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January 2, 2024

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

Micky Tripathi, Ph.D.
National Coordinator for Health Information Technology
Office of the National Coordinator for Health Information Technology
U.S. Department of Health and Human Services
330 C Street SW, Floor 7
Washington, DC 20201

Re: “Establishment of Disincentives for Health Care Providers That Have Committed Information Blocking” Proposed Rule [RIN 0955-AA05]

Dear Administrator Brooks-LaSure and National Coordinator Tripathi:

On behalf of AMGA, I am pleased to submit comments in response to the Office of the National Coordinator for Health Information Technology (ONC) and the Centers for Medicare & Medicaid Services (CMS) proposals to enforce information blocking regulations on healthcare providers as published in the *Federal Register* on November 1, 2023.

Founded in 1950, AMGA represents more than 440 multispecialty medical groups and integrated delivery systems, representing approximately 177,000 physicians who care for one in three Americans. Our member medical groups work diligently to provide innovative, high-quality, cost effective, patient-centered medical care.

On July 25, 2023, AMGA staff met with ONC to discuss areas of alignment, particularly in recognizing the importance of transparency and access to data among patients, providers, and payers. We continue to advocate for our shared goal of improving healthcare outcomes, facilitating data exchange, and shifting the US healthcare system towards value-based care. Accordingly, AMGA firmly opposes information blocking and supports the steady increase of interoperability across physician workflows. However, we are concerned that this proposed rule offers an overly punitive approach to addressing information blocking, and specifically targets physicians practicing in value-based care arrangements. Effectively, these proposals will inadvertently discourage participation in the Medicare Shared Savings Program (MSSP).

AMGA is pleased to offer comments on the proposed rule for your consideration.

Key Recommendations:

- AMGA recommends that CMS maintain a balanced approach to addressing information blocking by healthcare providers and Accountable Care Organizations (ACOs) and reconsider the severity of penalties, such as exclusion from the MSSP. Implementing less severe consequences would encourage compliance without disproportionately discouraging participation in value-based healthcare models.
- To maintain the integrity of the Merit-Based Incentive Payment System (MIPS) and promote fair penalties, AMGA recommends that CMS refrain from finalizing the proposed penalty of awarding a score of zero in the Promoting Interoperability category for clinicians found guilty of information blocking. A more balanced approach is necessary to avoid undermining the effectiveness of the MIPS program and to encourage compliance among participating clinicians.
- CMS should allow providers to implement a corrective action plan and appeal a finding that they engaged in information blocking. While we recognize that the disincentives under the proposed rule vary by program, the ability to appeal the OIG's underlying determination of information blocking should be available to all providers, regardless of the program in which they participate.

Information Blocking and Medicare Shared Savings Program Implications

Under the proposed rule, if the Office of Inspector General (OIG) determines a healthcare provider within an ACO is engaging in information blocking, the provider would face exclusion from the MSSP for a minimum of one year. This exclusion would not only impede the provider's involvement in the ACO, but also hinder their ability to join one. Similarly, if an entire ACO is found guilty of information blocking, it would be barred from participating in the MSSP.

Recognizing the importance of patients accessing their healthcare information, AMGA acknowledges that providers within a value-based model like an ACO have strong incentives to promote patient engagement and understanding of crucial medical information. Withholding information from patients contradicts the collaborative ethos of this model. However, the proposed remedy is disproportionate to the offense. The punitive measure of excluding a provider or ACO from the MSSP carries significant financial ramifications that may exceed the harm caused.

AMGA contends that barring providers from the program is excessive when milder penalties are available. AMGA asserts that the severity of the penalty might inadvertently discourage participation in the MSSP. As such, AMGA recommends exploring alternative, less severe consequences to maintain a balanced approach that encourages compliance without unduly stifling participation in value-based healthcare initiatives.

Promoting Interoperability Score

Under the proposed rule, clinicians participating in the MIPS program would receive a score of zero for the Promoting Interoperability category if the OIG determines the clinician engaged in information blocking throughout their reporting period calendar year. With this category contributing 25% to the total MIPS score, clinicians penalized for information blocking risk being

capped at a maximum score of 75, likely leading to a penalty under the 2024 MIPS performance threshold.

Similar to the penalty outlined for ACO participants, the suggested measure of denying clinicians the opportunity to earn a positive payment adjustment undermines the MIPS program and is overly punitive. AMGA strongly recommends that CMS reconsider and refrain from finalizing the penalty as proposed.

Lack of Corrective Action Plan and Appeal Opportunity

AMGA strongly asserts that the proposed penalties for information blocking in the MSSP and MIPS are unduly severe, and we urge CMS to reconsider and refrain from finalizing them. Equally concerning is the absence of provisions regarding the implementation of a corrective action plan or establishing an appeals process for the OIG’s determination of information blocking. Specifically, the proposed rule highlights that ACO appeals within the MSSP regulations do not extend to OIG’s underlying information blocking determination. Moreover, having appeal rights vary depending on the program under which disincentives are applied is inherently unfair. All providers should have the ability to appeal the OIG’s underlying determination through the same appeals process.

AMGA emphasizes the need for a collaborative approach. Providers should have the opportunity to work constructively with CMS in addressing any identified issues related to information blocking. Rather than resorting to punitive measures, regulators should collaborate with providers to rectify concerns within a reasonable timeframe. In the interest of fairness, AMGA contends that providers be granted the right to appeal any findings of information blocking. This recommendation underscores the importance of establishing access to a fair and transparent process to challenge decisions made in this regard.

AMGA and its members express gratitude to ONC and CMS for consideration of our comments. Should you have questions, please do not hesitate to contact AMGA's Senior Director of Regulatory Affairs Darryl Drevna at 703.833.0033 ext. 339 or ddrevna@amga.org.

Sincerely,



Jerry Penso, MD, MBA
President and Chief Executive Officer, AMGA