

Via online submission

March 12, 2010

Kathleen Sebelius, Secretary
Department of Health and Human Services
Office of the National Coordinator for Health Information Technology
Attn: HITECH Initial Set Interim Final Rule
Hubert H. Humphrey Building, Suite 729D
200 Independence Ave. SW
Washington, DC 20201

Re: Health Information Technology: Initial Set of Standards, Implementation Specifications, and Certification Criteria for Electronic Health Record Technology; Interim Final Rule

Dear Secretary Sebelius:

The American Occupational Therapy Association (AOTA) is a national professional association representing the interests of approximately 140,000 occupational therapists, assistants, and students. The practice of occupational therapy is science-driven, evidence-based, and enables people of all ages to live life to its fullest by helping to promote health and prevent – or minimize the functional effects of – illness, injury, and disability.

In order to ensure the continued quality of occupational therapy services and patient access to care, it will become increasingly important for occupational therapy services to be captured and stored in electronic form. It is for these reasons that AOTA appreciates the opportunity to provide comments on the Office of the National Coordinator for Health Information Technology's (ONC) interim final rule regarding Standards, Implementation Specifications, and Certification Criteria for Electronic Health Record Technology, which was published in the Federal Register on January 13, 2010 (75 Fed. Reg. 2014).

As part of the American Recovery and Reinvestment Act of 2009 (Recovery Act), the Health Information Technology for Economic and Clinical Health Act (HITECH Act) requires the ONC to set implementation specifications and certification criteria for electronic health records (EHR) and other health information technology (HIT). The Recovery Act also authorizes the Centers for Medicare and Medicaid Services (CMS) to define and incentivize the meaningful use of certified technologies by eligible professionals.

The ONC interim final rule sets forth a preliminary set of standards and specification criteria that EHR technology must satisfy in order to be certified. These requirements cover functionality, security, information exchange and transport, and system interoperability.

This set of standards is the first step in ONC's incremental plan to create a common language ensuring accurate and secure information exchanges across different EHR systems. As such, certified EHRs will have standard formats for clinical summaries and prescriptions and standard terms to describe clinical problems, procedures, laboratory tests, medications, and drug allergies. Because certified EHRs will standardize the entry and exchange of health care services going forward, it is imperative that they be capable of capturing all professional services covered and reimbursed by Medicare. Only by including this information will EHRs be capable of building a complete patient record that enables coordination of services across the continuum of care and ultimately achieves Congressional aims of improved health care quality and patient outcomes.

Notably, although occupational therapists are not currently included in the narrow definition of "eligible professionals" for purposes of receiving CMS incentive payments under the HITECH Act,¹ occupational therapy services *are* included in the statutory definition of "covered professional services."² This inclusion indicates that Congress considered therapy services to be a key piece of clinical information in a complete patient record.

In the section regarding incentives for eligible professionals, the HITECH Act defines "covered professional services" as follows:

(A) COVERED PROFESSIONAL SERVICES.—The term 'covered professional services' has the meaning given such term in subsection (k)(3).³

The subsection to which this definition refers, 1848(k)(3), states:

(3) Covered professional services and eligible professionals defined.—For purposes of this subsection:

(A) Covered professional services.—The term "covered professional services" means services for which payment is made under, or is based on, the fee schedule established under this section and which are furnished by an eligible professional.

(B) Eligible professional.—The term "eligible professional" means any of the following:

(i) A physician.

(ii) A practitioner described in section 1842(b)(18)(C).

(iii) A physical or occupational therapist or a qualified speech-language pathologist.

(iv) Beginning with 2009, a qualified audiologist (as defined in section 1861(l)(3)(B)).⁴

¹ Social Security Act § 1861(r) (as incorporated in HITECH Act § 4101(a); Social Security Act § 1848(o)(5)(C).

² Social Security Act §§ 1842(b)(18)(C), 1848(k)(3).

³ HITECH Act § 4101(a); Social Security Act § 1848(o)(5)(A).

⁴ Social Security Act § 1848(k)(3).

The additional practitioners referenced in § 1842(b)(18)(C) include the following:

- (C) A practitioner described in this subparagraph is any of the following:
 - (i) A physician assistant, nurse practitioner, or clinical nurse specialist (as defined in section 1861(aa)(5)).
 - (ii) A certified registered nurse anesthetist (as defined in section 1861(bb)(2)).
 - (iii) A certified nurse-midwife (as defined in section 1861(gg)(2)).
 - (iv) A clinical social worker (as defined in section 1861(hh)(1)).
 - (v) A clinical psychologist (as defined by the Secretary for purposes of section 1861(ii)).
 - (vi) A registered dietitian or nutrition professional.⁵

Thus, for the purposes of the HITECH Act, the definition of “covered professional services” includes physicians, occupational therapists, and selected other health care professionals.⁶ AOTA consequently believes that the HITECH Act intends for certified EHR to have the capability of capturing all information about relevant covered professional services (as defined by § 1848(k)(3)) for which payment is made under, or is based on, the Medicare fee schedule. This is a logical conclusion that can be illustrated by the value of including occupational therapy services in EHR in instances where such services were provided. Orders for therapy services, a record of medically necessary therapy services rendered, patient functional status, comorbidities, and outcomes are all key pieces of clinical information that constitute a complete patient record and allow for improved coordination of care.

We therefore request that the ONC revise the interim final rule to amend 45 C.F.R. §170.304 (Specific certification criteria for Complete EHRs or EHR Modules designed for an ambulatory setting), and 45 C.F.R. §170.306 (Specific certification criteria for Complete EHRs or EHR Modules designed for an inpatient setting) to require that systems have the capability of electronically capturing all of the relevant covered professional services furnished to patients in the setting.⁷ The revised regulations would read as follows:

§ 170.304 Specific certification criteria for Complete EHRs or EHR Modules designed for an ambulatory setting.

...

(h) *Clinical summaries.*

- (1) *Provision.* Enable a user to provide clinical summaries to patients for each office visit that include, at a minimum, diagnostic test results, problem list, medication list, medication allergy list, immunizations, **documentation of relevant covered professional services** and procedures.

and

⁵ Social Security Act § 1842(b)(18)(C).

⁶ Social Security Act §§ 1842(b)(18)(C), 1848(k)(3) (as incorporated in HITECH Act § 4101(a); Social Security Act § 1848(o)(5)(A)).

⁷ 75 Fed. Reg. 2014, 2046-47 (January 13, 2010).

§ 170.306 Specific certification criteria for Complete EHRs or EHR Modules designed for an inpatient setting.

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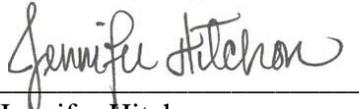
(f) *Exchange clinical information and summary record.*

(1) *Electronically receive and display.* Electronically receive a patient's summary record from other providers and organizations including, at a minimum, diagnostic test results, problem list, medication list, medication allergy list, immunizations, procedures, **documentation of relevant covered professional services** and discharge summary in accordance with § 170.205(a) and upon receipt of a patient summary record formatted in an alternate standard specified in § 170.205(a)(1), display it in human readable format.

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AOTA respectfully requests that careful consideration be given to these comments. Should you have any questions, or if you would like additional information, please contact us at (301) 652-6611 ext. 2023 or jhitchon@aota.org. AOTA looks forward to a continuing dialogue with the ONC on the nexus between HIT, EHR, and occupational therapy.

Sincerely,



Jennifer Hitchon
Regulatory Counsel

The American Occupational Therapy Association, Inc.