Public Testimony

To: National Committee on Vital and Health Statistics

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Topic: **PHRs Offered by Non-Provider/Plan Entities**

Distinguished members of the Committee,

It is my pleasure to represent WebMD Health Corp. ("WebMD") on today's panel to discuss Personal Health Records. Written responses to all questions posed to the Panel have been provided, and my verbal testimony will highlight a portion of the written response.

Q 1: What is the problem you are trying to solve with your offering? What is your business objective?

A: WebMD's business objective for Personal Health Records is to help consumers to gather, store, manage and share their essential health information in order to assist them and their care providers in making more informed decisions. Used by consumers in the popular and free-to-the-public WebMD.com portal, as well as used by beneficiaries of large employers and health plans within WebMD's Health and Benefit Manager solution, the WebMD Personal Health Record is consumer-controlled and can help achieve the objectives shared by key participating stakeholders – consumers, providers, employers and payers – to provide a greater continuity of care in order to improve quality and lower costs.

Q 2: What is the business model for your offering? Its funding source?

A: While the business models for serving consumers in a license-free environment – ie WebMD.com – is still emerging, WebMD licenses its WebMD Health and Benefit Manager solution as a private portal solution to large employers, health plans and other entities who wish to create a comprehensive and effective environment for their beneficiaries to better manage their health and make more informed health-related decisions. The WebMD Personal Health Record is an essential part of this licensed solution, and itself has a variety of premium services that clients can license including rule-driven alerts and data import from a variety of client-specified sources.

Q 3: How do you envision your offerings, as well as the Health IT industry and, specifically, patient-facing online services, evolving over the next 5 or 10 years?

A: While health information exchanges, electronic health records, and the National Health Information Network promise to make data more available to care providers in the next 10 years,

Personal Health Records and patient-facing services can connect patients to some of their data and providers from across the continuum of care in the near-term to support greater consumer involvement in the health care system, and support additional programs and services. Lifestyle improvement, disease self-management and greater consumer control over their health care spending are natural complements to the PHR that are likely to increase over the coming years, enabled by a PHR that is increasingly connected and actionable.

Q 4: How do you envision the relationships among PHRs, electronic health records, providers, plans, health information exchanges, etc. evolving over the next five or ten years?

A: WebMD believes that the relationship will continue to elevate the consumer, or patient, as the focus of the health care system, and PHRs will play a key role in that process. While today health information exchange efforts and even many EHR efforts have not prioritized connectivity of the patient, there are several things converging to support broader scale connectivity between independent PHRs and EHRs and HIEs. These include the recent HITECH act's requirement of EHR systems to enable consumers to have an electronic copy of their health records, and the requirements for use of specific data exchange standards under CCHIT. Also, the American Recovery and Reinvestment Act of 2009 should help further health information exchange and health record bank efforts, which can be used to drive greater consumer connectivity.

Payers seem not only willing to support these efforts, but also able to use their administrative processes, such as eligibility verification, to facilitate delivery of important clinical information and alerts to the point of care. Even before health information exchanges become commonplace, and with the support of payers, employers, providers and systems vendors, in the next 5 to 10 years patients should be able to connect through their PHR to more and more data sources and providers, helping to provide greater continuity of health information that can travel with them.

Q 5: How does information come to reside in the product or service you are offering?

A: Through our Health and Benefit Manager solution, WebMD works with its clients to facilitate professional data feeds including medication data, medical claims and laboratory test results, into the WebMD Health Record. Through WebMD.com and the Health and Benefit Manager solution, users can self-report data through the PHR, a Health Risk Assessment, or a variety of other tools made available within their PHR. In addition, WebMD continues to add connectivity to new data sources whether through Health and Benefit Manager solution and WebMD.com including connectivity with EHR systems and other similar data sources.

Q 6: What information do you give participants when they sign up?

A: When registering for a PHR through the Health and Benefit Manager solution and WebMD.com, WebMD provides terms of service and a privacy policy that outlines how WebMD protects the participant's information and how WebMD can use the participant's information. Through the PHR, participants also are able to determine which data will populate their PHR.

Q 7: What are you most concerned for them to understand about what you're offering?

A: WebMD is focused on communicating to its users the role that personal health record-keeping plays in enhancing the consumers ability to better manage our health and health care. Privacy and security are important foundations of trust, which is essential for anyone to participate in a service of this nature, but it is equally important that the consumer understand the benefits of a PHR and how the consumer can make the PHR work form them through participation.

Q 8: What kinds of privacy protections and policies are you building in to your product/service?

A: WebMD employs a variety of security and privacy practices and safeguards consistent with the Connecting for Health Common Framework recommended practices, and WebMD plans to submit for CCHIT certification once it becomes available. Also, where applicable WebMD plans to ensure that its policies and practices are consistent with the applicable HITECH provisions when they take effect. The WebMD PHR offers participants the ability to control their own information, and it is not shared with unauthorized third parties without the participant's authorization. Our privacy policy explains to the participant how and when their information (whether self reported or imported via a data feed) will be shared with authorized third parties.

Q 9: Do you reserve the right to change those policies? Have there been any changes to date?

A: WebMD does reserve the right to change its policies. In the case of non-material changes to its policies that do not expand the permissible uses or disclosures of personal health information, WebMD may notify the user of the change. In the case of a material change to its policies that affects its use of personal health information, WebMD will first seek an express opt-in authorization.

Q 10: What kinds of issues have you grappled with as you develop privacy policies?

A: WebMD has used the guidance of URAC, TRUSTe, consumer feedback, and other resources to guide the development of our privacy policy. WebMD endeavors to assure that it's policies are not only complete and accurate, but also easy to understand by participants.

Q 11: What is your experience of the public's questions or concerns with these policies?

A: WebMD has offered PHRs to consumers for more than ten years and WebMD has the market-leading PHR with the largest base of PHRs users. Over 130 of the largest employees and health plans trust WebMD to provide a PHR platform for their employers and members. WebMD is the most recognized and trusted brand of health information today. Brand credibility and trust help consumers feel comfortable with WebMD, which in turn will help the uptake in our PHR offerings.

WebMD has participated in the URAC Health Web Site seal program since its inception in 2001. WebMD submits to regular, independent reviews and has been awarded the URAC Health Web Site program seal since 2001. In addition to the more than 45 rigorous quality and ethics standards, URAC requires a separate, independent third party security audit which provides

additional validation that the WebMD backend systems are at or above industry standard. Prior to working with URAC, WebMD was a founding member of HiEthics and helped create the first set of self-governance ethics standards designed with clear and verifiable rules and clear implementation guidelines.

Q 12: How have you attempted to address concerns presented by members of the public?

A: In 2003, WebMD created an internal Best Practices department as an additional measure to help guide WebMD within the parameters of its established policy and to work with third party accrediting agencies and to address concerns presented by members of the public. The Best Practices department works regularly with WebMD's Chief Privacy Officer, WebMD's General Counsel and Regulatory Counsel, and other WebMD executives to help ensure policy implementation and compliance.

Q 13: In what ways is the model notice proposed by HHS helpful to you, or not helpful? How would you modify it to be more useful to your business?

A: WebMD respects the intent behind the HHS model notice. The requirements of certain certification seal services like URAC and TRUSTe include the summarization of privacy policies in easy-to-understand terms, and so we do try to present a simple outline of our privacy policy. We believe that the model notice will provide value for independent, side-by-side comparisons of multiple PHR vendors if such an analysis was performed by an independent third party. However, we also believe that the URAC and TRUSTe approach to privacy and security as well as the CCHIT certification criteria is a sufficient approach to developing an informative and complete explanation on privacy protections to the participant during registration. Our concern with the HHS model notice, and how it is proposed under CCHIT certification criteria to require user acceptance, is that it adds yet another step to the registration process. This has the potential to create a poor user experience which may erode, rather than build, consumer confidence in this type of service.

Q 14: What challenges do you find in managing individuals' authorizations and consumer-directed access to their PHRs?

A: WebMD is committed to the widespread adoption of PHRs and serving consumers through its public portal and Health and Benefit Manager solution. In addition to privacy and security concerns, WebMD believes that consumers desire simplicity when enabling access by others to their PHR. They understand the value of emergency access, and they understand the value of emailing their doctors, and they understand the value of getting their test results online or printing their child's immunizations. Yet to be determined is the extent to which consumers will embrace more sophisticated sharing models, such as the discretionary sharing of portions of their record with specific doctors, but WebMD will work to make that process as easy to use as possible.

Q 15: What were the areas that you had to focus on to ensure that you had adequate consumer support for your product/service?

A: WebMD continues to survey participants using its public portal and Health and Benefit solution to gauge their readiness to engage with PHR and other services. Consumer trust is essential to the utilization of WebMD's websites and services, and will be particularly important as we engage consumers with PHR services.

Q 16: How are you dealing with particularly sensitive categories of information?

A: WebMD's standard procedure is to allow the user to designate any specific item as sensitive, and then decide whether or not they'd like to share their sensitive data along with other data they might choose to share.

Q 17: To what degree are patients actually using the PHR that you offer? Do they use some features more than others, and, if so, why do you think that is so?

A: WebMD has offered PHRs to consumers for more than ten years and WebMD has the market-leading PHR with the largest base of PHRs users. Not surprisingly these services receive increased repeat utilization when data feeds are enabled, helping reduce the need for data entry by the participant.

Q 18: To what degree do you anticipate providers accessing patient information through the PHR?

A: Through our WebMD ID service available via the Health and Benefit Manager solution, WebMD offers a "break the glass" option for participants to enable their authorized health data to be made available whenever needed, including to emergency care providers. We are also developing new ways that the participant can invite authorized third parties to access all or portions of their record, in compliance with CCHIT requirements. We believe that it is more likely that providers will use their own clinical workflow products like EHR systems to interoperate with PHR systems so that the provider can access the health history of new patients, for example, or take advantage of home monitoring data or self-reported data on patients with chronic illness. We strongly encourage the consideration of PHRs in their unique role complementing, but not replacing, clinical workflow tools.

Q 19: Do you intend for your offering to be a "source record" for medical information?

A: WebMD strives to serve consumer users by helping them to gather, store, manage and share their essential health data. As patients today find it nearly impossible to remember all the essential aspects of their health history when they see a care provider, we design and build the PHR to help them to represent their health history as accurate, up-to-date and complete as possible, and hopefully in a way that is far superior to verbal presentation of this data. We hope that both consumers and providers will treat it as such, and take it in the context of other available data sources when making care decisions.

Q 20: How have physicians' practices or relationships with patients changed with the advent of PHRs?

A: WebMD has not yet witnessed significant changes in the relationship between patients and doctors as a result of the PHR. We anticipate, however, that with EHR and PHR systems both certified in part based upon their data to export and import standardized files like CCD, that the consumer will mediate the transfer of information between systems, especially when seeing new care providers. This will begin to have an impact on how the patient is processed at the point of care.

Q 21: How do the changes to HIPAA in the Recovery Act affect your work with PHRs?

A: We are hopeful that the HITECH Act's provision allowing consumers to obtain an electronic copy of their health information when it is maintained in electronic form will help consumers populate their PHRs with clinical information as it becomes available.   Through the Health and Benefit Manager solution, WebMD, as a business associate, enables members of participating health plans to manage their personal health information through a PHR sponsored by a covered entity. WebMD also provides PHRs directly to individuals as a PHR vendor through WebMD.com, its public portal.