

Presenting a live 90-minute webinar with interactive Q&A

Negotiating EHR Agreements: Complying with HIPAA, Stark and AKS, Overcoming Privacy and Security Risks

Acquiring an EHR and Meeting Incentive Program Requirements

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EHR Agreements: Acquiring an EHR and Meeting Incentive Program Requirements

**(Complying with HIPAA, Stark, and Anti-Kickback
Statutes, Overcoming Privacy and Security Risks)**



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Define the Transaction

- Hospital evaluates the provision of certified electronic health record technology (“EHR” or “CEHRT”) to employed and non-employed medical staff (Allied Professionals) as a service.
- Negotiation and acquisition of an ambulatory EHR system.
- Build and pilot ambulatory EHR to employed medical staff.
- Promotion and rollout of ambulatory EHR to Allied Professionals through a donation program.
- Governance of the shared EHR environment and management of physician expectations.



Development of an EHR Donation Program

- Subject to limitations set forth in the applicable safe harbor and exception, through 2021 hospitals can donate 85% of the cost of items and services (in the form of software and training services) necessary and used predominantly to create, maintain, transmit or receive electronic health records.
- In addition, if the donor is a not-for-profit, the donor should consider the guidance provided by the IRS to avoid the donation being treated as an impermissible private benefit or inurement.



Acquisition of an EHR and Associated Physician Office Module

EHRs are provided in a number of formats:

- Self-hosted, single database for both acute and ambulatory care.
- Self-hosted, separate databases with interfaces for acute care, ambulatory care and specialists.
- Remote-hosted, each hosted solution provided as a separate database with interface.
- A blend of any of the above.



Provision of Physician Office EHR to Allied Professionals

Does the hospital provide the EHR as a service?

or

Does the hospital provide the funding for the
EHR?



Governance of a Shared EHR Environment

- When the hospital is providing the Allied Professionals with an EHR, it becomes a service provider.
- How to set and maintain physician expectations in a world of rapidly changing regulations and developing standards of meaningful use.



Reporting of Meaningful Use of EHR System

- The hospital provisioned EHR will be the tool utilized by the Allied Professionals to make the attestation associated with being a “meaningful user” of Certified Electronic Health Record Technology.
- What does this mean and how does the hospital perform services as necessary in order to allow attestation to happen?



Acquiring the EHR





What Are You Buying?

- What are the functional requirements for your hospital (clinical and operational) and medical staff (employed and private practice), and are they defined in the Agreement?
- Does your EHR license agreement permit the resale of access and use of the EHR software to affiliates and Allied Professionals?



How Do We Know We Got It?

- Does the licensing include acceptance testing for both the acute and ambulatory care settings and a clear escalation and exit path if acceptance is not achieved?



How Do We Preserve Our Investment?

- Does the EHR license agreement properly protect the hospital from costs associated with upgrades, updates, product sunsets and an evolving regulatory landscape?
- Does the EHR license agreement meaningfully define service levels and reporting about service performance?
- Does the EHR license agreement reasonably allocate risks for compliance with law and regulatory changes?



Implementing the EHR

- Practical Solutions:
 - A few tales from the road.
 - Unexpected hurdles and how we got over them.



Ownership of Patient Information

- If the EHR is provided in multiple instances, one for each Allied Professional or practices, patient data is easily segregated.
- If patient data is maintained in a single or limited number of databases identifying the owner and extracting patient data at a time of disengagement (termination of the shared EHR relationship) can be much trickier.



Access to Patient Information

- Some configurations of a hospital hosted ambulatory EHR will impose the hospital's privacy and security policies on the access and use of the shared EHR. In these cases, the hospital will need to coordinate and educate physician office staff on the applicable policies.



Reselling the EHR to the Allied Professional

- Is the hospital and its IT staff ready to be the service provider of the main IT system of the Allied Professionals?



The EHR Services Agreement

- The hospital and physician practice must memorialize the provision of any services and any donation in writing.
- The EHR services agreement should limit the hospital's liability to only those things within the hospital's control. The exclusive remedy for the physicians should be reperformance of the services by the hospital.



Passing Through the EHR Licensor's Terms

- The Allied Professionals should receive the benefit of any warranty that can be assigned in the hospital's EHR Vendor Agreement.
- The assignment of pass through warranties should release the hospital from any further liability.



Management of the Environment

- Physician Governance Counsel.
 - Receiving physician input, without giving up control.
 - Limiting the scope of IT support, it is a Stark issue.



Pricing

- Cost
- Fair Market Value
- Pass Through Cost
- Time and Materials for Additional Work



Donation Agreements (Stark, Anti-Kickback and Tax Exempt)

13 Requirements, plus the IRS Memo's 4 Points

- Must be in writing.
- 85% of subsidy.
- Non-monetary remuneration (money should flow directly to vendor – not physician).
- Upgrades, updates, standardization can be permitted in limited circumstances.
- Tax-exempt entities must justify variations among medical staff or provide the subsidy to all medical staff on the same terms.



Standardized Workflow

- Provision of an EHR solution as a service impacts physician workflow.
- Understand, anticipate and respond to physician complaints.



Meaningful Use Incentive Payment Program Requirements





Is Your EHR Certified for Meaningful Use?

- To earn an incentive payment, you must use CEHRT.
- CERHT must be certified by the Office of the National Coordinator for Health Information Technology-Authorized Testing and Certification Body.
- CEHRT can be either “Modular” or “Complete”
- Updated CEHRT list at:
<http://oncchpl.force.com/ehrcert?q=chpl>



Is Your EHR Certified for Meaningful Use?

- Does your CEHRT cover all applicable Meaningful Use Measures?
- Be aware: ONC can “de-certify” CEHRT (April 2013)
 - *EHRMagic-Ambulatory*
 - *EHRMagic-Inpatient*
- Using multiple CEHRT’s to meet Meaningful Use
 - Remote Locations?
- Planning for updates, upgrades and beyond.



Stage 1 and Stage 2 Objectives and Beyond

- Stage 1 Requirements:
 - New Proposed Rules: 2013 vs 2014 Requirements
- Notable Objectives:
 - Protect electronic health information created or maintained by the certified EHR technology through the implementation of appropriate technical capabilities.
 - Use computerized provider order entry (CPOE) for medication orders directly entered by any licensed health care professional who can enter orders into the medical record per state, local and professional guidelines.



Stage 1 and Stage 2 Objectives and Beyond

- **Stage 2 Requirements:**
- **Notable Objectives:**
 - The Eligible Professional who transitions their patient to another setting of care or provider of care or refers their patient to another provider of care should provide summary care record for each transition of care or referral.
 - Provide patients the ability to view online, download and transmit their health information within four business days of the information being available to the Eligible Professional.



Stage 1 and Stage 2 Objectives and Beyond

- **Stage 3 Requirements (anticipated for 2017):**
- **Examples of Proposed Measures:**
 - Provide the ability to electronically submit patient-generated health information through structured or semi-structured questionnaires (e.g., screening questionnaires, intake forms, risk assessment, functional status) for more than 10% of all unique patients seen by the Eligible Professional during the EHR reporting period.
 - Eligible Professionals should make information available within 24 hours if generated during the course of a visit.
 - The Eligible Hospitals will send electronic notification of a significant health care event in a timely manner to key members of the patient's care team, such as the primary care provider, referring provider or care coordinator, with the patient's consent if required.



Challenges with Patient Portals

- Many Patient Portals are designed as a turnkey solution.
 - Privacy Policy
 - HIPAA Compliance
 - Help Desk Responsibilities
 - Designed to operate as a Shared Patient Portal



Be Prepared for a Meaningful Use Audit

- Approximately 1 in 20 Meaningful Use participants are audited.
- Audits can be performed by either CMS or State Medicaid third party auditor.
- Hospital may need to assist physician office with audit requirements.
- Do your agreements contemplate:
 - Audit Assistance
 - Audit Failure



HIPAA / Security

- The provision of an EHR as a hospital hosted service may place a great deal of control for HIPAA compliance in the hospital's hands. Consideration should be given to what hospital privacy and security policies and procedures will apply to recipients of the EHR service or if additional policies and procedures will need to be developed.



Technical Security Requirements for Physician Office End Points

- In hospital hosted model, the hospital may restrict access to only end users who comply with the applicable access policies.
- A shared database may require Allied Professional offices to adopt hospital procedures for remote login.



Business Associate Obligations

- 2013 Omnibus Final Rule
- Hospital should be able to answer the following:
 - Do hospitals' Business Associate Agreements with Vendors contemplate the Hospital functioning as a Service Provider?
 - Do Business Associate Agreements contemplate a Hosted Environment?



Access Procedures for Shared Database

- What rights does the hospital or Allied Professionals have to run reports on shared patient records?
- What rights do vendors and content providers have to run analytics on the database data?