National Committee on Vital and Health Statistics
Advising the HHS Secretary on National Health Information Policy

NCVHS Standards Subcommittee

Recommendations to Modernize Aspects of HIPAA and Other HIT Standards

March 30, 2022

Agenda

- Background on Standards Modernization Letter to HHS
- Review of Draft Letter
- Clarification Questions from Committee
- Motion and Discussion
- Voting

Background for Recommendations

- Recommendations to Modernize Aspects of HIPAA and Other HIT Standards to Improve Patient Care and Achieve Burden Reduction
  - Subcommittee on Standards deliberated industry comments from August 2021 Listening Session as part of Convergence 2.0 Project Phase 1
  - Findings indicated several “sticking points” around certain standards-related industry needs
    - Well known to industry and CMS regulators
    - Not yet acted upon
    - Sense of urgency

Background (continued)

- Purpose of letter is to advise HHS/CMS to take prompt action
- Meets critical immediate needs
  - Limited scope
  - Perceived value
  - Downsides to not taking action
- These are recommendations for short term actions
  - Compatible with and do not preclude longer term strategies
  - Consistent with consensus areas of Subcommittee's Convergence 2.0 Project
  - Adheres to ICAD report viewpoint: short term actions building toward more comprehensive and integrated future vision

Recommendation 1: Electronic Prior Authorization

Publish the CMS Interoperability and Prior Authorization proposed rule, which includes the HL7 FHIR standard to support APIs to automate payer and provider prior authorization workflows.

Summary of Recommendations, 1

- Recommendation 1: Electronic Prior Authorization
  - A critical need
  - Standards are good enough to begin national roll out
    - Not perfect for all potential use cases
    - Work well enough for the 80/20
  - CMS Final Rule published January 15, 2021 (was pulled back)
  - First time HL7 FHIR® being named as standards, albeit not HIPAA
  - Tested by many large stakeholders

Recommendation 2: Attachment Standard

Adopt a standard or standards for electronic Attachments as soon as possible to meet today's business needs.

Summary of Recommendations, 2

- Recommendation 2: Attachment Standard
  - A standard to allow industry to exchange attachments is necessary
    - Attachments contain additional information not contained in the standard transaction
    - Information in attachments can be in many forms: codified data, free text, images, etc.
    - Attachments provide information needed for clinical decision making: e.g., lab, MRIs, specialist reports, patient history, operative notes, rehab, consents, etc.
  - Attachments are necessary to the Prior Authorization workflow
  - Attachments are useful for other transactions, e.g., claims, referrals
  - Without an industry consensus (i.e., a common standard) for attachments, Prior Authorization cannot be successfully automated
    - Adverse impacts on patient would continue
    - PA burden would not be reduced

Recommendation 3: Regulatory Flexibilities

HIPAA transaction rules notwithstanding, evaluate and adopt regulatory flexibility strategies to permit HIPAA Covered Entities to implement new technologies such as FHIR standards.

Summary of Recommendations, 3

- Recommendation 3: Regulatory Flexibilities
  - An Electronic Prior Authorization rule would be the first adoption of an API-based standard, specifically HL7 © FHIR
  - API is a different technology from HIPAA X12 and NCPDP standards
  - FHIR standards are designed to work both in conjunction with the X12 standards and independent of the X12 standards
    - FHIR can utilize the X12 278 (Health Care Services Review) transaction adopted under HIPAA and also the X12 275 (Patient Information, formerly called Claim Attachment) transaction which has NOT been adopted under HIPAA
  - SS consensus: implementers should be allowed to use FHIR without being mandated to use the X12 278 when the business use case does not require it
    - Whether allowed or not, federal guidance must be clear

Recommendation 4: Streamlining the HIPAA Adoption Process

Streamline the process for adopting HIPAA transaction standards so that it is reliable, efficient, and timely.

Summary of Recommendations, 4

- Recommendation 4: Streamlining the HIPAA Adoption Process
  - Industry has long and vociferously complained that the HIPAA rulemaking process does not deliver necessary and timely updates to adopted standards
    - There is no certainty that a rule listed on the HHS Unified Agenda will be acted on
    - Without a reliable system, industry cannot budget or plan its implementations
    - Industry develops workarounds, which are inefficient
  - This recommendation urges HHS and CMS to continue to consider how its HIPAA rulemaking can be modernized to better meet industry need
  - Reiterates the Predictability Roadmap and the ICAD recommendations
  - Sets the stage for our forthcoming Convergence 2.0 Project recommendations

Review of Draft Letter

- Walk through letter with full Committee
- Discuss and address questions
- Motion to approve

Thank You!