THE EMR CONUNDRUM: WEIGHING THE TRUE COST OF ELECTRONIC MEDICINE

Despite facing many pressures to go electronic, physicians should reflect on the true utility of EMR technology before investing or continuing with it.

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Given the ubiquitous nature of digital technology in various industries today, the gradual integration of Electronic Medical Records (EMR) into the field of medicine is hardly a surprise. When EMR technology was first introduced (and subsequently endorsed by the Federal government), the prospects were clear: We were led to believe that the technology would ensure that every patient’s medical information would be both protected and accessible to physicians across the country, enabling physicians and patients to connect easier and better, while allowing the flow of medical care to run more smoothly and efficiently.

The government invested billions in this proposition, creating the Meaningful Use program that penalizes physicians for not using an EMR. However, years later, many physicians who have purchased and implemented an EMR system now question the expediency and efficiency in the delivery of medical care that was promised. In fact, many of us in the physician community may wonder whether EMRs are not only making the healthcare system less efficient, but also compromising physicians’ ability to practice medicine freely. In fact, much of the massive expense required to purchase and implement an EMR system falls on the physician (excepting incentive dollars from the program, provided you are a “meaningful user” of an EMR, as the government defines it). Moreover, investing in an EMR company/product guarantees nothing. In fact, the market for EMRs is so volatile and there are so many factors to consider that it’s very understandable why physicians do not want to invest tens of thousands of dollars to upwards of $100,000 into what it ultimately an uncertainty.

Before taking a look at the larger picture relating to government incentives/penalties and the broader national push for increased HIT, let’s explore some of the practical uncertainties regarding EMRs.

SIZING UP THE FINANCIAL BURDEN

In a perfect world, all doctors would be using an EMR and patient records would be easily accessed from any practice, which would reduce clutter and other unnecessary paperwork. Although this is an idealistic vision, one thing it portrays accurately is the extent to which the practice of medicine will change as we know it as a result of EMRs. Taken in realistic terms, EMRs change how we enter information, how we interact with patients and staff, and even perhaps how we practice medicine. In other words, by changing how we do what we do, EMRs are changing what we do. Let’s examine this further, starting with the investment and the variety of factors we must continually assess.

When you purchase an EMR, you’re doing more than paying a six-figure sum for a product. You are entering into an agreement that’s akin to a marriage. It’s not a “set it up and let it run” type of deal. It requires constant attention and work. The upfront costs are only the beginning. Aside from the initial costs of installing the hardware, there are also many continued costs, such as upgrades and ongoing maintenance. Many of these costs are not fixed upfront, so the vendor may...
decide the financial terms of these services. You also may need to make changes within your practice that will require adjustments to your EMR interface.

Once you account for the costs, you also need to think about how your EMR vendor is structured and consider questions such as whether the company has a good business model for growth and whether it can deal with your issues in a timely way. These considerations take on added significance when you consider the type of information you are entrusting to your EMR. A patient’s medical information is the most private and sensitive kind of information, not to mention addresses and other sensitive information about you and your practice. If the likes of Sony and Target can be hacked, it stands to reason that EMR companies are just as vulnerable. Therefore, it might be worth speaking with an attorney in your state to learn about legal protocols related to EMRs, particularly when it comes to who bears responsibility for breaches unrelated to office staff human error.

Finally, it is always important to consider alternatives to your EMR and consider paths for an exit strategy if needed. Many physicians who find themselves in this unfavorable situation are hesitant to switch EMRs because of the significant investment. Many choose to “make it work,” but this can lead to decreased patient satisfaction and increased user frustration, both of which can negatively affect the flow and efficiency of a practice—exactly the things the EMR was touted to improve.

THE EFFICIENCY QUESTION

In addition to these “bigger picture” concerns, we should also consider the ways in which EMRs will change our daily routines and practicing methods. The number one question regarding the integration of EMRs into a medical practice should be whether it makes the physician and staff more efficient. Certainly, there are some immediate pros to having an electronic interface. For example, you will never have a missed chart. Despite misperceptions from patients that their histories and chart information should be available on demand, you should be able to easily track a patient’s treatment history from your own practice relatively easily. In addition, EMRs also likely reduce the number of prescription errors between practices and pharmacies, which is no doubt a plus.

But do these relatively minor benefits of using EMRs truly make physicians more efficient? From a standpoint of patient interaction, it’s hard to make the case that EMRs make us more efficient. With an EMR, there is usually so much pointing and clicking that it can create barriers in the physician-patient relationship, which may explain why my mother, who is 81, recently asked me to find her another doctor who doesn’t punch and click the computer or go down a check list. “Doesn’t anyone practice medicine anymore, or do they just look at the computer?” she asked me. By contrast, if you have an EMR and opt to do your charting after speaking with the patient, you are likely losing a great deal of time.

The alternative to this problem is to hire a scribe to handle EMR scripting while the physician carries on the examination with the patient. This has the potential to increase efficiency, but how efficient is something that requires you to hire another staff member to maximize its full potential? In addition, having another person in the room could also curtail the physician-patient relationship.

In terms of using EMRs, it’s worth pointing out that different physicians will match better with different systems. In other words, we all have very different styles of practicing medicine and therefore we will have different preferences regarding EMRs. Despite variability among platforms, the underlying reality is that every EMRs has a multitude of templates to navigate, and even when you are comfortable with the templates and operability of a system, you are still working within its confines. Thus, it reduces the patient experience to a series of commands and steps, which diminishes the art of medicine. Additionally, the only way to make for a more expedient visit is to cut and paste, which can be a tendency among residents, as I have observed in my mentoring efforts. While entering less information that may not be unique to that visit may not seem too significant on a case-by-case basis, we should be giving more serious attention to the impact this shift could have on the practice of medicine.

Another issue to consider is the sheer amount of information that must be processed when using an EMR. You may be able to customize your EMR to make it run more efficiently, but in order to comply with the government’s Meaningful Use standards, you will have to enter information that offers no relevance to the visit. Does it really matter if a patient smoked a cigarette or has elevated blood pressure if you are treating a mole? You will also encounter patients who are either resistant to offering this information or are not able or willing to participate in required patient portals.

The simple reality is that EMRs tend to have so many components that they undercut their own ability to create
efficiency. There are certainly elements of EMRs that offer some benefit, but placed in the overall context of how EMRs impact your practice, it is natural to question the promise of efficiency.

**CHART YOUR OWN COURSE**

The other source of frustration that many physicians are feeling toward EMRs relates to the Federal government’s involvement in the initiative to force physicians to go electronic. Currently, physicians who are not “meaningful users” of an EMR will see smaller returns on Medicare reimbursements. This is analogous to a car mechanic being paid less for an oil change for using another tool to get the same job done. In other words, the work is still being done, so why does the government have the right to say it’s not worth the same amount in reimbursement?

By docking a percentage of Medicare returns on physicians who do not use an EMR, the Federal government has essentially created a mandate for physicians on par with patients not having health insurance. Government officials cite the ease of access to records and data collection as their primary purpose for ramping up the initiative, but if it really was so important to the government for the healthcare community to go electronic, why isn’t it easier to achieve? And if the government's ultimate agenda is to incentivize physicians to adopt the technology, why is the burden on physicians to shoulder the financial burden and uncertainty?

Although adoption rates have fallen short of the government’s expectations, the precedent that’s been set is no less worrisome. Whether the motives behind the mandate reach Orwellian proportions is debatable; nonetheless, the mandate itself should prompt physicians to ask very serious questions about the utility of EMRs. Thus, we should weigh any penalties for not using EMRs against the laundry list of potential drawbacks of implementing a system that we aren’t fully comfortable doing. So often, we are busy trying to keep our heads above water in our professional duties that we may forget to stop and ask ourselves: Does this really make sense for my practice? Moreover, we should organize ourselves and demand that our government not insert itself into our relationships with patients.

None of this is to say that physicians should not invest in or use an EMR. These systems surely present some benefits and their utility may grow over time. But rather than responding to incentives, penalties, or apparent trends regarding the implementation of EMR technology, we should give serious consideration to the real benefit and value of this technology before investing in it or continuing to use it in practice.

We focus so much on patient satisfaction, but perhaps the best way to create satisfied patients is if physicians are themselves satisfied—that means having EMR systems that are non-obstructing, affordable, voluntary, and support our natural work flow.
As the use of EMRs continues to expand, how has the legal spectrum changed regarding their use?

The conversion from traditional paper charts to electronic medical records has ushered in a new era of opportunities and risks for medical practices. It is undeniable that EMR systems offer tremendous benefits to both practitioner and patient. While it's undeniable that EMR systems offer tremendous benefits to both practitioners and patients, these systems also pose significant liability risks if not used properly. Plaintiff's attorneys have come to understand the power of an “audit trail.” This is the data collected in the background as EMR systems are being used. Time and date stamping of entries is one example of information contained in an audit trail. In the days of paper charting, it was very difficult to demonstrate that charting did not occur contemporaneously with patient treatment. Today, audit trails reveal exactly when charting takes place. They also reveal the identity (via password login) of the creator of the chart note. While the content of a patient’s chart may be substantially similar to traditional records, the availability of information regarding the creation of the chart note and how it has been accessed subsequently has radically changed.

Can you offer a brief overview of regulations currently in place to ensure the protection of physicians and patients?

Vendors offer a variety of different features in their EMR systems to help practitioners avoid charting liability. I have some clients that do not allow a patient note/visit to remain open for more than 30 or 60 days. Now other systems provide pop-up warnings to make the practitioner aware of certain possible dangers to the patient. Systems vary but most seem to have some features to assist the physician with patient care and avoiding a liability.

To what extent are physicians liable in the event of a breach, or records not able to be accessed due to a company bankruptcy, etc?

Let me make this clear. Physicians are responsible for their patient’s medical records. It does not matter if they select a vendor that goes bankrupt. It does not matter if their system is hacked or an employee steals patient data. The medical practice is legally responsible for the integrity and maintenance of patient records. There is no blaming a third party. While the practice may have some legal rights against a business associate that has failed to properly perform, ultimately it is still legally responsible to the patient for that patient’s medical records.

Are there certain legal pitfalls regarding the use of EMRs that physicians should avoid?

I can think of at least a dozen different pitfalls that physicians fall into when using electronic medical records. The first category of mistakes has to do with cyber hygiene. I've been in many practices where passwords are taped to monitors. Other practices share passwords or have a common password for a specific computer. All of this can lead to big trouble. Another category of issues relates to the use of different electronic means to fill out a chart. Here I’m thinking of cutting and pasting and auto-fill features. A third category has to do with patients and EMR systems. Here I’m thinking about a misuse or missed opportunities with patient portals. Also, certain patients feel alienated when their provider is spending more time looking at a monitor than at them.

What kind of safeguards can physicians implement to avoid these pitfalls or other legal entanglements?

First we need to acknowledge that a chart is not just a chart. Paper charts differ significantly from electronic medical records. Physicians and staff need to be trained on significant areas of liability risk and how to avoid those. Oftentimes practices and physicians end up encountering problems because of staff misuse of electronic medical records. I think that more efforts need to be directed at having staff maintain good cyber hygiene and the risks associated with EMR use.

How do you recommend physicians become educated about the increasingly complex legal spectrum of EMRs?

I would start with the EMR software provider. That firm very well may have some training on liability avoidance features of its software. Next I would move to third party specialists that provide an educational course for physician and staff on the proper use of the risks of EMR systems. My firm, Medical Risk Institute, has a forty-five minute online educational course on this topic. Several other organizations provide education on this topic as well.