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March 4, 2022

The Honorable Mariannette Miller-Meeks, MD
Modernization Subcommittee
Healthy Future Task Force
US House of Representatives
1716 Longworth House Office Building
Washington, DC 20515

The Honorable Mike Kelly
Modernization Subcommittee
Healthy Future Task force
US House of Representatives
1707 Longworth House Office Building
Washington, DC 20515

The Honorable Morgan Griffith
Modernization Subcommittee
Health Future Task Force
US House of Representatives
2202 Rayburn House Office Building
Washington, DC 20515

RE: Health Future Modernization Subcommittee Request for Information

Submitted via email to Kendyl.Willox@mail.house.gov

Dear Representative Miller Meeks, Representative Kelly, and Representative Griffith:

Thank you for the opportunity to provide feedback on the utilization of wearable technologies, the expansion of telemedicine, and the digital modernization efforts in the United States' healthcare system. As our healthcare system becomes increasingly interoperable and electronic, and the ecosystem of healthcare-related devices expands, we must ensure that we proactively address issues and harness this progress to strengthen our healthcare system. We applaud your continued leadership in this area.

AHIMA is a global nonprofit association of health information (HI) professionals. AHIMA represents professionals who work with health data for more than one billion patient visits each year. AHIMA's mission of empowering people to impact health drives our members and credentialed HI professionals to ensure that health information is accurate, complete, and available to patients and clinicians. Our leaders work at the intersection of healthcare, technology, and business, and are found in data integrity and information privacy job functions worldwide. AHIMA members also bring the expertise and knowledge around health information and data that is necessary to inform investments in our healthcare system, including data modernization, patient identification and access, public health, telehealth, and privacy.

We appreciate the commitment to addressing challenges associated with modernizing our healthcare system. AHIMA offers the following feedback in response to questions posed by the Subcommittee's Request for Information.

Wearable Technologies

New wearable technologies are emerging in healthcare every day. While the opportunities are clear: greater patient access to their health information, rapid feedback on a person's health, and portability of that health information, there are challenges that must be addressed.

Privacy of consumers' health information must be tantamount, and yet many of these new wearable technologies may fall outside the regulatory framework Health Information Portability and Accountability Act (HIPAA). As a result, certain protections related to the use of a consumer's health information such as notice of privacy practices, security safeguards, and restrictions on the sale, use, and reuse of health information do not apply. To ensure privacy of consumers' health information is protected, AHIMA provides the following recommendations on wearables that are HIPAA non-covered entities:

- Data holders should implement both initial and ongoing workforce development training to educate employees engaged in the data processing of health information to ensure they are trained to perform privacy-related duties. Third parties (e.g., service providers, partners, etc.) should also be held accountable for training associated with the performance of privacy-related duties.
- Data holders should document employees' and third parties' commitment to adherence to privacy policies and procedures.
- Data holders should clearly and conspicuously communicate to consumers what information will be collected and maintained and generally how the data may be processed and disclosed.
- Data holders should be required to make their privacy policy available in plain language before the individual shares any health information. The privacy policy should contain the categories of health information that it collects, processes, maintains, and discloses; practices of the data holder including an articulated basis for the collection, processing, maintenance, and disclosure of such information; and how individuals may exercise their rights under the policy and the law. The privacy policy must also be provided to the individual via a process that is concise, clear, intelligible, and easily accessible.
- Policies, processes, and procedures should be in place for receiving, tracking, and responding to complaints, concerns, and questions from individuals about a data holder's organizational privacy policies and practices.
- Individuals must have the opportunity to clearly communicate their privacy preferences. Policies, processes, and procedures should be in place to enable an individual's privacy preferences and requests, including a reasonable mechanism to revoke consent.
- Collection, access, use, disclosure, and maintenance of health information must be limited to no more than what is reasonably necessary to accomplish the intended purpose.
- Consent to collect, access, disclose and maintain health information should be sought whereby an individual makes an informed decision to share their information and the choice is recorded and maintained. Consent should be revocable at any time.

An additional issue that must be addressed is the inconsistent rules across wearables (for instance, some are covered under HIPAA, some are not). AHIMA recommends that oversight and enforcement of

entities not covered by HIPAA should be assigned to a single federal agency, such as the FTC. Adequate resources including funding and tools, as well as a clear congressional mandate, must also be provided to ensure appropriate oversight and enforcement.

Telemedicine Expansion

We are also pleased to see the focus on telemedicine expansion by the Task Force. As the COVID-19 pandemic has made clear, telemedicine is a valuable tool for expanding access to and increasing the timeliness of healthcare visits.

AHIMA believes that a number of flexibilities created under the COVID-19 public health emergency should be made permanent. These include:

- **Removing geographic and originating site restrictions**. Policy barriers that deter patients from seeking treatment across state lines using telehealth services may lead to fragmented or delayed care. We encourage Congress to address these restrictions by striking the geographic limitation on originating sites and ensure that patients receive care where and when they need it, with appropriate protections and guardrails in place.
- **Maintaining and enhancing the authority of the US Department of Health and Human Services (HHS) to determine appropriate providers, services, and modalities for health.** Congress should provide the Secretary with the ability to expand the list of eligible practitioners who may furnish clinically appropriate telehealth services, ensure that HHS and the Centers for Medicare and Medicaid Services (CMS) maintain the authority to add or remove eligible telehealth services, and give CMS the authority to reimburse for multiple telehealth modalities, including audio-only, when clinically appropriate.
- **Ensuring Federally Qualified Health Centers, Critical Access Hospitals, and Rural Health Clinics can furnish telehealth services after the public health emergency.** To address health disparities, Congress should ensure that these healthcare settings can offer virtual services after the public health emergency and work with stakeholders to support fair and appropriate reimbursement for these key safety net providers.

We also want to highlight the issue of equitable reimbursement as it relates to telemedicine. Expanding access to care using telehealth services requires consideration of the value telehealth provides and the related cost of delivery of services, including investment in the telehealth platform and other fixed costs. There are also varying documentation requirements, coding and billing rules and guidelines, and quality measures across payers as it relates to telehealth. Such variability hinders the ability to submit consistent documentation for payment as well as the ability to analyze information in a consistent, standardized, and meaningful way across different payers. New approaches will require consistent application of documentation requirements, coding and billing rules and guidelines, and quality measures across all payers. Therefore, AHIMA recommends that Congress:

- **Ensure parity between telehealth services and in-person services**. Policy must treat remote services no differently than services provided to patients in-person in terms of the scope of services that can be provided. Policy must also ensure that reimbursement of telehealth services is commensurate with the expense of providing such services, including investment in technology related to telehealth services. Additionally, policy must ensure equivalent documentation requirements, coding and billing rules/guidelines, and quality measures are consistently applied across all payers for telehealth services.

As the RFI states, barriers still exist that keep providers from practicing across state lines. Varying state licensure requirements often limit providers and other clinical staff to practicing in the state(s) where they are licensed. New approaches may require harmonization of state laws, regulations, and policies to expand the use and implementation of telehealth. AHIMA recommends Congress look toward the successes of interstate compacts to address this issue. AHIMA also recommends that any policy must encourage interstate licensure compacts and other licensure portability policies that enable clinicians to deliver care across state lines using telehealth services.

Finally, we would encourage Congress to consider the following legislative recommendations for Health IT improvements in long-term and post-acute (LTPAC) settings:

- Authorize funding for LTPAC providers to adopt interoperable HIT with a focus on patient care and safety, including infection control and prevention
    - Direct HHS/CMS to establish a financial incentives program for LTPAC providers making the transition to interoperable EHRs and technology aimed at improving patient care and safety across the continuum, including electronic clinical surveillance technology (ECST).
- Direct funding to ONC to ensure proper bidirectional interoperability between acute care (e.g., hospitals and physicians), LTPAC providers, and other ancillary providers (e.g., therapy, pharmacy, etc.). Resources would support the implementation, use, and sustainability of interoperable EHRs and infection and electronic clinical surveillance technology (ECST):
    - Build out an interoperability verification program to include the LTPAC sector to ensure the secure cross-continuum information exchange and alignment, where necessary with acute care.
    - Develop minimum criteria that EHRs and ECST would need for LTPAC providers to receive funding support.
    - Adapt, enhance, expand and/or and implement an LTPAC Informatics & Technology Workforce Development Program to include training on and dissemination of information on best practices to integrate health information technology, including electronic health records, into LTPAC care delivery.
    - Adapt, enhance, expand and/or implement an LTPAC Technical Assistance Program—such as via health information exchanges or other entities—to support LTPAC providers in their efforts to acquire, implement, adopt, and effectively use interoperable health information technology and information exchange tools.

AHIMA thanks Representative Miller Meeks, Representative Kelly, and Representative Griffith for their leadership in strengthening our healthcare system and for the opportunity to provide feedback. We look forward to working with you to ensure a healthcare system that is prepared to handle the emerging technologies and progress we are seeing today. Should you or your staff have any additional questions or comments, please contact Kate McFadyen, Director, Government Affairs, at kate.mcfadyen@ahima.org or (202) 480-6058.

Sincerely,

Wylecia Wiggs Harris, PhD, CAE
Chief Executive Officer