

October 4, 2023

Health Care Task Force
House Budget Committee
Washington, D.C. 20515

Dear Members of the Health Care Task Force,

On behalf of the 31 member companies of the HIMSS Electronic Health Record (EHR) Association, we appreciate the opportunity to provide feedback and insights into actions Congress can take to improve health outcomes while lowering spending, as outlined in your Request for Information (RFI) dated August 22, 2023.

As the national trade organization representing the leading EHR and health information technology (IT) developers in the healthcare industry, our members serve the vast majority of hospital, post-acute, specialty-specific, and ambulatory healthcare providers using EHRs and other health IT across the United States. We work together to build a sustainable healthcare ecosystem that leverages the capabilities of EHR and other health IT to efficiently deliver higher-quality care to patients.

In evaluating regulatory, statutory, or implementation barriers that could be addressed to reduce health care spending, we encourage the Health Care Task Force to consider harmonizing state and federal regulations related to health data privacy, consumer protection, data residency, quality measurement, and public health reporting. These areas have a significant impact on healthcare costs, administrative burden, and patient care, and we believe that alignment and coordination between state and federal requirements in these domains can lead to substantial cost savings and improved patient outcomes.

Harmonization of Health Data Privacy Laws

States possess the authority to enact privacy laws that are more stringent than those outlined in HIPAA. Consequently, each state uniquely determines how and to what extent the release and exchange of specific health information should be regulated. These regulations may apply to the timing of information disclosure to patients – including constraints on when particular laboratory results can be accessible to patients through platforms like patient portals or Application Programming Interfaces (APIs) – or when patient consent must be considered prior to the exchange of certain health information. Furthermore, states with restrictions on the information made available to patients via patient portals or APIs tend to diverge in their requirements concerning when this information can be

AdvancedMD	eClinicalWorks	Flatiron Health	MEDITECH, Inc.	Oracle Cerner
Allscripts	Elekta	Foothold Technology	Modernizing Medicine	PointClickCare
Altera Digital Health	eMDs – CompuGroup Medical	Greenway Health	Netsmart	Sevocity
Athenahealth	EndoSoft	Harris Healthcare	Nextech	STI Computer Services
BestNotes	Epic	MatrixCare	NextGen Healthcare	TenEleven Group
CPSI	Experity	MEDHOST	Office Practicum	Varian – A Siemens Healthineers Company

disclosed. Some states mandate a discussion with the patient before releasing results (e.g., California), while others establish a specific waiting period (e.g., Kentucky). Additionally, states vary in allowing patients to either opt in for the electronic exchange of health information through a Health Information Exchange (HIE) or opt out of such exchanges altogether.

When states enact laws that impose restrictions on specific health information beyond federal requirements, especially when these requirements conflict with those of other jurisdictions, it places a significant burden on both healthcare providers and Health IT developers. This burden includes the challenge of determining when it is appropriate to transmit information and the necessity to develop functionality that allows providers to effectively share or withhold health information as needed. Given the variations among states, not only in terms of regulatory rules but also in the supporting infrastructure needed for managing each state's unique requirements, health IT developers may find themselves compelled to create as many as 50 distinct technological solutions to meet the demands of each state and its healthcare providers. This imposes a considerable financial and human resource strain on providers, healthcare facilities, and health IT developers, requiring them to navigate complex prioritization decisions between federal and state laws, as well as state laws against one another, when allocating development resources and ensuring compliance.

In light of this, the EHR Association recommends that a standardized approach with a shared infrastructure and universally applicable computable policy definitions could significantly alleviate the ambiguity and multiplicity of approaches and methods while recognizing states' rights to establish specific rules. This approach would allow each jurisdiction to maintain its distinct policies while streamlining the overall process, ultimately reducing the burdens placed on healthcare stakeholders.

Standardization of Quality Measurement Requirements

Quality measurement data collection and reporting requirements also vary significantly between states and federal agencies. Numerous states have established their own programs designed to either incentivize or disincentivize certain healthcare quality practices, often operating under 1115A waivers through CMS. Each state has the autonomy to define unique criteria for measuring healthcare quality, frequently diverging significantly from the federal standards outlined by CMS for programs such as the Merit-based Incentive Payment System (MIPS), Inpatient and Outpatient Quality Reporting (IQR and OQR), and the Promoting Interoperability (PI) program, formerly known as the Meaningful Use or EHR Incentive program.

Even when states opt to adopt the same quality measures as the federal government, disparities persist in data collection and reporting requirements – including state-specific data submission methods or static measure specifications. Addressing these variations requires additional resources dedicated to the development and maintenance of multiple compliance mechanisms.

The EHR Association encourages the Health Care Task Force to explore the establishment of standardized quality measurement requirements that can be adopted at both the state and federal levels. This would streamline data collection and reporting, reduce compliance costs, and improve the quality of care.

Uniform Consumer Protection and Data Residency Laws

In addition to privacy and quality measurement concerns, states impose varying requirements related to consumer protection and data residency. Some of these requirements can change with each new administration or for reasons that seem to be more political than driven by the goal of creating optimal policies, cost reduction, or improved healthcare. While we acknowledge the importance of state authority and control over certain matters, these disparities in how privacy restrictions are applied, along with other variations in state law requirements, place a significant administrative burden on healthcare organizations and health IT developers.

Healthcare is an activity that frequently crosses state lines, and there's a fundamental need and expectation that health information should be accessible whenever and wherever it's needed, regardless of geographical boundaries. When providers and Health IT developers are compelled to navigate conflicting requirements with limited resources, it can result in delays and hinder the timely availability of critical information.

The EHR Association recommends that the Task Force consider measures to encourage uniformity in consumer protection and data residency requirements. While recognizing the importance of state authority, harmonizing requirements where possible would help ensure that health information is readily available when needed, regardless of state lines.

Support for Public Health Reporting Infrastructure

Public health involves a diverse array of reporting requirements encompassing individual patient data and larger datasets for surveillance, utilizing both identifiable and de-identifiable information. Although efforts to establish the necessary infrastructure for streamlining reporting, enhancing analytics and research, and disseminating knowledge to providers and patients have begun to gain initial momentum, they are already encountering challenges related to securing sustained funding for the long-term realization of essential advancements.

It is imperative for Congress to acknowledge the enduring nature of initiatives aimed at bringing all facets of public health, spanning from the local to the national level, to a unified platform where data can be readily and consistently shared. This approach should also prioritize the recognition and preservation of patient privacy while fostering analytics capable of delivering high-quality decision-making tools. Presently, these tools are often fragmented and biased, whether in the context of Social Determinants of Health (SDOH) or treatment protocols.

To address these challenges effectively, the EHR Association proposes that Congress commits to providing consistent funding and encourages collaborative efforts between key agencies such as ONC, CDC, FDA, NIH, and state, local, tribal, and territorial health departments (STLTs) to establish a common reporting and data-sharing platform. This would reduce duplication of efforts, minimize friction, and facilitate more effective public health initiatives.

Reducing Regulatory Compliance Burden

Healthcare providers and institutions allocate significant resources toward employing staff solely dedicated to regulatory compliance, ensuring they remain well-informed about evolving requirements. According to a survey conducted by the American Hospital Association (AHA), an average-sized hospital

designates 59 full-time positions to manage various aspects of regulatory compliance. It's worth noting that this encompassed all facets of regulatory compliance.

The AHA survey findings underscore the substantial regulatory burden placed on hospitals. Specifically, hospitals contend with 341 federal-level requirements emanating from agencies such as CMS, OIG, ONC, and OCR. Furthermore, organizations offering Post-Acute Care (PAC) services grapple with an additional 288 PAC-related requirements. We note that these figures do not encompass state-level requirements or those applicable to ambulatory and physician-based clinics, each of which grapples with its unique challenges and resource constraints.

Health IT developers are similarly constrained by finite resources as they strive to meet state-specific regulatory requirements. As mentioned earlier, available resources must be distributed among federal compliance obligations, client expectations for non-regulatory functionality, market demands, international considerations, and state requirements. Consequently, the allocation of limited resources must be further prioritized to address the most critical state-specific requirements.

We acknowledge the complexity of this area of law and its nuanced intricacies. However, we firmly believe that fostering enhanced coordination between federal and state mandates on health information exchange, consumer protection, data residency, and quality measurement collection and reporting could substantially alleviate the burden placed on healthcare institutions, providers, and health IT developers.

In conclusion, the EHR Association and our member companies stand ready to support the Health Care Task Force in its mission to improve healthcare outcomes while lowering costs. We look forward to the opportunity for further collaboration and discussions on these important topics. Please feel free to reach out to us for any additional information or insights. The Association's leadership can be reached by contacting Kasey Nicholoff at knicholoff@ehra.org.

Sincerely,

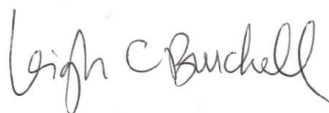


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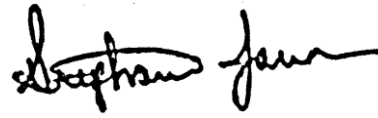
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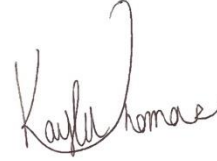
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Established in 2004, the Electronic Health Record (EHR) Association is comprised of 31 companies that supply the vast majority of EHRs to physicians' practices and hospitals across the United States. The EHR Association operates on the premise that 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.ehra.org.