Use HITECH as directed

Healthcare practitioners who want to take advantage of funds made available by ARRA must focus on the transition to EHR technology now.

By Frederick Turner

The ability of American medicine to deliver high-quality care at affordable rates will depend, in part, on the ability of healthcare practitioners to incorporate high technology into their practices. One area where federal law envisions the efficiencies that accompany technology is the electronic management of medical records. This article examines the federal law which supports the funding of health information technology (HIT) and provides strategic suggestions for contracting for HIT and ultimately receiving federal funds.

On Feb. 17, 2009, President Obama signed the American Recovery and Reinvestment Act (ARRA) into law. The new law is an enormous and unprecedented initiative to stimulate the U.S. economy and simultaneously promote certain policy objectives; by now most healthcare providers are aware that among the many provisions of ARRA is a concerted effort to improve the delivery of healthcare services by promoting the meaningful use of HIT. One area of HIT that holds particular promise for both improving the quality of care and producing increased efficiencies is the use of electronic health records (EHRs).

The Health Information Technology for Economic and Clinical Health (HITECH) Act, enacted as part of ARRA, was signed into law to promote the adoption of HIT by authorizing incentive payments, through Medicare and Medicaid, to physicians and hospitals that demonstrate meaningful use of certified EHRs — provided this technology is procured and introduced in accordance with a prescribed timeline.

The pool of federal HITECH funds has, understandably, spawned an army of vendors promoting a vast array of technologies designed to fulfill the HITECH vision of integrating advanced technology into the delivery of healthcare services. But the window to qualify for the maximum incentive payments is closing and will soon expire, leaving latecomers eligible for lesser (and progressively diminishing) financial rewards and late-latecomers subject to penalties.

Many practitioners have focused on EHR as the key area of medical technology that should be part of any modern medical practice. The complexity of securing reimbursement for EHR investment, however, combined with the fixed timeline for incentive eligibility, has created an unfortunate air of urgency about selecting EHR technology. Adding to the overall uncertainty and anxiety about making a large capital investment is the undeniable fact that HITECH funding is subject to the shifting political winds that blow through Washington. This article presents a brief overview of the HITECH Act and offers healthcare providers wrestling with EHR technology options some advice: Use HITECH only as directed, and consider consulting an attorney before committing to a course of treatment.

HITECH

Only a small fraction of physicians presently use any EHR system, despite years of widespread availability and ample promotion. The reluctance to adopt is understandable: Healthcare providers are leery of incurring large setup and maintenance costs — disrupting existing, established routines — and are unsure that the financial benefits will justify the cost. HITECH is designed to break through these real and perceived fears by providing sufficient incentives — and ultimately penalties — to motivate individual practitioners and institutions to overcome inertia and skepticism and ride a great wave of adoption.

Under HITECH, eligible professionals (EP) will be eligible for up to $44,000 in reimbursements from Medicare and $65,000 from Medicaid for meaningful use of a certified EHR starting in 2011. To qualify for these payments and other incentives, an EP must comply with and follow certain regulatory criteria that define meaningful use and certified EHRs, as well as a host of other key terms. In the short space provided here, the focus will be on the timeline for Medicare practitioners seeking the maximum incentive payments under HITECH, the necessity of selecting a certified EHR provider to qualify for incentive payments and the status of the meaningful-use standards required for monetary reimbursement. Finally this article discusses some of the many pitfalls that a healthcare provider will want to avoid in contracting with an EHR provider.

Healthcare professionals with Medicare patients who meet the requirements for meaningful use of a certified EHR are eligible to receive up to 75 percent of the allowable Medicare reimbursement.

Medicare providers must act by no later than 2012 to claim the full incentive; given the lead times required to investigate and compare the many competing EHR systems, select a specific technology, install the hardware and train personnel, time
is rapidly ticking. The urgency to select EHR technology is thus understandable, but healthcare professionals must not let the deadline for incentives drive the selection process; selection of an EHR is a complex task with long-term implications.

Eligibility for incentive payments requires compliance with a deceptively simple formula: EPs that demonstrate meaningful use of certified EHR technology will be eligible to receive incentive payments of 75 percent of the provider’s annual allowable Medicare charges up to the scheduled maximum. Like many government programs, however, eligibility to claim the reward will require strict compliance with lengthy regulatory standards.

The first prerequisite, i.e., selecting a certified EHR technology, has been greatly simplified; at the time ARRA was signed into law, this, and other key terms, was undefined. In July 2010, however, the Center for Medicare and Medicaid Services (CMS) released the final rule defining standards for certified EHR systems. To qualify as certified EHR technology, a system must be tested and certified by the Office of the National Coordinator (ONC). A list of ONC-approved technologies is now available on the Web. And, for the few healthcare providers who may already be using some form of EHR technology, be advised that existing EHR systems must be certified by ONC to qualify for the Medicare and Medicaid EHR incentive programs (and ultimately to avoid penalties).

The term meaningful use was also undefined at the time ARRA was signed into law, but like many key aspects of HITECH, the regulatory agencies have since clarified what constitutes meaningful use: the use of a certified EHR in a meaningful manner, such as e-prescribing; the use of certified EHR technology for electronic exchange of health information to improve quality of healthcare; and the use of certified EHR technology to submit clinical quality and other measures. In short, meaningful use will require that providers document that they are using certified EHR technology in ways that can be measured in quality and in quantity.

The meaningful-use criteria will be developed in three steps over the course of the next five years. Stage 1 (for 2011 and 2012) sets the baseline for electronic data capture and information sharing. Meaningful use under Stage 1 requires compliance with a core set of objectives and a menu of goals. For eligible professionals, there are a total of 25 meaningful-use objectives and to qualify for an incentive payment, 20 of these 25 objectives must be met. There are 15 required core objectives, and five objectives may be chosen from a menu of 10 objectives. Stage 2 (expected to be implemented in 2013) and Stage 3 (expected to be implemented in 2015) standards for meaningful use are presently undefined, but will continue to expand on this baseline and be developed through future rule making.

Selecting EHR technology

There is a swarm of technology vendors eager to provide healthcare providers EHR-compliant technology and training. The promotion and marketing for HITECH dollars is epic and aggressive. Some EHRs utilize server-based technology and some cloud-based technology. The menu of choices spans a spectrum as vast as shopping for transportation – you can hail a cab or buy a Rolls Royce. The universe of EHR technology and the population of healthcare providers are so diverse that a meaningful comparison and summary of options is impossible. Consequently, each healthcare practice will have to undertake an individualized search to find the EHR technology that fits its specific needs. Implementation of all EHR technology does, however, share one common denominator: the absolute necessity of a contractual agreement. No matter the size of the practice or the type of technology selected, healthcare providers and EHR vendors will rely on a contract to ensure the parties’ mutual intent is fulfilled.

A carefully crafted EHR contract can prevent the most obvious pitfalls that accompany any large-scale technological transformation. A good contract will ensure that the parties’ respective expectations are fulfilled and, moreover, put a large portion of the onus of HITECH compliance on the EHR vendor, where it rightfully belongs. EHR vendors have devoted millions of dollars and countless hours studying the HITECH Act to make sure their products comply with the new law.

As soon as you begin to narrow your list of potential vendors to three or four potential candidates, ask each to give you all the standard pieces of the agreement you could be expected to sign and give these documents to your attorney for review. You will very probably not get the entire agreement at this stage because many of your specific needs have yet to be defined by the vendor, but a reputable vendor should be willing to provide the basic forms. Regardless of whether you select a software system to install on your on-site hardware, or a cloud-based system (whereby the vendor maintains the software and your data off site), it is very probable your contract will be a combination of agreements, including a license to use the vendor’s propriety software; a service agreement (to train personnel and maintain the system); sub-license(s) with various pharmaceutical and medical suppliers; a proposal outlining your specific requirements; a schedule setting forth the cost of services; and lastly a standard form setting forth the essential business terms (i.e., accounting, billing, payment, responsibility for data entry and coding, etc.) as well as the many sundry provisions that are a basic part of any business contract. A cursory, preliminary review by your attorney may uncover one or more highly objectionable terms or conditions that are non-negotiable, thus eliminating this vendor from further consideration. Alternatively, as a consumer you will have considerably more leverage negotiating key terms when a potential vendor knows he is one of several candidates under active consideration. The legal review need not be an exhaustive, comprehensive analysis of the transaction – that level of detail can await your selection of a specific vendor. But, a preliminary legal review before a final vendor is selected can highlight potentially troublesome issues that can either eliminate a vendor or lead to a successful negotiation and resolution of critical terms.

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