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SOPHOS

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Teleconference

Structuring Electronic Health Record Contracts to Comply with ARRA and HITECH

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Regulatory Issues

- ARRA and HITECH statutes and corresponding regulations
 - Provide funding for the purchase of EHR technology and financial incentives for becoming “meaningful users” of EHR technology
 - Stark and Anti-Kickback exceptions allow donation of EHR technology to physicians and other referral sources if the software, services and training donated are necessary and used predominately to create, maintain, transmit, and receive EHRs



EHR Incentive Plans

- Medicare:
 - Incentive payments to eligible professionals (EPs) for up to 5 years and eligible hospitals for up to 4 years
 - Reductions in reimbursement rates after 2015 to Medicare providers who do not use certified EHR technology
- Medicaid:
 - Incentive payments to EPs and hospitals in the first year EHR technology is adopted, and incentive payments for the following 5 years if meaningful use is met
 - No penalty for failure to adopt EHR technology
- EPs may participate in either Medicare or Medicaid incentive plan, but not both
- Eligible hospitals may participate in both plans



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Meaningful Use Regulations

- Interim final rule released December 30, 2009
- Stage I “meaningful use” criteria focus on:
 - Capturing information in coded, electronic format
 - Using electronically stored information to track key clinical conditions
 - Communicating electronically stored information to coordinate care
 - Reporting clinical quality measures and public health information



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Regulatory Issues

- Contract Solutions – In any EHR contract, vendor should commit to:
 - CCHIT Certification
 - Product will allow and not impair client's ability to meet meaningful use criteria
 - Cooperation with certification and attestation



Example 42 CFR Compliance Language

- Vendor warrants and covenants that the EHR Technology meets, and will meet, all of the conditions specified in 42 CFR § 1001.952(y) and 42 CFR § 411.357(w), including:
 - The Technology is necessary and used predominantly to create, maintain, transmit, or receive electronic health records
 - The Technology will be interoperable as required by 42 CFR § 1001.952(y)(2) and 42 CFR § 411.357(w)(2)
 - Vendor will not take any action to limit interoperability of the EHR Technology with other electronic prescribing or electronic health records systems



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Example 42 CFR Compliance Language (Continued)

- In determining whether to provide EHR Technology to a Practice, Vendor will not take into account the volume or value of referrals or other business generated between Client and any Practice as required by 42 CFR § 1001.952(y)(5) and 42 CFR § 411.357(w)(6);



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Example 42 CFR Compliance Language (Continued)

Vendor will immediately notify Client in writing of any Practice that, to Vendor's knowledge, has already obtained items or services equivalent to the EHR Technology

Vendor will not restrict, or take any action to limit, a Practice's right or ability to use the EHR Technology for any patient regardless of payor status

The services provided by Vendor will not include staffing of any Practice's office



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Example 42 CFR Compliance Language (Continued)

- The EHR Technology will contain electronic prescribing capability that meets certification standards for SureScripts, CCHIT, and all federal regulatory or statutory requirements for certification of electronic health record systems
- Vendor warrants that neither the EHR agreement nor the transactions contemplated by it violate any federal or state law or regulation governing billing or claims submission



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Assisting Physician Adoption

- Physician Adoption is critical to meeting meaningful use
- Some vendors are supplying a full-time MD on-site to help train and push adoption by other MDs
- Often this service is added gratis near the end of negotiations
- This type of service is also available from third-party consultants



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Latest Trends

- Clients and vendors taking less time to close deals
- Standard form contract always favors the vendor
- Longer negotiations favor the client
- Price and terms become more favorable to client in each successive negotiation round



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Before You Close

- Business Intelligence on Vendors
 - Pending litigation searches
 - Dunn & Bradstreet reports
 - Merger and acquisition activity



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Questions?

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