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Electronic Health Records: "Meaningful Use" in a Land Rush

The \$780 billion American Recovery and Reinvestment Act of 2009 offers cash incentives to U.S. healthcare providers for diverse activities. ARRA cash will move through the federal agency alphabet soup such as CMS, the Health Resources and Services Administration (HRSA) and the Office of National Coordinator of Health Information Technology (ONC). Potential grant recipients range from federally qualified health centers (FQHCs) to academic medical centers. Sources to track this activity include www.hhs.gov/recovery and www.grants.gov.

Amidst the many "stimuli," ARRA has spawned what some observers liken to an "Oklahoma Land Rush" to spur what may be a key lynch-pin to substantive, long-term healthcare reform: *Electronic Health Records (EHR) technology*. Will the EHR products under development and now for sale qualify for ARRA funding and meet the substantive requirements truly needed as healthcare reform proceeds? Or will many of these products go the way of the two-pound mobile telephone?

ARRA brings both carrots and sticks to the EHR stimulus table. It authorizes payments spread over five years for implementing EHR technology. The sooner the provider qualifies, the more cash it gets. Then, beginning in 2014, ARRA triggers potential reductions in Medicare and Medicaid payments to providers who are not "meaningful users" of EHR technology. HHS has created a Health IT Policy Committee (HITPC) to recommend a policy framework for the nationwide health information infrastructure. HITPC is preparing guidelines on what constitutes "meaningful use" of EHR technology. HITPC's recent draft and industry comments provide glimpses into potential standards providers may face to earn government grants for EHR.

ARRA defines "meaningful EHR user" as a healthcare professional who (i) uses certified EHR technology in a "meaningful manner;" (ii) connects EHR technology so that there can be an "electronic exchange of information;" and (iii) uses "certified EHR technology" to submit information and reports to HHS. The draft "Meaningful Use Matrix" released by HITPC adds detail to this broad and somewhat circular "definition." HITPC seems to view "meaningful use" as a dynamic term that will evolve as the EHR funding program progresses. Some of the initial "meaningful use" requirements under consideration include:

- EHR technology must fully comply with HIPAA Privacy and Security Rules
- Ability to generate and transmit permissible prescriptions electronically
- Recording vital signs including height, weight and blood pressure electronically
- Providing electronically-generated clinical patient summaries for each encounter
- Enabling communication between patient and provider in electronic format
- Exchanging key clinical information among providers of care
- Submitting electronic data to immunization registries where required and accepted

In other words, "meaningful use" will require the utilization of EHR to coordinate patient care and to report quality and reimbursement data. Also, "meaningful use" will require the holy grail of EHR, "interoperability."

As HITPC and its federal relatives continue to develop the promised regulatory framework for the funding, performance requirements and activation of "certified" EHR, providers will benefit from a few basic actions and precautions:

- Robust investigation of EHR vendors prior to contract
- Require that any purchase documentation contains adequate assurance, indemnification and/or hold-backs to ensure that the resulting purchased systems meet the "certified" and "meaningful use" standards
- Confirm that the vendor has the technological and financial capacity to indemnify the purchaser and perform necessary updates to qualify the EHR system as the standards evolve over the next few months
- Monitor developments of ONC, HITPC, HHS, CMS and HRSA at least monthly

If you would like a copy of HITPC's Meaningful Use matrix please contact us at jbwalker@Venable.com, or you can access it [here](#).

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