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July 2, 2014

Elizabeth Holland
Director, HIT Initiatives Group
Office of eHealth Standards and Services
Centers for Medicare and Medicaid Services

Elisabeth Myers
Policy and Outreach Lead
Office of eHealth Standards and Services
Centers for Medicare and Medicaid Services

Dear Ms. Holland and Ms. Myers,

The Electronic Health Record Association (EHRA) is very concerned with the recent unpublicized and unexpected change to FAQ 8231, updated on 6/23/14, which addresses reporting of actions taken before, during, after the applicable meaningful use reporting period. Previous and current text of the FAQ are attached for reference.

The revised FAQ places additional reporting restrictions on objectives that have no specific timeframe specified in the Final Rule and are identified in the ONC test procedure for (g)(1) and (g)(2) automated measure calculation to include actions taken “before, during, and after” the reporting period. The additional restriction is to only include actions that take place no earlier than the start of the reporting year.

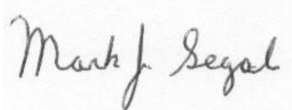
We are concerned that this FAQ introduces a restriction that is not specified in the Final Rule and has not been previously publicized in CMS or ONC guidance. Given that the restriction was not previously made publicly, EHR developers have taken different approaches in the reports that they have developed, certified against (g)(1) and (g)(2), and distributed to clients, consistent with the FAQ version dated 4/26/2013. It is not reasonable to expect EHR developers to reprogram reports and undertake the expense of recertifying reports, especially given that this revision was made in the middle of 2014 reporting periods.

Continuing to make changes through FAQs, especially mid-way through the reporting year, and indeed, in the middle of the period in which already certified EHR technology is being rolled-out, is very concerning to us. In addition, we consider the

clarification added to FAQ 8231 to be an inappropriate deviation from regulation, past guidance and certification requirements, and ask that CMS rescind this revision as quickly as possible.

If for some reason such an action is not possible, we ask that you provide us with a detailed explanation and rationale for this change as well as guidance for providers and auditors so that providers acting on the 2013 FAQ version using certified EHRs consistent with that FAQ are not penalized. In addition, the EHR Association would like to work with CMS and ONC to ensure that guidance necessary for reporting development is available on the timelines needed for EHR developers to program their reports, and that subsequent clarifications carefully consider the current certification requirements.

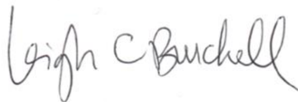
Sincerely,



Mark Segal, PhD
Chair, EHR Association
GE Healthcare IT

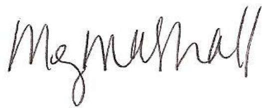
Sarah Corley, MD
Vice Chair, EHR Association
NextGen Healthcare

HIMSS EHR Association Executive Committee



Leigh Burchell
Allscripts

Joseph Geretz
SRSsoft



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Ginny Meadows, RN
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Hatem (Tim) Abou-Sayed, MD
Modernizing Medicine

Sasha TerMaat
Epic

About HIMSS EHR Association

Established in 2004, the Electronic Health Record (EHR) Association is comprised of more than 40 companies that supply the vast majority of operational EHRs to physicians' practices and hospitals across the United States. The EHR Association operates on the premise that the rapid, widespread adoption of EHRs will help improve the quality of patient care as well as the productivity and sustainability of the healthcare system as a key enabler of healthcare transformation. The EHR Association and its members are committed to supporting safe healthcare delivery, fostering continued innovation, and operating with high integrity in the market for our users and their patients and families.

The EHR Association is a partner of HIMSS. For more information, visit www.ehrassociation.org.

Table 1 - Text prior to 6/23/14

[EHR Incentive Programs] While the denominator for measures used to calculate meaningful use in the Medicare and Medicaid Electronic Health Records (EHR) Incentive Programs is restricted to patients seen during the EHR reporting period, is the numerator also restricted to activity during the EHR reporting period or can actions for certain meaningful use measures be counted in the numerator if they took place after the EHR reporting period has ended? The criteria for a numerator is not constrained to the EHR reporting period unless expressly stated in the numerator statement for a given meaningful use measure. The numerator for the following meaningful use measures should include only actions that take place within the EHR reporting period: Preventive Care (Patient Reminders) and Secure Electronic Messaging. For all other meaningful use measures, the actions may reasonably fall outside the EHR reporting period timeframe but must take place no later than the date of attestation in order for the patients to be counted in the numerator. Created on 4/26/2013 (FAQ8231)

Table 2 - 6/23/14 revision, highlighting added

[EHR Incentive Programs] While the denominator for measures used to calculate meaningful use in the Medicare and Medicaid Electronic Health Records (EHR) Incentive Programs is restricted to patients seen during the EHR reporting period, is the numerator also restricted to activity during the EHR reporting period or can actions for certain meaningful use measures be counted in the numerator if they took place after the EHR reporting period has ended? The criteria for a numerator is not constrained to the EHR reporting period unless expressly stated in the numerator statement for a given meaningful use measure. The numerator for the following meaningful use measures should include only actions that take place within the EHR reporting period: Preventive Care (Patient Reminders) and Secure Electronic Messaging. For all other meaningful use measures, the actions may reasonably fall outside the EHR reporting period timeframe but must take place no earlier than the start of the reporting year and no later than the date of attestation in order for the patients to be counted in the numerator, unless a longer look-back period is specifically indicated for the objective or measure. Created on 4/26/2013 Updated on 6/23/2014 (FAQ8231)