



April 30, 2014

Federal Trade Commission
Office of the Secretary
Room H-113 (Annex X)
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Re: Health Care Workshop, Project No. P131207, Competitive Issues in Health IT

To Whom It May Concern:

The Advisory Board Company (ABC) appreciates the opportunity to comment on issues related to competition in health care information technology. ABC is a global research, technology, and consulting firm, with expertise in developing and implementing highly-effective health information technology (IT) tools and data analytic solutions. Our technology solutions support health care providers in analyzing administrative, financial, clinical and claims data to improve quality and efficiency at the individual provider, system, and population level. Currently, our technologies analyze data covering over half of U.S. inpatient admissions. Our Crimson platform, in particular, includes tools that help providers assess physician quality; identify gaps in patient care; stratify patients according to clinical risk; predict risk of readmissions while patients are hospitalized; engage care team members in care management; analyze and optimize physician referrals; and improve physician practice management. Given our extensive experience as a third-party vendor that interacts with health care providers and electronic health records systems on a daily basis, we would like to offer our insights on issues that are key to facilitating interoperability, data access, and innovation.

Over the past three decades, advances in information technology have spurred significant improvements in numerous sectors of the world economy. However, the American health care system is still struggling to realize the full potential of these technologies, even with the substantial increase in the adoption of electronic health records (EHR) and other advancements in recent years. In our experience, one of the most significant barriers to success is the lack of interoperability between information resources—the lack of universal and seamless data sharing across health systems, providers, and patients—that is limiting the potential of IT-enabled health care delivery. The increasing emphasis on new payment and care delivery models that drive improvements in quality and efficiencies in cost offers a renewed opportunity to advance interoperability because it places a premium on actionable information, and we encourage the FTC to ensure that anti-competitive behaviors do not inhibit the progress that is underway.

Our comments focus on two primary concerns related to the critically important interoperability between EHRs and the data analytic and consumer tools that third-party vendors develop to optimize the information contained within EHRs. First, we are concerned that some vendor market strategies and contract requirements may be used to restrict the appropriate use of data across the spectrum of care. Second, we are concerned that continued opposition to the standardization of formats for data transfer and nomenclature will impede progress in providers' ability to use data to improve clinical decision making.



Market Strategy and Contract Terms Should Not Prevent the Appropriate Flow of Valuable Health Data

Over the past few years, we have become increasingly concerned that some vendor behaviors may unduly restrict providers' ability to share essential health information efficiently, thus limiting their ability to manage and improve the care delivered to their patients. While restricting data may allow a vendor to lock in market share or deter others from entering a market, we believe this often comes at the expense of optimal patient care. It is important to note that such behavior is not necessarily widespread, although we have observed a variety of market strategies utilized to enhance the market position of specific technologies. For instance, a vendor may charge a significant "data extraction fee" that makes it costly for a provider to share information. More frequently, we see vendors utilize stringent contract terms that lock customers in to using one brand or product, making it very difficult for an organization to employ technologies outside of that relationship.

Our most significant concerns with regard to fair market competition relate to the use of unnecessary contract language that unduly restricts the appropriate flow of information between health care providers and vendors. For example, one frequently seen strategy involves contractually restricting a health care provider's ability to use data contained within an EHR. Some vendors may require that the staff of a hospital or physician office be certified before they are allowed to extract requisite patient data, such as medication lists. Obtaining certification and employing additional staff to complete these tasks can be costly and time consuming for the provider. Likewise, if a provider seeks to engage a third party to assist with extracting and using data to benefit patients, that third party may be required to sign access and use agreements containing unconscionable terms. While we certainly support the use of appropriate confidentiality and technical requirements in data use agreements, it is important that the contract requirements do not include inappropriate conditions that are not related to the protection of legitimate interests. Continued use of unreasonable contract terms could result in provider organizations that are not able to innovate and manage care to the greatest extent possible, and innovative technologies that face significant barriers to market entry and growth.

Lack of Standard Data Formats and Nomenclature Pose Barriers to Optimal Data Use

In addition to the market strategies outlined above, lack of standardization in the formatting and sharing of data also poses barriers to optimizing the value of health IT. Electronic health information offers the greatest value when it can be analyzed and transformed into useful decision making tools that can assist providers at the point of care delivery. Ready access to real-time clinical, administrative, and claims data has great potential for providers to deliver more informed and better clinical care, especially for providers seeking to improve health across their patient population (e.g. population health). However, current standards are narrow in scope and lack the ability to transport all data sources. Efforts to improve data transportation, such as through the promulgation of a standard Application Programming Interface (API), have met active opposition from some vendors for a variety of reasons, ultimately resulting in significant barriers to entry for new market competitors. The lack of a standard API coupled with unchecked market power could allow EHR vendors to restrict access to certain relevant data entirely or, at the very least, charge their customers a significant price to build and deploy new interfaces for extracting and using that data.



We consistently see examples of how the lack of standardization increases the burden for providers who are seeking to use patient information to improve care. For example, developing a workaround to obtain a primary care physician's referral order for use in scheduling a visit with a specialist can cost more than \$10,000 per practice, depending on the specific vendor. For certain vendors, this transport process is not possible even with additional interfaces. In addition to restricting data liquidity and innovation, these roadblocks harm patients. Physician referral orders are a key component of tracking provider quality, often utilized to identify poor care coordination. These intentional moves that restrict access to data for competitive reasons also restrict the opportunity to improve quality. Improved transport standards could foster a more competitive health IT environment and improve care.

Currently, there is great variation in the format and nomenclature used for clinical and other data. Without standard terminology, it is difficult for a provider to turn this data into relevant information to inform clinical practice. For example, the data in physician and nursing progress notes, which could be analyzed in aggregate for tasks like identifying the highest-risk patients, is not in standardized formats and can only be analyzed through tools like natural language processing software. Such software is expensive and even the most advanced versions lack perfect accuracy. Lack of data standardization is an even greater challenge in the ambulatory setting where relevant content, like physicians' schedules and availability and patient problem lists, is rarely available in standardized formats, making it even more challenging to analyze. Schedule information, for instance, is crucial in determining patient access bottlenecks, an important metric when managing a population. Increasing standardization of clinical data and nomenclatures allows for improved data sharing and innovation, facilitating a more competitive health IT environment.

We are pleased that the FTC is embarking on the important effort to examine potentially anti-competitive behavior within the health care sector and in the health IT market specifically. Furthermore, we encourage the FTC to utilize its oversight and enforcement authority to address anti-competitive vendor activity that directly or indirectly limits data liquidity. These oversight efforts should focus on restrictive vendor contract language and technical barriers that serve little purpose other than to protect the market position of one product or brand. Moreover, the FTC may also consider reducing anti-competitive behavior by clearly defining acceptable and unacceptable conduct by vendors. This guidance would discourage inappropriate vendor behavior and enhance the FTC's ability to pursue those organizations that are engaged in anti-competitive conduct.

Ultimately, continued care and payment transformation in both the public and private sector will be the most impactful driver of IT-enabled health care delivery. The health care sector's ability to invest in and embrace these improvements depends upon the appropriate availability of health data at a reasonable acquisition cost. As such, the ongoing work of the FTC to ensure fair market opportunities will be a cornerstone to continued health IT innovation, and we applaud the FTC's commitment to ensuring a level playing field for all of the organizations that are contributing to the advancement of health IT.

Sincerely,

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Vice President, Health Policy