

Responses to Questions from Da Vinci Steering Committee (8/7/2020).

These responses have been provided by the Health Informatics and Interoperability Group at CMS and are based on the Interoperability and Patient Access final rule (CMS-9115-F) published on May 1, 2020. The responses reflect current information from the final rule and do not constitute new policies nor create new requirements on the public. Please feel free to share this information with other individuals and organizations to whom it may apply.

Payer to Payer 1/1/22 (reviewed 21-July-2020)

1. Are there any conditions under which the January 1, 2016 date is not applicable:
  - 1.1. If normal payer retention policies make data subsequent to January 1, 2016 not maintained by CMS definition?
  - 1.2. If data is received from another payer at enrollee request and exceeds the current payer's retention policy?

**Response:** The Interoperability and Patient Access final rule requires impacted payers to make the specified data they maintain with a date of service on or after January 1, 2016 available per patient request. The final rule defines “maintain” to mean the payer has access to the data, control over the data, and authority to make the data available through the API (85 FR 25538). We encourage each payer to look at how they maintain the data as part of the patient record to determine whether it fits within the criteria.

2. If the current payer receives information from a prior payer at member direction, is the current payer required to maintain the information in the format(s) it was received and exchange it with a subsequent payer in the same format(s)?

**Response:** Yes. An impacted payer is only required to maintain and send data received under this payer-to-payer data exchange requirement in the electronic form and format it was received. In this way, a payer would not be asked to receive paper records from another payer under this policy and then in turn share those paper records with another payer in the future at the patient's direction. If the payer received an enrollee's information via an API, the payer must share it via an API if the payer they are sending it to has the capacity to receive it (85 FR 25567).

3. If a current payer translates information received from a prior payer into FHIR resources and makes those FHIR resources available to a subsequent payer, does this meet the requirement of the rule?

**Response:** A payer is not required to translate information received under this payer-to-payer data exchange requirement to FHIR. However, a payer is not prohibited from doing so.

4. Is the current payer allowed to exchange the data received from a prior payer in the original format and any translation of any part of those data into FHIR to a subsequent payer?

**Response:** Yes. The Interoperability and Patient Access final rule only requires payers to receive and maintain data in the form and format it was received under the payer-payer exchange requirement. There is no prohibition on exchanging the data received from a prior payer in a FHIR format. We do encourage payers to consider sending and receiving these data via an API, and we did note in the final rule that we may consider for future rulemaking an API-based payer-to-payer data exchange (85 FR 25567).

5. If a covered plan maintains data derived from clinical or claims data that meets the USCDI definitions, but is solely generated by the payer, do these data need to be made available via the Patient Access API and exchanged via the Payer-to-Payer requirement?

**Response:** If a covered plan maintains USCDI data as part of an enrollee's record, those data should be made available via the Patient Access API and payer-to-payer requirements.

6. In the patient-directed exchange between a prior payer and the designated recipient payer, can the "send data requirement" be met by giving the designed recipient payer access to the API for clinical data (USCDI) that is used for enrollee designated third-party applications?
  - a) If data has been received from a prior payer in a format other than FHIR, can the data be exchange by a separate method or made available through a FHIR DocumentReference resource?
  - b) If the receiving payer utilizes the FHIR API to receive the data is the payer required to make the same information available to the enrollee (assuming they are a current enrollee of the receiving payer in a covered product) along with other USCDI information maintained by the payer.

**Response:** The Interoperability and Patient Access final rule does not specify the means by which payers conduct the exchange of electronic information between payers under the Payer-to-Payer Data Exchange. As noted above, we do encourage payers to consider leveraging an API for this data exchange. As the method of electronic data exchange is not specified, there are no specific requirements around FHIR resources. We do encourage payers to consider using those FHIR resources that will make the data most valuable to other payers and ultimately to patients over time.

- a) If data has been received from a prior payer in a format other than FHIR, the final rule requires payers to incorporate data they receive from another payer into their enrollees record. However, a payer is only required to send data received under the payer-to-payer data exchange in the electronic form and format it was received (85 FR 25567).
- b) If the receiving payer utilizes the FHIR API to receive data from another payer, they must incorporate the data they receive into the enrollee's record. As such, the payer now maintains that data, and must provide it to the enrollee, along with the other USCDI data it has and maintains, should the payer request their data via a third-party up under the Patient Access API requirement.

The final rule obligates the payer to send data received from another payer in the electronic form and format it was received, and to send the USCDI data they maintain. The Payer-to-Payer Data Exchange must take place with the approval and at the request of the enrollee.

7. Will CMS FFS participate in the exchanges defined by the CMS final rule?
  - a) Can Medicare FFS receive data from another payer at the direction of the enrollee?
  - b) Will CMS provide information received from another payer at the direction of the enrollee, along with any USCDI maintained by CMS, to another payer at the direction of the beneficiary? Will this capability exist for 5 years after the beneficiary leaves Medicare FFS?

Response: The Medicare Fee-for-Service (FFS) program, although not required under the Interoperability and Patient Access final rule, is developing the capability to receive data from other payers at the direction of the enrollee as part of its modernization initiative. Generally, Medicare FFS is working toward meeting the requirements as stated in the final rule for the benefit of its beneficiary population even though not required to do so.