

## Electronic Medical Records: Standard of Care? (Part 1)

**“The time has come for an electronic medical record in every group medical practice in America. Period. End of story.”<sup>1</sup>**

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Improving patient safety has been identified as one of the primary incentives for health care systems and/or providers to embrace and adopt information technology and electronic medical records. Medical providers are encouraged to implement electronic medical records/electronic health records (EMR/EHR) in their practices. There are incentives and grants through the Health Information Technology for Economic and Clinical Health (HITECH) Act of 2009 to encourage “meaningful use.”

There is no doubt that the use of EMR/EHR has increased exponentially in the last few years and that it may soon become “standard of care” for providers to rely on EMR/EHR. However, as EMR/EHR adoption increases, it is useful for practitioners to be aware of some the risks and pitfalls of adopting EMR, including:

1. The CMS requirement that providers demonstrate “meaningful use” of EMR/EHR;
2. Purchasing the right product;
3. Transitioning to EMR/EHR; and

<sup>1</sup> Donald M. Berwick, MD, MPP, President and CEO, Institute for Healthcare Improvement (IHI), [A Keynote Address at the Medical Group Management Association’s \(MGMA\) Annual Conference](#), October 6, 2004.

4. Coping with system crashes and other “technology” problems.

### **Meaningful Use<sup>2</sup>:**

The HITECH Act of 2009 established a program under Medicare and Medicaid to provide financial incentives for physicians who adopt and demonstrate “meaningful use” of certified EMR/EHR technology. This program provides incentive payments to Eligible Professionals (“EPs”) as they demonstrate adoption, implementation, upgrading and meaningful use of certified EMR/EHR technology. The programs began in 2011 and are designed to support providers during the transition to an EMR/EHR. Further, the plans are intended to improve quality, safety and efficiency in patient care.

What is “meaningful use”? EMR/EHR systems that satisfy the meaningful use criteria have specific capabilities associated with efficient and high-quality patient care. Providers have to demonstrate to CMS that they are using their EMR/EHRs in ways that can positively affect the care of their patients. To do this, providers must meet all of the objectives established by CMS for this program. If they can do that, then they will be able to demonstrate meaningful use of their EMR/EHRs and receive an incentive payment. Meaningful use can be broken down into five interrelated goals:

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<sup>2</sup> The concept of “meaningful use” will be explored in greater detail in a forthcoming article.

- Improve the quality, safety, and efficiency of care while reducing disparities;
- Engage patients and families in their care;
- Promote public and population health;
- Improve care coordination;
- Promote the privacy and security of patient information.

Like the purchase of any item or service, vendor selection for EMR/EHR can be a risk. Providers need to be careful about the EMR/EHR system they adopt. Before buying a product, medical providers should research the system to make sure it can be tailored to meet the needs of the practice or provider and that it satisfies CMS’ “meaningful use” standard.

Some providers have run into problems with their EMR/EHR systems prompting litigation. There is a class action lawsuit pending in the 11<sup>th</sup> Circuit Court of Miami-Dade County, Florida, Pain Clinic of Northwest Florida, Inc. et al. v. Allscripts Health Care Solutions, Inc. and Allscripts Healthcare, LLC, Case No.: 12-49371 CA 40, wherein the plaintiffs allege that the defendants breached their contractual obligations relating to the purchase of an EMR/EHR and its compliance with the HITECH Act. In addition, the plaintiffs complained that they were left in the lurch when, following the defendants’ decision to discontinue the sale of its product, defendants failed to address the product’s defects.

Another lawsuit, filed on behalf of a hospital pending in the United District Court for the District of Montana, Helena Division, Mountainview Medical Center v. Nextgen Healthcare Information Systems, LLC, Case No. 13-79-H-SEH, asserts that the vendor, NextGen, did not have an EMR/EHR that was certified pursuant to the standards established by CMS and that NextGen failed to comply with its contractual obligations by properly installing an EMR/EHR that met the “meaningful use” standard. Mountainview, in its complaint, demanded damages that included payments made to NextGen, lost revenues, lost federal reimbursement payments and costs associated with loss of operations. In answering the complaint, NextGen asserted a counterclaim against Mountainview alleging breach of contract and seeking damages.

These cases highlight the importance of EMR/EHR vendor selection. Providers should take care to select a vendor which has a proven history of compliance with “meaningful use” criteria and can adequately trouble shoot issues that arise in the implementation of new EMR/EHR systems.

**Transitions:**

Once a vendor has been selected and an EMR/EHR system installed, providers must turn their attention to the risks that arise during the transition from paper records to electronic records. Risks to patient safety may increase during the transition and implementation period.

Some studies have shown an increase in mortality coincident with the implementation phase of commercially sold computerized physician order entry systems (CPOE). In that regard, great care needs to be taken during the implementation period especially for those patients who are dependent on time-sensitive therapies. Han YY, Carcillo, JA et al., Unexpected Increased Mortality After Implementation of a Commercially Sold Computerized Physician Order Entry System, *Pediatrics* 2005; 116-1506-1512 (erratum); *Pediatrics* 2006; 117:594.

Transitions to EMR/EHR systems often involve hybrid workflows—wherein both paper and electronic record systems are used. Hybrid workflows have their own risks. The Pennsylvania Patient Safety Authority analyzed the types of patient safety events related to the use of hybrid medical record workflow. The most common errors made during periods of hybrid work flow were the omission and duplication of tasks, particularly delivery of medications, which obviously raises serious concerns regarding patient safety. Sparnon, Erin, Pennsylvania Patient Safety Authority, Spotlight on Electronic Health Record Errors: Paper or Electronic Hybrid Workflows, *Pennsylvania Safety Authority Reviews & Analyses*, Vol 10 (no 2), June 2013.

Given the risks associated with hybrid workflow, attention should be devoted to the challenge of quickly completing the transition from paper to electronic record keeping because lingering in the hybrid phase increases the risk of medical errors and encourages the development of record-keeping techniques that may

not be translatable once the EMR/EHR transition is complete. During the hybrid workflow phase, policies and procedures can and should be implemented with the goal of ensuring the quality and integrity of a healthcare provider's health record throughout the period of transition. It is incumbent on a system/practice "to implement a reasonable procedure during the transition period."<sup>3</sup>

**When technology fails:**

Like all technology, EMR/EHR systems can crash and/or fail. A system crash or malfunction could put patient safety at risk. Recovery plans should be in place. It is essential that all staff members are informed of the recovery plan and trained to implement it on short notice. Most recovery plans will include a provision for some form of paper charting. However, because system crashes may represent a situation where there is a hybrid workflow period, providers need to be cognizant of the risks of same and establish policies as part of a recovery plan for the incorporation of all paper records created during the technological interruption into the EMR/EHR. Scanning and late entry into the EMR/EHR should, therefore, be permissible in the event of a computer crash and/or malfunction.

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<sup>3</sup> See Smith v. United States, 119 F. Supp. 2d 561, 562 (D.S.C. 2000)(concluding that under South Carolina's common law standard of due care, hospital had the duty to implement a records delivery procedure during its transition phase that a hospital using ordinary prudence and reason would utilize under the same circumstances; hospital did not have the duty to utilize a records delivery procedure during its transition to computers that the most careful hospital would have used.)

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### **Conclusion:**

Although EMR/EHR represents an important and ultimately positive development in the practice of medicine, providers need to be informed and mindful of some of the pitfalls that arise during the purchase of and transition to EMR/EHR. In addition, providers should stay up to date as to the requirements relating to “meaningful use” to ensure that their systems are being used to their full potential, that patient safety is not being compromised and that they are complying with all federal and state requirements.

This article merely touches the surface of the many complicated issues arising as a result of the adoption of EMR/EHR. Over the next few issues of our newsletter, the healthcare group at RCFP will be delving into EMR/EHR to provide helpful advice on the implementation and use of electronic record keeping.