March 15, 2010

Comments on Centers for Medicaid and Medicare Services (CMS) "Meaningful Use" Regulation Involving Electronic Health Records (CMS–0033–P) and on Office of the National Coordinator (ONC) for Health Information Technology Interim Final Rule on Certification Standards for Electronic Health Records (EHR) Technology

Thank you for the opportunity to comment on proposals to implement Health Information Technology (Health IT). It is disappointing that accessibility requirements are not included within current certification processes or within proposed standards and implementation specifications. In its proposed rule, the ONC states that "we are interested in public comments to inform future deliberations on whether specific certification criteria could be adopted to further promote the capabilities Certified EHR Technology should provide with respect to meeting the accessibility needs of individuals with disabilities."

We submit that "future deliberations" will be too little, too late. Accessibility standards are already available and would add little or nothing to the cost or technical difficulty of developing Health IT. On the other hand, further delay in adopting accessibility standards for Health IT will ensure that Health IT is developed without accessibility, which will require expensive retrofits and work-arounds for technology developers, health care providers, and individual consumers.

It is critical to harmonize existing accessibility standards with Health IT standards and establish specific accessibility certification criteria to ensure that people with disabilities are able to utilize electronic health information systems to independently access and manage their personal health care information and participate in all that new Health 2.0 networks and tools have to offer. Accessibility of Health IT is essential to avoid discrimination against people with disabilities, to promote full inclusion of individuals with disabilities (including individuals who are elderly) in the benefits of health care systems, including the ability to exercise informed consent, and to facilitate equal opportunity for people with disabilities to be employed in some of the fastest-growing fields in the country.

Within a very short time frame, the HITECH Act will accelerate development and deployment of electronic health information systems nationwide. The stated goal is "utilization of a certified electronic health record for each person in the United States by 2014." Without requirements to address accessibility within HITECH standards, testing, certifications, implementation plans, and incentive plans, systems will be developed and deployed that create needless barriers. People with disabilities, including 25 million people with significant vision loss[1], who may well stand to benefit the most from many Health

[1] American Foundation for the Blind, http://www.afb.org/Section.asp?SectionID=15&TopicID=413&DocumentID=4900.

IT innovations, will find themselves unable to use electronic health records and associated technology-based health management products and services. Moreover, failing to address accessibility requirements up-front will make retrofitting more difficult and costly.

Meaningful use: The definition of meaningful use must include accessibility as a basic functional requirement. The HITECH Act must assure that personal health records (PHRs) and other consumer-facing health management tools are accessible to consumers with sensory disabilities and consumers who require keyboard controls. Without stringent and timely requirements for attention to this issue, people with disabilities may be structurally excluded from benefiting from the stated goal of providing consumers with "timely access to data, knowledge, and tools to make informed decisions and to manage their health."

Further, the definition of meaningful use must acknowledge that people with disabilities are themselves health care professionals, as well as patients. According to the U.S. Bureau of Labor Statistics, seven of the twenty fastest growing occupations in the U.S. are health care-related. People with disabilities must be able to work in this field and the accessibility of administrative and clinical functions embedded within EHRs will directly impact their future public and private employment opportunities.

Accessible designs can ensure that users can access all electronic information and use all software features, regardless of their disabilities. For example, by implementing accessibility requirements and solutions established by Section 508 guidelines and W3C Web Content Accessibility Guidelines (WCAG 2.0), technology-enabled health resources can be structured to accommodate a wide variety of people with specific needs such as:

- low-vision users, who require magnification and/or audio files in addition to text
- non-visual users, who utilize screen readers or require Braille output
- visual-only users, who cannot utilize audio, relying on text, captions or visual cues
- keyboard-only users with limited mobility or those who use AT devices to control the computer

Meeting these functional requirements is not difficult if attention is paid to formatting requirements for content and the accessibility of interface designs. Adding these capabilities after the fact, however, can be expensive and unwieldy.

As noted in the 2008 National Council on Disability Progress Report to the President and Congress, equal access to electronic forms of information and communication is a fundamental requirement for participation in our society and in the workforce:

> *Lesser education, lower incomes, and higher unemployment contribute to digital isolation, but among the factors contributing in turn to these, the serious problem of the inaccessibility of much mainstream technology….surely plays a major role. A generation ago this was not an independent variable of great significance. But today it has joined all the familiar problems as a source of exclusion and a breeding ground for frustration and despair. Bringing people with disabilities fully into the technological mainstream has emerged as one of the chief arbiters of equal opportunity and full participation in our society….*

It is admirable that data collection about meaningful use seeks to ensure that people actually achieve meaningful use across racial, ethnic, cultural, and income lines. However, disability is not included in the data proposed to be collected. As a result, the impact of inaccessible technology and the need for accessibility will not even be noticed. Because people with disabilities will not even be counted under the proposed system, their absence will not be noticed and their needs will certainly not be met.

Integration and implementation of accessibility specifications within standards, certification requirements and outcomes measures will have an enormous impact on how people with disabilities experience the health care system — both as patients and as professionals.

Standards: Accessibility standards already exist and could be applied to Health IT. Section 508 guidelines and W3C Web Content Accessibility Guidelines (WCAG 2.0) are available and widely used in a variety of contexts. Entities already have over a decade of experience applying these standards and a variety of tools are available to evaluate and improve accessibility of technologies. However, mere reference to the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act is not sufficient to achieve meaningful access because neither of those laws includes standards for technology accessibility. It is important to include the more specific technology standards available, in order to ensure clarity and consistency.

Including accessibility standards in Health IT development will help to avoid expensive retrofits. It will also save health care providers and administrators from complaints and lawsuits by their clients. The Americans with Disabilities Act and Section 504 of the Rehabilitation Act require effective communication between health care providers and their clients with disabilities. Without accessibility built in to the technology, health care providers will have to create their own methods of providing accessibility. These work-around methods (e.g., reading health care records aloud for clients with vision impairments) are generally less effective for the client than built-in accessible technology and are more disruptive (and expensive) of the provider's practice.

HHS' Health IT standards development effort builds on "established international standards, including the International Organization for Standardization's (ISO) standards 17011 and Guide 65, that have guided conformity assessment in numerous industries, and ISO 17025 that is used for assuring quality of testing and calibration laboratories." We strongly encourage review by the Health IT Standards Committee of the "Access for All" interoperable accessibility specifications. These specifications grew out of a working group established in 2000 by the WGBH National Center for Accessible Media within the IMS Global Learning Consortium that has since become ISO standard 24751, which provides a common language to describe digital resources to facilitate matching of those resources to learners' accessibility needs and preferences.

Accessibility experts and accessibility working groups working within national and international standards bodies can help harmonize existing W3C or ISO specifications with proposed Health IT Standards for accessible content creation, exchange and transformation and suggest robust accessibility solutions and inclusive design exemplars that are deployed in other industries. The Health IT Policy and Health IT Standards groups should involve these entities in defining and addressing challenges, opportunities and progress meeting the needs of people of disabilities in development and deployment of our nation's health care technologies.

Testing, Certification and Monitoring: Whatever decisions are eventually made about the testing certification process and authorized certification bodies, there must be a consistent requirement across

all EHR testing and certification programs to require adherence to Section 508 and WCAG 2.0 accessibility requirements as a minimum functional requirement. We applaud the proposal to utilize the National Institute of Standards and Technology (NIST) for testing and believe that it is critical that compliance with accessibility requirements be included in functional testing and not self-reported by vendors. While Section 508 and Section 255 (telecommunications access) provide standards for accessibility, neither provides an effective monitoring or enforcement mechanism. The National Council on Disability's 2008 Progress Report outlines ongoing problems related to compliance, oversight and enforcement of Section 508 and Section 255 rules, which should not be replicated in the Health IT context.

Medicare and Medicaid incentive plans: HHS is also proposing a definition for meaningful use attached to Medicaid and Medicare criteria for incentive payments for adoption and meaningful use of HIT and qualified EHRs designed to accelerate use of these technologies in hospitals, clinics and practices throughout the country. Incentives will be based on three stages, with adherence to first stage criteria defined in this proposed rule. This first stage criteria is based on five major health outcome policy priorities, with specific performance measures detailed for each. Four of the five outcome priorities are concerned with health care providers and hospitals realizing the benefits of technology-based information sharing and documentation related to patient care and public health while maintaining security and privacy safeguards. We have noted above the importance of requiring that these soon-to-be-pervasive electronic health information systems are accessible to ensure equal employment opportunities in health care to people with disabilities.

Accessible electronic records, for the first time, can offer patients with disabilities the opportunity to independently access their own health records. The ability to produce information in a wide variety of accessible formats can be easily integrated into health information systems using existing accessibility specifications and universal design principles as previously described. However, without accessibility requirements for EHR systems, people with disabilities might as well be relegated to paper records, as if the new technology did not exist. They will continue to be forced to have hospital staff, health care workers, attendants, family, or friends read their most personal information to them, often compromising both their privacy and their ability to exercise informed consent.

For these reasons, we believe the NCO and HHS should:

- Include accessibility to people with disabilities in the definition of Meaningful Use;
- Adopt standards for Health IT accessibility based on the standards in Section 508 of the Rehabilitation Act and WCAG 2.0;
- Require collection of data on Health IT use by individuals with disabilities, in the role of both patients and providers;
- Require the certifying agency(ies) to include accessibility testing in their certification process;
- Implement processes for monitoring and enforcement of Health IT accessibility;
- Require that any recipient of incentives for Health IT or EHRs be required to demonstrate that the Health IT meets accessibility standards.

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