ELECTRONIC MEDICAL RECORDS: COMING SOON TO A PHYSICIAN’S OFFICE NEAR YOU

By: Paul Mandelkern

Recent studies estimate that less than one-third of physicians use electronic health records (EHR) for their patients. However, the federal government believes that the use of EHR by hospitals, physicians, and other health care providers will increase patient safety, improve patient care, and in the long term cut health care costs by minimizing errors in personal health records and increasing productivity and administrative efficiency. Providing federal funding to help health care providers implement EHR is also seen as a way to stimulate the economy. Therefore, it should be no surprise that included within the “stimulus bill” that President Obama signed into law in February of 2009, was the Health and Information Technology for Economic and Clinical Health Act, commonly known as the HITECH Act, which provides financial incentives for health care providers to use EHR.

The HITECH Act uses a “carrot and stick” approach to encourage health care providers to use EHR. As the “carrot,” the HITECH Act set aside $17 billion to be used for incentive payments, in the form of enhanced Medicare reimbursements starting in 2011, to physicians and hospitals who demonstrate that they are “meaningful users” of “certified EHR technology.” However, after 2015 these payments will no longer be available, and the “stick” will be applied in the form of cuts in Medicare reimbursements to hospitals and physicians who are not “meaningful users” of “certified EHR technology.”

For physicians, the increased Medicare reimbursement will be equal to 75% of the allowable charge, and an eligible physician can earn up to a maximum of $44,000 over the five-year payment period that begins in 2011, subject to annual maximum caps starting at $18,000 in the first year and decreasing each year thereafter. For those physicians who do not meet the HITECH Act’s EHR requirements by 2015, their Medicare reimbursement will be reduced by 1% in 2015, 2% in 2016, 3% in 2017, and 3-5% in 2018 and beyond.

The HITECH Act did not include the certification standards for EHR technology nor a detailed definition of “meaningful use.” Instead, that act required the Center for Medicare and Medicaid Services (CMS), the federal agency that administers the Medicare program, to define “meaningful use” by administrative rule, and it delegated to the Office of National Coordinator for Health Information Technology (ONC) of the U.S. Department of Health and Human Services the task of developing the detailed standards for EHR certification.

On January 13, 2010, CMS published a proposed 556-page administrative rule creating three increasingly stringent “stages” of “meaningful use” criteria and establishing the specific criteria for the first of the three stages. Simultaneously, ONC published an interim administrative rule which sets standards, implementation specifications, and certification criteria for EHR technology. The interim rule was effective on February 12, 2010, while CMS’ proposed “meaningful use” rule was subject to 60 days of public comment. At the end of the comment period CMS had received 2,000 letters commenting on its proposed rule including lengthy comments from the American Hospital Association and the American Medical Association.

The first-stage “meaningful use” criteria will be in effect for 2011, and it sets forth 25 objectives and corresponding measures to enable physicians to demonstrate “meaningful use” of EHR. For each “meaningful use” objective, CMS proposes a corresponding measure that is a numeral calculation that the physician uses to demonstrate that he or she has met the objective. For example, one objective is that the physician maintain an active medical allergy list in the EHR, and the measure is that 80% of all unique patients seen by the physician have at least one medication allergy (or the indication of “none” if the patient has no medication allergies) recorded in the patient’s EHR.

Since most physicians will want to receive the additional Medicare reimbursement made possible by the HITECH Act, and very few will want to suffer the Medicare cuts that will apply in 2015, the coming months should see a rapid implementation of HITECH Act qualified EHR by those physicians who are not already EHR users.
Practice Areas

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- Duke University School of Law, J.D., 1974
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