New Federal Regs May Speed Health IT Adoption

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Hospitals, health plans, and other health care organizations will soon be able to assist physicians in obtaining health information technology without running afoul of federal fraud laws under regulations issued last month by the Department of Health and Human Services.

In two final regulations published in the Federal Register on August 8, the Centers for Medicare and Medicaid Services and the HHS Office of Inspector General carved out new exceptions to the Stark physician self-referral law and the federal antikickback statute. Under these new exceptions, certain health care entities will be able to donate interoperable electronic health record (EHR) software and training. And hospitals and other health care organizations will also be able to provide hardware, software, and training services that are "necessary and used solely" for electronic prescribing.

The regulations did not cap the donations to physicians for electronic prescribing technology, but the government is requiring physicians to share some of the costs of donated electronic health record technology. Under the rules, physicians will be required to pay 15% of the donor's cost of the EHR technology and services.

The regulations go into effect in early October (60 days after publication in the Federal Register). The provisions related to EHR arrangements are slated to sunset on Dec. 31, 2013.

The regulations were widely praised by physician organizations and health IT industry groups for breaking down barriers to physician adoption. But Patrick Hope, legislative counsel for the American College of Physicians, said the changes aren't likely to do a whole lot to speed physician adoption of the technologies since few hospitals will be able to afford to donate the expensive technology to physicians.

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"They are operating at the margins just as physician offices are," Mr. Hope said.

ACP officials are urging members of Congress to establish an add-on payment to the Medicare reimbursement for an office visit to help offset the ongoing costs of an electronic health record system, Mr. Hope said. While the regulations are helpful in removing some barriers, he said, an add-on payment would create a better business case for physician adoption of health IT.

The jury is still out as to what impact these regulations will have on physician adoption, said Chantal Worzala, senior associate director for policy at the American Hospital Association. Not all hospitals will have the financial resources to donate health IT services, she said, since only about a third of U.S. hospitals are profitable.

But the regulations will give hospital administrators more options. "Hospitals really should have flexibility in working with community physicians," she said.

While some health plans may be interested in offering electronic prescribing products, Ms. Worzala said, hospitals are likely to want to help physicians acquire more comprehensive EHR systems.

The relaxation of the Stark physician self-referral law and the antikickback statute is a good thing, said Dr. Steven E. Waldren, assistant director of the American Academy of Family Physicians' Center for Health Information Technology, since the changes will allow more health IT resources to flow to physicians. However, he cautioned physicians not to count on getting this support.

This type of support won't be available to all physicians and in some cases may not be appropriate, he said. For example, Dr. Waldren said that some hospital electronic health record systems are not designed for the ambulatory environment and may end up costing physicians more money in the long run. The bottom line is that physicians need to continue to do their "due diligence" in researching systems, he said.

The Medicare Modernization Act of 2003 mandated that the HHS Secretary create exemptions to allow for certain health care organizations to help furnish physician practices with electronic prescribing technology. The changes were outlined in a proposed rule issued last October.

Under the provisions related to electronic prescribing technology, hospitals can donate hardware, software, and services to members of their medical staffs; group practices can donate to physician members; and Medicare prescription drug plan sponsors and Medicare Advantage plans can donate to pharmacies and prescribing physicians. The Stark law exemption and antikickback safe harbors have slightly different definitions of who can donate the comprehensive electronic health record system software and training.

The electronic prescribing safe harbors and exemptions allow organizations to donate hardware, software, Internet connectivity, and training and support services. The provisions for electronic health records are slightly different and do not include hardware. For EHRs, organizations can donate software, which must include an electronic prescribing component. Also, organizations can donate information technology and training services, which can include Internet connectivity. ■