



September 11, 2013

Margo Lachowicz
Access Health CT/Connecticut Health Insurance Exchange
280 Trumbull Street, 15th floor
Hartford, CT 06103

Dear Ms. Lachowicz:

The Connecticut Hospital Association (CHA) appreciates the opportunity to provide the Connecticut Health Insurance Exchange (Exchange) with our comments on the proposed "Policies and Procedures: All-Payer Claims Database" (APCD) as published in the August 13, 2013 *Connecticut Law Journal*, and which first appeared on or about August 6, 2013 on the Access Health CT website.

CHA is a not-for-profit association whose membership includes Connecticut's acute care hospitals, as well as short-term specialty hospitals, long-term care facilities, nursing homes and hospices, and other types of healthcare providers and organizations. CHA represents the interests of its members on key healthcare issues in the areas of quality and patient safety, access and coverage, workforce, community health, diversity, and hospital reimbursement.

Our comments are directed to the sections found on page 6 of the proposed policies and procedures with the headings: "Data Utilization and Disclosure," "Fees," and "Privacy and Confidentiality." These three sections pertain to what the Exchange will do with collected data. Below, we addressed each section separately, and have included the original language from the proposed policies and procedures in italics.

COMMENTS RELATED TO DATA USE AND DISCLOSURE

Proposed Language:

Data Utilization and Disclosure

The Exchange will utilize data in the APCD to provide health care consumers in the state with information concerning the cost and quality of health care services that will allow such consumers to make economically sound and informed health care decisions.

The Exchange will make standard, aggregated reports containing information regarding utilization, cost and quality of services available to health care consumers.

The Exchange may make data available in such form or forms as it deems appropriate to health care consumers and public and private entities engaged in reviewing health care utilization, cost, or quality of health care services, including community and public health assessment activities, in accordance with future Policies and Procedures to be promulgated by the Exchange.

CHA Comments: We ask that the section on “Data Utilization and Disclosure” be expanded to address two important issues. First, we ask that the policies and procedures for making data available to specific stakeholders, interested persons, or entities expressly include those listed in Section 144(b)(4) of Public Act 13-247, which states:

(b)(4) The exchange shall: (A) Utilize data in the all-payer claims database to provide health care consumers in the state with information concerning the cost and quality of health care services that allows such consumers to make economically sound and medically appropriate health care decisions; and (B) make data in the all-payer claims database available to **any state agency, insurer, employer, health care provider, consumer of health care services or researcher** for the purpose of allowing such person or entity to review such data as it relates to health care utilization, costs or quality of health care services.

The language in the proposed policies and procedures indicates substantial discretion will be taken by the Exchange in determining what data will be made available, specifically providing that “*The Exchange may make data available in such form or forms as it deems appropriate to health care consumers and public and private entities....*” CHA understands that the Exchange needs to retain flexibility as to the form of the data released, but nothing about that flexibility of form should result in limiting who can access the data. To avoid any confusion between the statutory language and the policies and procedures, we ask that the Exchange expressly list in its policies and procedures the statutorily mandated entities to which the Exchange must make data available.

Second, we ask that the policies and procedures establish a timeline by which these data will be made available, both initially and on an ongoing basis (as data continue to be collected). While there are various timelines for receiving data from reporting entities included in the proposed policies and procedures – with severe penalties for non-compliance – the proposed policies and procedures lack similar guidance for when the Exchange plans to process and release the data. The usefulness of data diminishes if there is a significant lag time between reporting and use.

While CHA appreciates that the Exchange does not wish to create unreasonable milestones, particularly for this new endeavor, the public and those entities engaged in healthcare reform efforts should be given reasonable expectations as to the timeframes for accessing the APCD.

COMMENTS RELATED TO FEES

Proposed language:

Fees

The Exchange may charge a fee for access to data in the APCD.

CHA comments: CHA appreciates that this language mirrors the mandate set forth in Section 144 of PA 13-247. However, we ask that the Exchange set forth the criteria it plans to use in setting, waiving, and requiring fees, and by what method those decisions will be made. The public and those entities engaged in healthcare reform need to depend on the APCD as a realistic source of reliable, affordable data. Additionally, any pricing method adopted should avoid being *ad hoc*. Rather, it should be based on a rationale or methodology that does not inhibit or impede access to data and that is communicated to users well in advance of its imposition.

Guidance on what the Exchange anticipates regarding fee structure will enhance the chances of successful use of the APCD, because it will allow better planning by those potentially interested in accessing the data.

COMMENTS RELATED TO PRIVACY AND CONFIDENTIALITY

Proposed language:

Privacy and Confidentiality

The Exchange may make data from the APCD available to public and private entities in accordance with these Policies and Procedures when disclosed in a form and manner that is consistent with HIPAA regarding the safeguarding of Protected Health Information and the de-identification of data, and in compliance with state and federal data security and confidentiality requirements.

The Exchange shall institute appropriate administrative, physical and technical safeguards that are consistent with HIPAA security rules, including those contained in 45 C.F.R. Part 160 and Part 164, Subparts A and C, to ensure that data received from Reporting Entities is securely collected, compiled and stored.

CHA comments: CHA appreciates that the proposed language reflects the statutory mandate requiring the Exchange to apply HIPAA-based standards to ensure proper privacy and security. The proposed language, however, does not make clear that HIPAA does not technically apply to the APCD, which is not covered by HIPAA. Federal HIPAA rules are different for an entity or organization that is, legally and technically, a covered entity or business associate as defined by HIPAA. For example, covered entities are permitted to share information in an organized healthcare arrangement, can share certain data with other HIPAA-covered entities, and must require their business associates to handle data in very specific ways.

The APCD and Exchange are not HIPAA-covered entities or business associates. State law cannot grant such status because it is exclusively determined by federal HIPAA law and regulation. For

avoidance of confusion, and to prevent unintended consequences that might jeopardize HIPAA privacy rights, we ask that language be added to the proposed rules to clarify that the APCD and the Exchange are neither HIPAA-covered entities nor business associates.

Thank you in advance for your consideration of, and attention to, our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "James Iacobellis". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

James Iacobellis
Senior Vice President
Government and Regulatory Affairs

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