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March 2, 2010

David Blumenthal, MD, MPP
National Coordinator for Health Information Technology
Department of Health and Human Services
Attention: HITECH Initial Set Interim Final Rule

**Re: Initial Set of Standards, Implementation Specifications,
and Certification Criteria for Electronic Health Record
Technology**

Dear Dr. Blumenthal:

On behalf of the Association of Community Cancer Centers (ACCC), I welcome the opportunity to submit comments regarding the interim final rule published on January 13, 2010, specifying the initial set of standards, implementation specifications, and certification criteria for electronic health record (EHR) technology. ACCC is a membership organization whose members include hospitals, physicians, nurses, social workers, and oncology team members who care for millions of patients and families fighting cancer. ACCC's more than 900 member institutions and organizations treat 60 percent of all U.S. cancer patients when combined with our physician membership.

Certification Criteria

ACCC greatly appreciates the fact that the Office of the National Coordinator (ONC) for Health Information Technology (HIT) has been closely coordinating with the Centers for Medicare & Medicaid Services (CMS) regarding the proposed meaningful use Stage 1 objectives. As a result, the certification criteria contained in the interim final rule very closely track the proposed meaningful use criteria proposed by CMS. However, ACCC has a number of concerns with the proposed Stage 1 meaningful use criteria and the related measures. Overall, we believe that there are too many criteria proposed for Stage 1, that some of the proposed criteria are overly demanding, and that the proposed criteria may mean that relatively few eligible professionals (EPs) and eligible hospitals would benefit from the HIT-related stimulus dollars approved under the American Recovery and Reinvestment Act. We note, too, that CMS has estimated that 47 to 79 percent of EPs and an unspecified number of hospitals could face Medicare penalties in 2015 for failing to meet

EHR meaningful use criteria. We find this estimate troubling and we believe it suggests that the meaningful use criteria envisioned by CMS are overly ambitious. We have communicated our concerns regarding the meaningful use criteria to CMS and we attach a copy of these comments for your information.

With respect to the ONC interim final rule, we presume that any changes made to the meaningful use criteria by CMS would be matched by changes to the interim final rule. In this regard, we urge ONC to pay particular attention to the comments submitted by EHR vendors regarding the initial set of certification criteria—and other elements of the interim final rule—since the availability of certified EHR technology is an obvious limiting step to the receipt of Medicare and Medicaid incentives by EPs and eligible hospitals for meaningfully using such technology (or, in the case of Medicaid incentives, for adopting, implementing, or upgrading such technology). Both ONC and CMS need to have reasonable expectations with respect to EHR vendor capabilities lest overly ambitious regulatory requirements significantly delay the availability of certified EHR technology.

Certification Process

When the interim final rule was published, the ONC noted that it planned to issue a notice of proposed rulemaking to establish the policies for the certification of HIT and the process a certification body will need to follow to become an authorized certification body. ACCC fears that the delay in publishing the proposed rule and the complexities involved in specifying an EHR certification process and recognizing one or more certification bodies will mean that professionals and hospitals that would be eligible for Medicare and Medicaid incentives for meaningfully using certified EHR technology will have nothing to meaningfully use in a timely fashion.

For example, we note that ONC assumes that it would generally take 6 to 18 months for commercial vendors and open source developers of Complete EHRs and EHR Modules to prepare for testing and certification. We therefore urge ONC to make the finalization of the requisite certification process a very high priority and ensure that the certification bodies are “up and running” as quickly as possible. In addition, we urge ONC to work with CMS to assess the possibility of adopting some kind of “grandfathering” policy under which at least some previously certified EHR technology might be viewed as satisfying the condition that an EP or eligible hospital meaningfully use certified EHR technology, at least for some period of time, and thereby qualify for Medicare and Medicaid incentives. We recognize that providing for such a “grandfathering” policy would be challenging because of the close connection between meaningful use criteria and the EHR certification criteria. However, absent such a policy, we fear that the availability of certified EHR technology could be delayed until 2012 or even later.

I hope the preceding input is helpful. If you have any questions regarding our comments or need more information, please contact Matthew Farber, ACCC’s Director of Provider Economics & Public Policy at (301) 984-9496, or at mfarber@acc-cancer.org.

Sincerely,

Matthew Farber, MA
Director, Provider Economics & Public Policy
Association of Community Cancer Centers

Attachment