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Not adapting to new regulations involving health records could come with price tag

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Physicians and hospitals could receive less money from Medicare if they refuse to adopt electronic health records, said Julie Treumann, a partner at Ungaretti & Harris LLP.

The Health Information Technology for Economic and Clinical Health Act, approved in 2009, requires the Centers for Medicare & Medicaid Services to provide health-care providers with federal incentives for their meaningful use of certified electronic health record technology. After 2015, CMS plans to phase out incentives and reduce payments to providers who do not adopt EHR technology.

"In order for them to not lose that money, they're going to have to comply with requirements for meaningful use of certified electronic medical records," said Treumann, who focuses her practice in health-care transactions and corporate matters for clients in the health-care industry. "When you look deeper into what that really means, you can see how it's going to affect the way that providers are doing things."

The HITECH Act calls on health-care providers to become meaningful users of EHR by meeting an initial set of standards and certification criteria. While final rules are expected this month, Treumann said proposed rules predict possible changes in office procedures.

Health-care organizations must adhere to physician order entry, Treumann said, which means doctors must directly input at least 80 percent of health information into the electronic system.

"The chances are that they are not doing that now, because they have a staff that does it for them," she said.

Another meaningful use criterion

requires physicians and hospitals to generate and transmit at least 75 percent of their prescriptions electronically, Treumann said. Their technology must also meet the same certification standards as software used by all eligible health-care organizations, she added.

Treumann said meaningful use criterion could also change patient care.

"They have to ask every patient who's 13 or older whether they smoke," she said. "That may not be something they're doing now for a 14-year-old."

The provisions of the HITECH Act will be implemented in three stages. In stage 1, hospitals and health-care professionals must meet 23 and 25 objectives, respectively, to become meaningful EHR users. Treumann said many health-care providers have called these criteria too aggressive.

Stacey A. Cischke, a partner at Cassidy, Schade LLP, who represents physicians, dentists and health-care institutions, said EMR will ensure accuracy and portability of health-care information. For example, she said, if someone lives in Minnesota but moves to Illinois, his or her health records could be electronically transferred, rather than copied and mailed.

Cischke agreed that the HITECH Act's deadlines are "ambitious," but expects their impact to be different for every health-care provider.

"For bigger institutions, a lot are already headed that way," she said. "But if you think about smaller physician practice groups with four physicians, the mandate to go electronic is different. It's very expensive."

In addition to software, Cischke said, physicians and hospitals must pay to implement security and privacy safeguards and fund routine

maintenance.

Cischke added that health-care professionals must also train their staff on the new technology.

"For one of my clients, a major teaching hospital, that's a major undertaking," she said. "There may be 100 doctors on staff, not to mention other nurses or technicians who may make entries. It has to be good training, information that they're going to retain."

Susan E. Conner, a partner with Cassidy, Schade, said statistics show that electronic health records improve patient safety and quality of care, but agreed that their adoption could be cost-prohibitive or challenging even for health-care providers who already implemented their own versions.

"Many physicians offices have started to do this, many hospitals have done this, but we're still early in the learning curve of which program is best to allow health providers to provide care and document that care," Conner said.

Even though some physicians would rather spend time with patients rather than electronics, Cischke said, most of her clients see a benefit to EMR.

"It makes sense in the long run, and it will be worth it," she said. "I don't think anyone can dispute that it will make better healthcare more accessible."

Treumann, who's helping to initiate a health information technology subgroup at Ungaretti & Harris, said health-care attorneys can begin negotiating contracts for their clients once they receive the final rules. They will ensure that contracts contain appropriate provisions regarding meaningful user standards and certification criteria, she said, and help them receive incentive payments.