On July 13, 2010, the Center for Medicare and Medicaid Services (CMS) issued the final rule on electronic health record (EHR) incentive programs, which were created by the Health Information Technology for Economic and Clinical Health (HITECH) Act. With this ruling, CMS established financial incentives for providers who engage in “meaningful use of certified EHR technology,” and beginning in 2015, will impose penalties on providers who do not.

Before the HITECH Act, the enforcement of the Health Insurance Portability and Accountability Act (HIPAA) privacy and security rules had become lax. Consequently, many healthcare offices were remiss in the training, implementation, and enforcement of those rules.

With the current changes, you will not be in compliance if the HIPAA rules are not implemented in your practice, nor will you be paid your incentives under the HITECH Act, because compliance is
part of the meaningful use requirement that applies to EHR implementation. This situation could result in willful neglect and a stiff penalty for noncompliance under theHITECH Act.

Understand that you will not reach meaningful use simply by changing from paper to digital records. EHRs can only optimize their benefits when the specified objectives and structured format have been achieved and requirements have been met.

You will need to redesign and improve efficiencies in workflow to ensure that all information is being captured accurately. It is critical that doctors and hospitals make improvements where appropriate and establish that management has quantifiable actions in place to safeguard against any risks caused by breaches in privacy and security.

WHAT IS MEANINGFUL USE?

Simply stated, meaningful use is defined as the use of a certified EHR for the electronic exchange of health information to improve the quality of healthcare and to submit clinical quality-of-care data. This process includes implementing clinical decision-making to facilitate disease and medication management, and the electronic capture of information in a structured format.

The core objectives of meaningful use for physicians include the following:

- using e-prescribing,
- computerized provider order entry,
- reporting ambulatory clinical quality measures,
- recording demographics,
- maintaining an active medications list,
- providing patients with an electronic copy on request,
- implementing one clinical decision support rule,
- protecting electronic health information,
- recording and charting changes in vital signs,
- maintaining an active medication allergy list,
- providing clinical summaries for each date of service,
- recording smoking status for patients aged 13 years and older,
- maintaining a current list of active diagnoses and problems,
- having the capability to exchange key clinical information among providers of care, and
- performing drug and allergy interaction checks.

Stage one of implementation, which is to be achieved in five stages, requires completing 10 of these 15 objectives. In addition, privacy and security compliance with HIPAA is required for all stages, including the use of e-prescribing.

WHO IS ELIGIBLE FOR INCENTIVES?

Medicare defines professionals who are eligible for meaningful use incentive payments as doctors of medicine/osteopathy, chiropractors, and doctors of optometry, podiatric medicine, and dental surgery/medicine. For eligible professionals who work at multiple locations but do not have EHR technology available to them, eligibility will require that 50% of their total patient encounters take place at locations where certified EHR technology is available. All meaningful use measures will be based on encounters at locations only where certified EHR technology is available.

Medicare’s incentive for eligible physicians includes payments equal to 75% of what they bill to Medicare, up to $44,000 over 5 years starting in 2011. Medicaid defines eligible professionals as physicians, nurse practitioners, dentists, certified nurse midwives, and physician assistants.

Medicaid’s incentives for eligible physicians are payments of up to $63,750. Office-based physicians whose patient mix includes at least 30% Medicaid beneficiaries are eligible. For pediatricians, the threshold is 20%.

In addition to providing incentives to medical practices to adopt EHRs, the law includes penalties for practices that fail to use EHRs. By 2015, these incentives will be reduced by 1%; by 2016, 2%; and by 2017, 3%. For all subsequent years thereafter, they will be reduced by 3%.

DETERMINE YOUR COMPLIANCE WITH HIPAA RULES

To determine whether your office is in compliance with these new rules, take a look around. Is your
server room or local server secure? Do your legal documents meet the requirements of these regulations? Do you employ a business associate?

Another issue to consider is data security in relation to employees. Determine whether employees are using the same passwords, or no passwords, to secure their computers. Make sure that these passwords are not written down somewhere that patients or other staff members can see them, and take measures to secure your server room or local server.

Breaches of security include the inadvertent disclosure of patients’ health information to unauthorized people; the intentional disclosure of information by a past or current employee; theft by hacking or using information under a false pretense; obtaining information for personal gain and/or malicious harm; and causing financial harm by identity theft using Social Security numbers, debit and credit card information, and any other access to a patient’s financial resources.

Make sure you have a plan that addresses breaches in protected health information (PHI). Also, have a plan in place to demonstrate that you are working on the implementation of past and current regulations. Be able to document that data were not destroyed in achieving compliance.

**TRAINING PERSONNEL ON HIPAA**

Training is required for all employees who work in the healthcare industry. Federal law provides standards on privacy rules. Because these laws are ever-changing, train employees so violations do not occur.

To do this, create an outline for the training session. Include all of the requirements for compliance, and address the office policies, rules, and regulations you want to establish. Allow enough time to train all of the employees who are affected by HIPAA. Depending on staff size, you may need between 2 to 3 hours, including time for questions and answers.

Explain the consequences of disclosing PHI. Cover the history of HIPAA, the law in its current form, and how it affects your practice. To help staff members retain the material better, divide the training session into blocks, with breaks to let them absorb the information. Training should then take place at least quarterly to address any changes and re-evaluate any existing protocols.

**POWER POINTS**

Meaningful use is not achieved by merely switching from paper forms to electronic health records (EHRs). Several core objectives must be met.

In addition to providing incentives to medical practices to adopt EHRs, there are also penalties for failing to use them.

As you work to achieve compliance, be sure to document that no data were destroyed in the process.

Train staff members to ensure they do not violate privacy laws and know what steps to take to properly protect each patient’s financial data and health information.

Many practices may want to ignore the rules, but it is critical that you examine your office procedures with the understanding that the changes are mandatory. If you don’t comply, administrative, civil, and criminal penalties can be levied.

**PENALTIES FOR NONCOMPLIANCE**

Criminal penalties for noncompliance state that any employee who obtains or discloses PHI can receive a fine up to $5,000, be placed in prison for one year, or both. An employee who knowingly violates HIPAA can be imprisoned for 5 years, fined up to $100,000, or both. A person who knowingly violates HIPAA with the intent of selling PHI for commercial advantage can be imprisoned for 10 years, fined up to $250,000, or both.

Civil penalties also can be imposed for HIPAA violations. The Office of Civil Rights can assess a penalty of up to $100 for each violation on any person who violates HIPAA, with a maximum fine of $25,000 for separate incidents of the same requirement or violation.

It is important to understand the difference between willful neglect and the outright violation of these rules. If a violation takes place for reasons other than willful neglect, no penalty will be incurred if the violation is rectified within 30 days from the date the employee knew or should have known of his or her failure to comply with HIPAA.

Organizations that use available technology and maximize its efficiency will be able to capture incentives. We must embrace the concept that the healthcare industry is undergoing a digital revolution. Providers need to develop a strategic plan and embrace changes. Meaningful use will change how you operate, but ultimately, we must remember that the purpose is to improve healthcare and reduce costs. Will it work? Time will tell.

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