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January 4, 2021

The Honorable Alex Azar
Secretary
Department of Health & Human Services
200 Independence Ave, SW
Washington, DC 20201

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244-1850

RE: CMS-9123-P

Dear Secretary Azar and Administrator Verma:

The eHealth Initiative (eHI) appreciates the opportunity to comment on the proposed rule entitled *Reducing Provider and Patient Burden by Improving Prior Authorization Processes, and Promoting Patients' Electronic Access to Health Information for Medicaid Managed Care Plans, State Medicaid Agencies, CHIP Agencies and CHIP Managed Care Entities, and Issuers of Qualified Health Plans on the Federally-facilitated Exchanges; Health Information Technology Standards and Implementation Specifications* (CMS-9123-P).

While we commend the administration's commitment to reducing regulatory burdens and improving patient care, we are disappointed the administration did not provide an adequate notice and comment period. On December 18th, eHI and members of our Policy Steering Committee wrote to you to request an extension of the comment deadline until at least February 18, 2021 given that the proposed rule includes highly technical provisions that warrant thorough feedback and could have a large impact on the health care system if finalized and several requests for information (RFIs), which will be critical to future rulemaking. Because the comment deadline was not extended, this letter includes comments in response to specific proposals and general responses to the RFIs. We will follow provide additional input on the RFIs at a later date.

Specific Comments

Implementation Guides

eHI recognizes the valuable work of our member organization, Health Level Seven (HL7) International, in developing and advancing the implementation specifications proposed by CMS. Generally, we support their comments and continued input on implementation guides, specifications, and standards in the proposed rule.

Specifically, eHI also urges CMS to establish a process to allow for timely standards updates. The standards development process is iterative, and many of the standards and implementation specifications contained in this proposed rule will have evolved by the enforcement date of these proposed regulations. Similar to ONC's Standards Version Advancement Process (SVAP), we also support CMS allowing voluntary use of updated standards or implementation guides.

Patient Access APIs

CMS proposes numerous policies to streamline the prior authorization process, which eHI supports and has called attention through our *Prior Authorization Collaborative Project*.¹ eHI supports CMS' proposal that pending and active prior authorization requests be made available via the Patient Access API.

eHI also supports CMS' proposal to allow payers to request a privacy attestation from third-party applications to which their enrollees wish to send their information via the Patient Access API. We appreciate CMS' continued attention on the gap in federal privacy regulations between HIPAA Covered Entities and Business Associates (including payers) and non-HIPAA covered entities (including many third-party applications). eHI urges CMS to work with Congress to address this issue through federal privacy legislation.

Payer-to-Payer Data Exchange

CMS also proposes to extend payer-to-payer data exchange requirements to Medicaid and CHIP FFS plans. Specifically, CMS proposes to require plans to exchange, at a minimum, adjudicated claims and encounter data (not including cost information), clinical data as defined in the USCDI, and information related to pending and active prior authorization decisions. eHI supports this proposal.

Provider Access API

While eHI generally supports CMS proposal to require covered payers to implement Provider Access APIs as proposed, we are concerned this proposed process does not recognize the value of providers participating in regional or national Health Information Networks (HINs) and frameworks in order to exchange patient information with payers. CMS should explicitly address how this proposed functionality would complement such exchange relationships, especially in light of the ONC TEFCA process.

¹ <https://www.ehdc.org/priorauth>

We are also concerned that the covered payers will face financial hardship in meeting this new mandate, especially in light of the impact COVID-19 has had on state budgets. Given the importance of these APIs in advancing interoperability, we urge CMS to allow impacted plans to access up to 100 percent federal matching.

eHI does not support CMS proposing a process whereby patients would be required to opt-in to Provider Access API data sharing. This is inconsistent with HIPAA rules as they do not require an opt-in process and establishing such a process for the Provider Access API could hinder care coordination and add additional burden. We support aligning requirements with HIPAA rules.

Prior Authorization

As previously stated, eHI appreciates CMS' continued work to streamline the prior authorization process to ease burden on patients and providers. We believe CMS' support of electronic prior authorization (ePA) moving forward is critical to achieving this goal.

While eHI supports CMS' intent to establish standardized timeframes for prior authorizations, we are concerned that the timelines proposed by CMS are too long and could pose delays to provision of care. We urge CMS to require a 48-hour timeline for non-urgent prior authorizations and a 24-hour timeline for urgent prior authorizations. If additional information is required, CMS should require payers to request necessary information within two business days. Once the information is received by the payer, the payer should then provide a final determination within two business days.

In the proposed rule, CMS requests feedback on the utilization of "gold-carding" to streamline the prior authorization process. eHI supports "gold-carding," and identified this practice as one potential solution in a 2019 report entitled *Considerations for Improving Prior Authorization in Healthcare*.²

HHS API Specifications

Generally, eHI supports HHS adopting standard implementation specifications, based on ONC recommendations, across federal programs, not limited to ONC certification.

Medicare Fee-For-Service

While the regulations proposed would not impact Medicare FFS, CMS states in the proposed rule that they plan to align requirements with those finalized for impacted payers. eHI supports this alignment, and also encourages CMS to align requirements for Medicare Advantage plans.

Requests for Information

Reducing Burden and Improving Electronic Information Exchange of Prior Authorization

² <https://www.ehfdc.org/sites/default/files/resources/files/Considerations%20for%20PA%202.26.19.pdf>

eHI strongly supports ePA and encourages CMS to continue work to improve and incentivize providers to utilize the process. We also encourage CMS to explore the use of HL7 FHIR-based APIs for prior authorization of medication orders, in addition to non-medication orders. This could be especially useful for provider-administered (vs. pharmacy) medications.

We also support CMS adopting ePA as an optional MIPS Improvement Activity to incentivize providers to utilize electronic information exchange for prior authorization requests.

Given eHI's extensive work in bringing together stakeholder organizations to develop recommendations to improve the prior authorization process, we look forward to providing more extensive input on this topic in the future.

Accelerating the Adoption of Standards Related to Social Risk Data

eHI commends CMS on its focus on this critical issue. Through our member work groups, educational webinars, and Leadership Council, eHI has focused significant attention and work on social determinants of health – including the publication of two reports within the last three months.³ We look forward to providing further information at a later date to help inform future CMS rulemaking in this area.

Conclusion

Thank you for your work to reduce provider and patient burden. should you have any further questions, please contact Catherine Pugh at catherine@ehidc.org.

Sincerely,



Jennifer Covich Bordenick
Chief Executive Officer

³ <https://www.ehidc.org/resources/social-determinants-health?tid=411>