

## EMR Fines Test Trump Administration's Opposition to Bureaucracy

Earlier this week the Health and Human Services Office of Inspector General (OIG) released an audit report on \$6.1 billion paid to 250,000 clinicians in the incentive program for meaningful use of electronic medical records (EMRs) (1). A random sample of 100 clinicians who had received at least one incentive payment revealed that 14 of them who had had not met all meaningful use requirements as they had attested (Table 1) (1,2).

Table 1. Meaningful use deficiencies identified in 14 of 100 clinicians.

- Six clinicians couldn't provide a mandatory analysis of security risks;
- Four clinicians couldn't prove that they had generated at least one list of patients-another requirement -who had the same condition;
- Three clinicians could not provide patient encounter data to document that they had met various meaningful use measures;
- One clinician had 90-days' worth of patient encounter data when a year's worth was needed;
- One clinician did not use certified EHR technology as much as required.

The OIG recommended that the Center for Medicare and Medicaid Services recover the \$291,222 paid to the clinicians in the sample group and extrapolated the recovery to \$729 million from the remaining clinicians based on this random sample. This is about 13% of the incentives paid to clinicians for the CMS EMR program. The decision to carry out the recommendation will ultimately fall to a US Department of Health and Human Services (HHS) secretary, Tom Price MD, who has opposed government programs that created regulatory hassles for physicians.

"We would protest if they went through with this," said Robert Tennant, director of health information technology policy at the Medical Group Management Association (MGMA). "Going after folks who tried to meet arbitrary government requirements, who made a good faith effort, isn't fair" (2). Tennant said that this complexity, made worse by evolving requirements, helps explain the deficiencies listed in the OIG audit. "I'm not surprised some providers found it daunting to keep up with the changes," he said. The requirement for a security risk analysis is a problem, Tennant noted, because CMS hasn't given clinicians sufficient guidance on how to meet the requirements. "This is a real stumbling block for smaller practices," he said. "They're not security experts, they're clinicians" (2). American College of Physicians Vice President of Governmental Affairs and Medical Practice Shari Erickson said that clinicians who originally attested to meaningful use lacked clear, specific guidance on what documentation they needed for each requirement (2).

CMS incentivized using EMRs because many clinicians were reluctant to initiate EMRs in their practices because of cost and efficiency considerations. Average costs to initiate an EMR were \$163,765 for a single practitioner and \$233,298 for

a practice with five physicians (3). Reimbursement under the EMR program was about \$65,000 per provider (4). Furthermore, there was an 8% decrease in productivity after EMR initiation (3). In other words, if physicians wanted to see Medicare/Medicaid patients they were asked to use EMRs that cost them money and made them work harder.

The violations identified in the OIG audit seem fairly minor and are the type of trivial violations that the lawyers and bureaucrats seem to delight in identifying and excessively penalizing clinicians. In contrast, large health care organizations seem to go unpunished for more egregious violations. Witness the lack of action against Banner Healthcare for compromising 3.7 million medical records in 2016 (5). The average cost of data breach has been estimated at \$398 per compromised record (2). Extrapolating, Banner should be fined nearly \$1.5 billion.

Medicine is likely the most regulated industry in the US. Several of my colleagues have complained that the regulation seems more directed at them and not at the hospitals and insurance companies that seem to create most of the increase in cost and the violations. Some of the more paranoid clinicians viewed the EMR as nothing more than a tactic to gain further control of their practice and viewed Hillary Clinton as someone who would continue the onslaught on clinicians. These fines for EMR noncompliance are the first true test for the Trump administration in the area of healthcare regulation. Many of my colleagues are watching Trump and Price to see if their opposition to bureaucracy was merely lip service or has some backbone.

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### ***References***

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