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eHEALTH INITIATIVE & FOUNDATION
ONE THOMAS CIRCLE, NW, SUITE 700
WASHINGTON, DC 20005
www.eHIDC.ORG
@eHEALTHDC
(202) 624-3270



June 23, 2020

Christi Grimm
Principal Deputy Inspector General
Office of Inspector General
Department of Health and Human Services
330 Independence Ave SW
Washington, DC 20201

RE: RIN 0936-AA09

Dear Principal Deputy Inspector General Grimm:

The eHealth Initiative (eHI) appreciates the opportunity to comment on the proposed rule entitled *Fraud and Abuse; Information Blocking; Office of Inspector General's Civil Money Penalty Rules*.

eHI's multi-stakeholder member organizations stand committed to ending information blocking and promoting interoperability of health information. We continue to stress the importance of clarity as the administration moves forward in finalizing all regulations related to information blocking. The broad and sweeping regulations impact almost every stakeholder in the health care system and clear rules of the road are necessary to ensure the regulations are fairly and effectively enforced.

Assessing Single vs. Multiple Violations

While eHI appreciates the examples provided in the text of the proposed rule regarding scenarios in which actions would represent a single violation or multiple violations, we urge OIG to include some level of baseline criteria for distinguishing between a single violation and multiple violations. eHI appreciates the importance of OIG enforcement discretion; however, we believe it must be balanced with the importance of clear regulatory language to provide rules of the road to marketplace actors.

Educational Period and Corrective Action Plan

eHI urges OIG to consider including in the regulatory text a corrective action plan process, coupled with an initial educational period, for an actor to come into compliance prior to assessing penalties. We appreciate that OIG has highlighted the right of enforcement discretion and the notion of intent included in the statutory definition of information blocking, a corrective action plan process

coupled with an initial educational period would allow actors to make good faith efforts to comply with the new regulations, while also ensuring bad actors are penalized accordingly.

Enforcement Date

The enforcement date proposed in the rule is 60 days after enactment of the final rule. OIG also includes an alternate approach for comment which would set a date certain – October 1, 2020. Given that the compliance date for information blocking provisions of the ONC final rule is November 2, 2020, we urge OIG to not set the enforcement date earlier than three months after November 2, 2020. During this time, the agencies should focus on education and outreach to organizations who will be subject to the new regulations.

Conclusion

Thank you for the opportunity to comment on this proposed rule, which is a crucial aspect of enforcing the statutory ban on information blocking. We look forward to continuing to work with you to help achieve interoperability.

Sincerely,



Jennifer Covich Bordenick
Chief Executive Officer