



New Rules and Roles for Hospital Support of Physician Practices

Gerry Hinkley

415.983.1135

gerry.hinkley@pillsburylaw.com

Overview

- Assistance with demonstrating “meaningful use” of EHR
 - EHR Donation Programs
 - Local extension centers
 - Tools to keep track of meaningful use
- Establishing practice settings
- Establishing hospitalists programs
- Sponsoring accountable care organizations (ACO)

Assisting with Demonstrating Meaningful Use

- CMS and ONC have released the initial regulations affecting the content and timing of demonstration of meaningful use to support receipt of HITECH payments to Medicare and Medicaid providers utilizing EHR technology
- What's at stake: \$44,000 for each professional provider qualifying under Medicare incentives and \$63,750 under Medicaid incentives
- Stage 1 (beginning as early as January 1, 2011 for professional providers) requirements of meaningful use include
 - capturing health information in a coded format
 - using information to track key clinical conditions and communicate for care
 - implementing clinical decision support tools
 - reporting clinical quality measures and public health information

Meaningful Use of EHR (continued)

- Specific criteria in the following functional areas
 - using CPOE
 - using e-prescribing
 - recording demographics and vital signs
 - maintaining an up-to-date problem list
 - checking insurance eligibility and submits claims electronically
 - having capability of exchanging clinical data electronically
 - implementing privacy and security capabilities
- Records and transmits clinical quality measures to CMS and State Medicaid agencies
- Provides patients with an electronic copy of their health information
- Uses certified technology
- Means to report meaningful use will come in subsequent rulemaking, but it will be by attestation – measurement will be required

How Can Hospitals Help With Meaningful Use – EHR Donation Programs

- Exceptions/safe harbors to Stark Law and under the Antikickback Statute permit donations of 100% of costs of e-prescribing technology (hardware and software) and 85% of costs of EHR technology (software only)
 - must be interoperable
 - must not be duplicative
 - can include practice management functionality
- These exceptions/safe harbors have been little used prior to HITECH
- There is now substantial interest in hospitals developing these programs

Other Ways Hospitals Can Help with Meaningful Use – Local Extension Centers

- Local extension centers
 - HITECH contains provisions for regional extension centers that will provide assistance in EHR adoption primarily to those who care for the underserved
 - Adoption and implementation of EHRs can be daunting and the amount of the HITECH incentives will only pay a part of EHR procurement and implementation
 - Local extension centers that are aimed at main-stream providers can provide technical assistance, guidance and information on best practices to support and accelerate health care providers' efforts to become meaningful users of EHRs, such as
 - Selecting a certified EHR product that offers best value for the providers' needs;
 - Achieving effective implementation of a certified EHR product;
 - Enhancing clinical and administrative workflows to optimally leverage an EHR system's potential to improve quality and value of care, including patient experience as well as outcome of care; and
 - Observing and complying with applicable legal, regulatory, professional and ethical requirements to protect the integrity, privacy and security of patients' health information.

Another Way to Help With Meaningful Use –Tools to Track and Demonstrate Meaningful Use

- Receipt of HITECH meaningful use will depend on successful demonstration to CMS for Medicare and State Medicaid agencies of the fact of meaningful use in each measurement period
- E.g., individual providers must demonstrate
 - 80% CPOE use and be practicing in settings with certified EHR availability at least 50% of the time
 - 75% of prescriptions transmitted through e-prescribing technology
 - active medications list for 80% of patients
- These requirements are additional homework for physicians
- Hospitals can assist with the creation and dissemination of tools to track meaningful use

Other Ways to Assist Physicians – Hospitals Can Create New Outpatient Practice Settings

- Physicians are challenged in the current economy with establishing traditional practice settings
- Hospitals can assist with management and back-office functions that take detract from patient care activities, tap limited resources and require skills that are not taught in medical school; provide access to benefits; staffing
- Examples include
 - Hospital-based clinics
 - Free-standing clinics
 - Medical foundations
 - Time-share arrangements
 - Hybrid care setting that bring together hospital-sponsored clinics with free-standing physician practices, ancillary services, social services

Other Ways Hospitals Can Support Physician Practices – Hospitalist Programs

- Managing inpatient care
- Around the clock availability during a hospital stay.
- Availability to answer any questions that patients and patients' families may have
- Knowledgeable about hospital services
- Working closely with the primary care physician specialists and hospital staff to coordinate medical services specific to patients' needs
- Allowing primary care physicians to have increased availability to patients' needs post-discharge

Other Ways Hospitals Can Support Physician Practices – Sponsoring ACOs

- Operated by a group of doctors and hospitals that would be paid to care for all the health needs of defined populations (elderly, chronic conditions)
- Remove the incentives to doctors to be paid more by giving more services
- Instead, doctors would be paid based on their ability to hold down overall costs and meet quality-of-care indicators: improving care, not driving more of it
- If the ACOs fail to meet certain quality and cost savings targets, the providers in the ACO would face lower payments
- ACOs would also be awarded for maintaining patient satisfaction and meeting national quality standards (e.g., hemoglobin a(1)(c) reduction)
- Health Reform will likely include pilot programs for ACOs for Medicare beneficiaries
- Private insurers and self-funded employer plans are actively involved in putting ACOs into practice

This is a publication of the Health Care Group of Pillsbury with a purpose to inform and comment upon recent developments in health law. It is not intended, nor should it be used, as a substitute for specific legal advice, as legal counsel may only be given in response to inquiries regarding particular situations.

Copyright 2009, Pillsbury Winthrop Shaw Pittman LLP (reprints with attribution permitted)