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PHYSICIAN CLINICAL REGISTRY COALITION

February 8, 2018

VIA ELECTRONIC MAIL

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Re: Information Blocking by Electronic Health Record Vendors

Dear Mr. Cannatti and Ms. Marchesini:

The undersigned members of the Physician Clinical Registry Coalition (the "Coalition") are writing to express our ongoing concerns about information blocking by electronic health record ("EHR") vendors. The Coalition is a group of 25 medical societies and other physician-led organizations that sponsor clinical data registries that collect identifiable patient information for quality improvement and patient safety purposes to help participating providers monitor clinical outcomes among their patients. We are committed to advocating for policies that enable the development of clinical data registries and enhance their ability to improve quality of care through the analysis and reporting of these outcomes.[1]

The Coalition strongly advocated for the information blocking language included within the 21st Century Cures Act (Pub. L. 114-146) (the "Cures Act") to prevent EHR vendors from blocking the transmission of clinical outcomes data to third parties, such as clinical data registries. The Cures Act prohibits EHR vendors from interfering with, preventing, or materially discouraging

[1] *See* www.registrycoalition.net for more information about the Coalition.

the access, exchange, or use of electronic health information,[2] and grants the Department of Health and Human Services ("HHS") Office of the Inspector General ("OIG") the authority to investigate and impose penalties upon an EHR vendor that engages in such information blocking.[3] The ability of clinical data registries to access patient information from EHR vendors is crucial for such registries to achieve their missions of improving quality of care.

While we understand that the OIG and Office of the National Coordinator for Health Information Technology ("ONC") are developing rulemaking to implement such information blocking requirements, we have become increasingly aware of EHR vendors creating barriers to access patient information within their systems. These barriers interfere with and materially discourage the access to such information by clinical data registries.

Coalition members report that some EHR vendors refuse to enter into negotiations for the transfer of patient information to clinical data registries, and therefore are prohibiting clinical data registries from any degree of access to such information. While other EHR vendors have negotiated with Coalition members and their third party software vendors, such as FIGmd, these vendors require providers to pay a large fee to send their data from the EHR to the clinical data registry or their software vendor, or require purchasing intermediary software systems owned by the EHR. Coalition members report the following information blocking practices by specific EHR vendors:

- Allscripts
    - Charges providers $1,000 to $1,500 to set up the platform to send data to clinical data registries and a monthly fee per clinician for reporting under the Merit-based Incentive Payment System ("MIPS")
    - Charges $40,000 for sending data abstraction from a hosted version of hospital-based EHRs to clinical data registries
    - Directs providers to use CE City/Premier as the software vendor for clinical data registry reporting, which charges an initial fee of several thousand dollars and monthly fees

- Athena
    - Charges extremely high fees for providers to send data to clinical data registries for reporting under MIPS, which has led multiple practices to withdraw from a Coalition member's clinical data registry
    - Does not send sufficient data on behalf of the practices; clinical data registries cannot calculate measures using the data

[2] 42 U.S.C. § 300jj-52(a)(1).
[3] *Id*. § 300jj-52(b).

- Cerner
  - Charges private practices $1,500 to set up the platform to send data to clinical data registries and a monthly fee of $100 per clinician
  - Charges academic practices several thousand dollars to transmit practice data to clinical data registries
  - Charges $30,000 for sending data abstraction from a hosted version of hospital-based EHRs to clinical data registries
  - Does not send sufficient data on behalf of the practices; clinical data registries cannot calculate measures using the data

- ChartLogic
  - Has not shared patient information with clinical data registries as of the date of this letter

- EPIC
  - Charges providers $20,000 to set up the platform to send data to clinical data registries
  - Does not allow screen shots for data validation
  - Refuses to sign non-disclosure agreements with registry vendors for sharing their proprietary scripts

- Modernizing Medicine
  - Refuses to submit sufficient data on behalf of the practices; clinical data registries cannot calculate measures using the data
  - Does not allow integration solutions for data submission to clinical data registries, including participation in MIPS through societies' qualified clinical data registries ("QCDRs")

- Practice Fusion
  - Has not shared patient information with clinical data registries as of the date of this letter

These information blocking practices hamper the ability of clinical data registries to conduct analyses for quality improvement purposes, resulting in smaller sample sizes and skewed results and clearly fall within the definition of "information blocking" under the Cures Act. As the majority of academic medical centers and large health systems use EPIC or Cerner for their EHRs, these information blocking practices will result in a disproportionate amount of private practice data within physician-led clinical data registries. These obstructive tactics also create inefficiencies for physicians to report their data for MIPS.

We are also concerned about the information blocking practices of EHR vendors that are approved to operate QCDRs. These EHR-led QCDRs may require their customers to submit data for quality reporting through their QCDRs, which will further obstruct the ability of non-

commercial QCDRs, such as those led by medical societies, to obtain sufficient data to meaningfully operate their registries. This practice may also restrict competition and cause EHR-led QCDRs to have a monopoly in the registry space. In addition, larger EHR vendors have recently acquired some smaller EHR platforms, such as AllScripts' acquisition of Practice Fusion, which creates further challenges for clinical data registries to obtain sufficient data.

In addition to the Coalition's concerns regarding the current obstructive practices of EHR vendors, the Coalition also advocates for ONC to develop common, open source logic models, implementation profiles, and standards to allow for the ease of sharing data. Currently, EHR vendors and medical society clinical data registries maintain data in different logic models, implementation profiles, and standards that create additional barriers for aggregating data. If EHRs and registries are required to implement certain open source logic models, implementation profiles (i.e. Fast Healthcare Interoperability Resources ("FHIR") and Consolidated Clinical Document Architecture ("CCDA") and conform the data to Health level Seven International ("HL7") standards, EHRs can transmit data to registries in a more efficient and cost effective manner. Developing these models, profiles, and standards is critical to enabling registries to aggregate sufficient data, achieve meaningful results, and extrapolate such results to improve the quality of care.

We would appreciate the opportunity to meet with you and other appropriate OIG and ONC officials to discuss our concerns regarding information blocking by EHR vendors. Please contact Rob Portman at 202-872-6756 or rob.portman@powerslaw.com to let us know if you are able to meet with representatives of the Coalition and, if so, what time would be best for you.

Respectfully submitted,

AMERICAN ACADEMY OF DERMATOLOGY ASSOCIATION

AMERICAN ACADEMY OF NEUROLOGY

AMERICAN ACADEMY OF OPHTHALMOLOGY

AMERICAN ACADEMY OF OTOLARYNGOLOGY-HEAD AND NECK SURGERY

AMERICAN ACADEMY OF PHYSICAL MEDICINE AND REHABILITATION

AMERICAN ASSOCIATION OF NEUROLOGICAL SURGEONS/NEUROPOINT ALLIANCE

AMERICAN COLLEGE OF EMERGENCY PHYSICIANS

AMERICAN COLLEGE OF GASTROENTEROLOGY/GIQUIC

AMERICAN COLLEGE OF RHEUMATOLOGY

AMERICAN COLLEGE OF SURGEONS

AMERICAN GASTROENTEROLOGICAL ASSOCIATION

AMERICAN SOCIETY FOR GASTROINTESTINAL ENDOSCOPY/ GIQUIC

AMERICAN SOCIETY OF NUCLEAR CARDIOLOGY

AMERICAN SOCIETY OF PLASTIC SURGEONS

AMERICAN SOCIETY FOR RADIATION ONCOLOGY

AMERICAN UROLOGICAL ASSOCIATION

NORTH AMERICAN SPINE SOCIETY

SOCIETY FOR VASCULAR SURGERY

SOCIETY OF INTERVENTIONAL RADIOLOGY

SOCIETY OF NEUROINTERVENTIONAL SURGERY

THE SOCIETY OF THORACIC SURGEONS