at creating and implementing technical standards for the secure exchange of appropriate health

data that is free of inappropriate exchange barriers. The AAFP is pleased the legislation includes language to establish common data sets. The AAFP has been engaged in the important task of developing process and policies for how patient information is shared with providers, payers, and others while still protecting the patient's privacy. Achieving this goal will be a significant challenge, but it could significantly improve the ability to exchange health information between physicians and across various systems. Ultimately, it also will improve patient care and efficiency.

We urge the Committee exercise caution with legislative language to advance trusted exchange policies. The private-sector is making progress in this space with efforts like DirectTrust that has fostered a large trust community and common agreements. In the past, private sector advances were unintentionally hindered by governmental initiatives to accelerate the work. For example, the private sector was working on exchanging clinical care summaries in 2005 and the government established the Health Information Technology Standards Panel (HITSP). Unfortunately, the federal government's involvement did not advance the proposal. Experts are still wrangling with HITSP's decisions and with advancing the clinical care summaries work that had begun years before. We agree with the Committee's desire for private-public partnerships within health IT. We believe that it is critical to have front line workers on advisory committees to ensure understanding of the impacts at the point of care as well as in other areas of medical practice. We would urge the Committee to take small steps in this area at this time.

Section 6, Empowering Patients and Improving Patient Access to Their Electronic Health Information

The legislation encourages certification of patient-centered health record technology and clarification of the circumstances in which it is permissible for providers to share patient information. This provision is consistent with the AAFP's 2015 testimony in which we shared concerns about the steps that protect patient's privacy.

Section 7, Encouraging Trust Relationship for Certified Electronic Health Records

The legislation would require ONC and the HHS Office of Civil Rights (OCR) to encourage health information exchange organizations and networks to partner with health care providers, health plans and other entities to offer patients access to their electronic health records in a way that is longitudinal and easy to understand.

Recommendation:

- The AAFP supports this policy and encourages the Committee to consider authorizing a pilot program or a feasibility study for a patient records system that is voluntary and patient-centered, and that utilizes a system in which patient health data is portable.

Section 8, Encouraging Trust Relationship for Certified Electronic Health Records

The bill would require certified EHRs demonstrate design elements that allow for trusted exchange with multiple trusted exchange relationships. We applaud the Committee's efforts to include patients in trusted exchange. We do believe there is a fundamental issue that must be addressed to include patients. That issue is the ability to accurately identify patients and each patient's health information. Today that work is done through patient information matching, due to issues in establishing patient identifiers. This approach, which relies on accurate, near-complete, and non-ambiguous data, works when all entities in the trusted exchange are covered under the laws and regulations of HIPAA. Once patients and non-covered HIPAA compliance entities are added to the exchange, privacy challenges will arise when they attempt to identify the right patient and information. It is acceptable to show a physician health information to

distinguish one 42-year-old Jane Doe from another Jane Doe. It is quite another situation to provide health information to patients and other non-covered entities. We need new approaches such as a strategy for patient identifiers so consumers can be safely and efficiently added to a trusted exchange.

Section 9, Government Accountability Office Study on Patient Matching

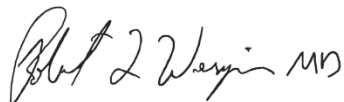
The draft bill requires a Government Accountability Study (GAO) on patient matching. The legislation would require the Comptroller General to review policies and activities of ONC and relevant stakeholders regarding patient matching, privacy, and security. According to a 2014 ONC report, patient matching processes are already being used to improve patient safety and clinical care across disparate health systems and to address continuity of care among patients who receive care from more than one provider. Patients often have medical records in multiple locations including hospitals, physician practices, laboratories, pharmacies and other settings. One of the largest unresolved issues in the safe and secure electronic exchange of health information is the need for a nationwide patient data matching strategy ensuring the accurate, timely, and efficient matching of patients with their healthcare data across different systems and settings of care. The AAFP supports the use of patient identifiers and the [ASTM](#) International universal voluntary patient identification standard.

Recommendation:

- To supplement the GAO study on policies and activities, we urge policy makers aggregate the relevant research and include recommendations for how to implement a nationwide patient matching system. The Institute of Medicine may be well suited to analyze how patient matching could advance.

Again, we appreciate the opportunity to comment and look forward to working with you. If you need additional information, please contact Sonya Clay, Government Relations Representative, at 202-232-9033 or sclay@aafp.org.

Sincerely,



Robert Wergin, MD, FAAFP
Board Chair

RW/scc