

Issue Brief

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Final Interoperability And Patient Access Rules Now On Display

The U.S. Department of Health and Human Services finalized two rules that are intended to give patients “unprecedented safe, secure access to their health data.” The rules, one from the Office of the National Coordinator for Health Information Technology and the other from the Centers for Medicare & Medicaid Services, impact the Medicare and Medicaid Programs; Patient Protection and Affordable Care Act; Interoperability and Patient Access for Medicare Advantage Organization and Medicaid Managed Care Plans, State Medicaid Agencies, CHIP Agencies and CHIP Managed Care Entities, Issuers of Qualified Health Plans on the Federally facilitated Exchanges, and Health Care Providers.

Copies of the rules are available at <https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-07419.pdf> from ONC, and <https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-05050.pdf> from CMS. Both are scheduled for publication in the *Federal Register* on Friday, May 1. The effective date is 60 days after publication, or Wednesday, July 1.

COMMENT

We reported on these rules in March. However, at that time, neither rule had been forwarded to the *Federal Register* for publication.

These rule’s have been revised, in part, because of the impact of the coronavirus. The changes from our March analysis focus primarily on implementation dates.

CMS says it is extending the implementation timeline for the Admission, Discharge, Transfer notification Conditions of Participation by an additional six months. In the version of the rule displayed on March 9 on the CMS website, it stated these CoPs would be effective six months after the publication of the final rule in the Federal Register. CMS has changed this item to now be effective 12 months after the final rule is published in the Federal Register.

CMS also finalized the Patient Access API and Provider Directory API policies for Medicare Advantage, Medicaid and the Children’s Health Insurance Program, effective Jan. 1, 2021. CMS will exercise enforcement discretion for a period of six months in connection

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continued

with these two API provisions. Therefore, as a result of COVID-19, and to provide additional flexibility to payers, CMS will not enforce the new requirements under 42 CFR Parts 422, 431, 438 and 457 until July 1, 2021.

Finally, CMS finalized the Patient Access API for Qualified Health Plan issuers on the individual market Federally Facilitated Exchanges beginning with plan years beginning on or after Jan. 1, 2021. CMS will not enforce the new requirements under 45 CFR Part 156 until July 1, 2021.

*Analysis provided for MHA
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Other policies included in the final rule will be implemented and enforced on schedule.

However, the changes to the implementation dates noted above have NOT been refined in the public display copies. The date changes are from the CMS fact sheet. A copy is at <https://www.cms.gov/Regulations-and-Guidance/Guidance/Interoperability/index>

Interesting that the April 21 copy of these rules still reflect a Jan. 21, 2020, approval date by the CMS Administrator.

FINAL THOUGHTS

These rules are both long and complex. Providers need to carefully review and take actions to comply with many requirements, even if some have been delayed until July 1, 2021.

While the rules' overall intended goals are well-meaning, they do not come without a significant cost of compliance.

The government's assumptions that these changes will better help patients know more about their health care and the health care system in general appears overly optimistic.
