June 3, 2019

Donald Rucker, M.D.
National Coordinator for Health Information Technology (IT)
Office of the National Coordinator for Health Information Technology (ONC)
Department of Health and Human Services
330 C Street SW, Floor 7
Washington, DC 20201

RE: Notice of Proposed Rulemaking (NPRM): 21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program

Dear Dr. Rucker:

On behalf of the National Association of County and City Health Officials (NACCHO), I write to provide comment on the ONC NPRM: 21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program. NACCHO is the voice of the nearly 3,000 local health departments across the country. These city, county, metropolitan, district, and tribal departments work every day to protect and promote health and well-being for all people in their communities.

NACCHO appreciates the effort by the agency to mobilize health data for patients and providers. It adds powerful tools to mobilize these data that range from controls on information blocking to the HL7 Fast Healthcare Interoperability Resources application programming interface (API). These tools join the legacy of *Meaningful Use,* the ongoing *Promoting Interoperability,* and the electronic health record (EHR) certification program in striving to make electronic health data support a variety of outcomes. NACCHO submits that while there are requirements placed on public health in this regulation, there is still limited attention to, and alignment for, mobilizing data for population health needs. Local health departments have a unique role, in that they are responsible for protecting the health of all residents in their jurisdiction. Healthcare is a massive industry and powerful business which, when incentives are properly aligned, can drive major health IT activities. Public health, specifically local health departments, are dependent on government support and incentives, including regulations like this, to promote population health activities and outcomes. While local health departments have made substantial progress toward implementing their own health IT systems, limited funds for full implementation and engagement of local health departments have posed challenges in progress toward optimal interoperability among health IT systems. The promise of health IT to allow faster, most precise identification of health threats across the nation has not yet been realized. Regulations should help to advance this goal and not impede it.

NACCHO offers the following comments related to the strategy and recommendations outlined in the report.

Information Blocking of Public and Population Health Surveillance (pages 18-19, 24-26, 580-586)

Like patients and providers, public and population health continue to face obstacles in mobilizing clinical care and EHR data. Public health needs ongoing support to establish and to maintain clinical care connections that manifest the nation's health surveillance infrastructure. The Centers for Medicare and Medicaid Services and ONC have, to this point, focused principally on federal laws and on goals for patients and providers. But many of the benefits of health IT accrue in support of population health outcomes. And many of these public and population health activities are state and not federal responsibilities.

- Electronic data are necessary for health information exchange and the federal agencies need to ensure that state and local laws are now fully supported electronically. NACCHO supports local health department involvement with state and federal partners around compliance with information blocking regulations. These information blocking regulations should specifically identify failures to electronically support state laws like those that require the reporting of specific conditions. These state laws should not be menu choices for providers or optional implementations for EHR vendors. Specific language should be included in this new regulation that indicates that the failure to support state mandated reporting can be considered information blocking and subject to information blocking penalties. Local health departments stand to benefit tremendously from electronic data that is fed through health information exchanges. This information is crucial to public health surveillance activities and better enables local health departments to promote, protect, and preserve health in our communities.
- While state law-driven activities are not fully considered by these regulations, the definitions included in this NPRM are broad enough that public health agencies and systems could actually be construed as being in-scope for the penalties of these regulations as perpetuating information blocking themselves. *NACCHO strongly suggests that public health organizations and their activities related to interoperability be clearly excluded from consideration of blocking information* and urges that local health departments be included as key stakeholders for this recommendation.

Standards Advancement Process (pages 12, 21-22, 63-66, 109, 143-147, 202-216, 272-287, 570, 627-640)
ONC is proposing to permit EHR health IT developers to use new versions of standards once these new versions are identified by the ONC. Many standards, however, involve data exchange between more than one organization. Without both sides of an exchange being able to operationalize a new standard, this suggested approach will be problematic.

- EHR vendors should not implement new versions of interoperability standards that public health agencies are not yet prepared to support.
- NACCHO supports the development of a more collaborative process, that involves all appropriate participants, in determining when a new standard is ready for implementation across organizational boundaries.
- NACCHO supports the development of information systems that support bi-directional communication with clinical care facilities and local health departments.

While standards are critical to reporting data elements and streamlining data reporting, NACCHO emphasizes that harmonization should consider the needs of different programs and ensure programs perspectives are adequately represented. This can help all stakeholders determine with health departments how to better address and overcome barriers to harmonization.

U.S. Core Data for Interoperability (USCDI) (pages 63-64, 144, 266-267, 528-531)

Electronic Case Reporting and, eventually, immunizations and syndromic surveillance are targeted to be required to use the new USCDI data classes and elements as they replace the Common Clinical Data Set (CCDS).
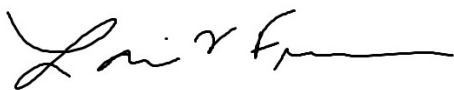
- NACCHO supports the concept of coordinated clinical data sets to align health IT programs, promote interoperability, maximize the use of extant EHR data, and minimize provider burden. The description and use of the CCDS and now the USCDI, however, has been confusing and support for the USCDI depends on clearer communications about the following:
    - ➢ There are some data in the USCDI that are not relevant to, nor appropriate for, public health programs such as electronic case reporting. In fact, these data cannot be received by state public health agencies in keeping with state laws. "Use" of any particular USCDI data element or class needs to be specified as "according to program need and applicable law."
    - ➢ There are some critical data that public health requires that are not in the USCDI and will not be for some time. Therefore, while every effort should be made to use USCDI data where possible, some additional, non-USCDI data must be recognized as being important to programs and needed in involved exchange standards as well.
    - ➢ As local health departments are integral to data collection and reporting, it is critical that national discussions and subsequent harmonization efforts take into account the perspectives of those agencies.
- Public health also needs ongoing representation on the USCDI task force or in an appropriate consensus-based standards development organization preparing the USCDI if there are expectations that public health should use its products.

Smoking status changes (page 48)
- Local health departments are commonly responsible for tobacco prevention work and are very concerned about the removal of smoking status from EMRs. Public health needs this information to be available to clinicians for patient care, as well as for surveillance and population health work. Local health departments are on the front lines working alongside clinicians to enable the health and well-being of the people they serve. Reducing tobacco and nicotine use is one of the greatest opportunities to help people live longer, healthier lives. Tobacco use remains the leading cause of preventable death in the nation.

NACCHO appreciates the efforts of the ONC to gather input on the notice of proposed rulemaking to improve the interoperability of health information. NACCHO looks forward to continuing to collaborate with ONC as a partner in this effort. If you have any questions, please contact Eli Briggs, Senior Director of Government Affairs at ebriggs@naccho.org or 202-507-4194.

Sincerely,

Lori Tremmel Freeman, MBA
Chief Executive Officer