M E M O R A N D U M

TO: Health IT Policy Committee
FROM: Sara Juster, Associate General Counsel and Privacy Officer
DATE: September 10, 2015
SUBJ: Charges/Fees to Provide Electronic Copies of Health Information

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Prefatory Comments:

Surescripts was asked to provide comments to the IT Policy Committee regarding charges/fees to provide electronic copies of health information to patients.

Please note that Surescripts is a data transmission network; we primarily transmit prescription messages between healthcare providers and pharmacies and provide medication history obtained from pharmacies and PBM's to providers. While healthcare providers, using their EMR, may be required to maintain thousands of patient records, a national network such as Surescripts maintains billions of records about several hundred million patients. None of these records are generated by Surescripts per se. The majority of patient data that we hold is generated either by a healthcare provider through their EHR, a PBM or a Pharmacy. After transmitting patient information as directed and on behalf of providers, pharmacies and PBM's, we hold it for a limited period of time for troubleshooting on the network, quality review and audit purposes.

Patient records always will exist in either the provider's EMR or at a pharmacy or PBM; requiring Surescripts to provide patients with a copy of the information about them that has been transmitted across our network basically amounts to requiring us to maintain records for the entire nation.

Request for Responses

1. Is an electronic file size an appropriate proxy for "pages" in setting fees for electronic access, or is it simply a substitute for a per-page proxy? If file size is appropriate, how should cost be calculated, particularly considering the questions below? If not, what is a better proxy for calculating labor costs for electronic access?

Response: Given the nature of services we provide, any requirement that Surescripts provide information directly to patients would be better measured by transaction or record, rather than page size or electronic file size.

2. One of the objectives of Stage 2 of the Meaningful Use EHR Incentive Program is to provide individuals the ability to view, download and transmit their health information. Therefore, should the producible form and format of the electronic copy the individual requests affect how the individual is charged? (For example, an individual downloads an electronic copy

onto a portable thumb drive or CD vs. using the download or transmit capabilities of certified EHR technology or email.) This issue may also arise when an individual uses personal health records or mobile health devices.

Response: Deviation from a standardized "form and format" should incur relevant charges that take into account the fact that developing the functionality to enable download by the individual is a capital expense incurred to build the service rather than an operational or office supplies cost.

3. If, due to interoperability issues between an EHR where the requested information is maintained, and the software used to create the copy for the individual (for example, proprietary software of a business associate which provides the electronic copy to the individual), the business associate must download the file from the EHR, and subsequently upload it to the business associate's software before generating an electronic copy for an individual, should labor costs associated with this process be charged to the individual? Why or why not? If so, how should they be calculated? Additionally, if the information is located in several different EHRs, downloaded, and uploaded to a separate software or system, should labor costs associated with this process be charged, as well – and if so, how should they be calculated?

Response: Currently, Surescripts is not in a position to retrieve records from our trading partners (i.e. an EHR) at the request of an individual. If we were to be required to retrieve data from an EHR in order to comply with an individual's request for their data, the cost should be based on a per EHR vendor and per transaction or record basis, with variation by record type. In other words, the cost should take into account that certain records are larger and more complex and may entail higher costs to retrieve and provide than does a simple eligibility or new prescription message. In addition, if a patient requests "rush service" (i.e. sooner than the thirty (30) day time frame provided in the Access Rule), additional charges should be permitted.

4. Similarly, if information from an EHR has to be printed on paper (therefore paginated) and then scanned and uploaded to a different software program used to create and/or send the copy for/to the individual, should the individual be charged, and if so, how should the cost be calculated?

Response: Scan charges should be per page.

5. Would you answer anything differently if the copy of the data from the designated record set were being transmitted to a non-HIPAA covered business associate, such as a PHR vendor compared to another HIPAA covered entity or that organization's business associate?

Response: No, unless there's a competitive risk associated with enabling the PHR to compete with us in data transmission market.