

Will Healthcare Providers Be Able to Make “Meaningful Use” of General Electric’s New Electronic Health Records System?

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Earlier this year, President Obama signed into law a comprehensive measure designed to stimulate the economy – the American Recovery and Reinvestment Act of 2009 (ARRA).¹ As part of the ARRA, the Department of Health and Human Services (HHS) and other government agencies are tasked with formulating regulations intended to assist healthcare providers implementing electronic health records (EHRs) systems, sometimes called electronic medical records (EMRs).² Hospitals, physicians, and other healthcare providers who adopt the “meaningful use” of EHRs will receive financial incentives in the form of higher Medicare and Medicaid reimbursement rates.³ However, those incentives will not be available until 2011; thus providers must absorb the upfront capital investment, cited by physicians and hospitals as the main barrier to EHR implementation.⁴ Capitalizing on the predicament, General Electric recently announced that it will provide \$100 million in interest-free loans to physicians and hospitals who invest in EHR products and services.⁵ The bold financial move by GE generated widespread buzz on healthcare and business websites in recent weeks.⁶

¹ Pub. L. No. 111-05, H.R. 1, 111th Cong. (2009) (enacted).

² There are distinct differences between the two. An electronic medical record is a record of patient health information generated by encounters at one particular physician practice; it is the physician’s own electronic record of his or her patient’s medical care. An electronic health record is a record of a patient’s long-term and aggregate health information generated by one or more encounters in any healthcare delivery setting; the EHR connects physicians with other caregivers. See Texas Med. Assoc., *Electronic Medical Record? Electronic Health Record? What’s the Difference?*, <http://www.texmed.org/Template.aspx?id=5278> (last updated Feb. 21, 2007); Houston Neal, *EHR vs EMR – What’s the Difference*, SOFTWARE ADVICE, Nov. 14, 2008, <http://www.softwareadvice.com/articles/medical/ehr-vs-emr-whats-the-difference>.

³ *Id.*; see also Centers for Medicare and Medicaid Servs., *Fact Sheets: Medicare and Medicaid Health Information Technology: Title IV of The American Recovery and Reinvestment Act*, June 16, 2009, <http://www.cms.hhs.gov/apps/media/press/factsheet.asp?Counter=3466&intNumPerPage=10&checkDate=&checkKey=&srchType=1&numDays=3500&srchOpt=0&srchData=&keywordType=All&chkNewsType=6&intPage=&showAll=&pYear=&year=&desc=&cboOrder=date>.

⁴ Reena Jana, *GE Announces Loans for Electronic Medical Records*, BUS. WEEK, June 15, 2009, http://www.businessweek.com/innovate/next/archives/2009/06/ge_announces_lo.html.

⁵ See General Elec., Press Release, *GE Launches Program to Doctors, Hospitals to Accelerate EMR Adoption; First \$100 Million of healthyimagination Commitment*, June 15, 2009, <http://www.genewcenter.com/Content/Detail.asp?ReleaseID=7003&NewsAreaID=2&MenuSearchCategoryID=>

⁶ See generally, e.g. Bernie Monegain, *Physicians, hospitals can tap into GE’s technology loans at 0 percent*, HEALTHCARE FINANCE NEWS, June 16, 2009, <http://www.healthcarefinancenews.com/news/physicians-hospitals-can-tap-ges-technology-loans-0-percent>; Joseph Goedert, *GE Jumps into the Stimulus Race*, HEALTH DATA MGT., June 15, 2009, <http://www.healthdatamanagement.com/news/stimulus-38480-1.html>; Dana Blankenhorn, *GE buying IT market share*, ZDNET HEALTHCARE, June 15, 2009, <http://healthcare.zdnet.com/?p=2352>; Marianne Kolbasuk McGee, *GE Offers Stimulus Loans To Bolster E-Medical Records*, INFO. WEEK, June 16, 2009, <http://www.informationweek.com/news/showArticle.jhtml?articleID=217900127>.

The Stimulus Simplicity Program

General Electric's Stimulus Simplicity program is a joint effort between GE Capital and GE Healthcare to ensure that EHRs are certified to meet government standards and to provide interest-free loans with deferred payments.⁷ The program is part of the company's "healthyimagination" initiative – a \$6 billion investment into the healthcare industry.⁸ The catch? Loans are available only to those healthcare providers that purchase GE's line of Centricity products and services.⁹ GE's Centricity EHR systems are primarily used by ambulatory care physicians and clinics while the company's Centricity Enterprise system assists hospitals' clinical, financial, and administrative departments.¹⁰

The company's certification that its products will meet federal requirements is not, in theory, a risky guarantee. Through a relationship with Intermountain Healthcare, which operates several hospitals in Utah, GE has ties to the federal government's Healthcare Information Technology (HIT) Policy Committee and HIT Standards Committee – the federal advisory groups working on defining "meaningful use" mentioned in the Act. How the terms are ultimately defined is critical to a determination of which physicians and healthcare providers can obtain financial incentives.

The HITECH Act of the American Recovery and Reinvestment Act of 2009

The health information technology (HIT) provisions of the ARRA are found primarily in Title IV of the Act, known as the Health Information Technology for Economic and Clinical Health Act (HITECH).¹¹ Pursuant to the HITECH Act, physicians and hospitals that implement the "meaningful use" of EHRs during calendar years 2010 to 2014 will be eligible to receive higher Medicare and Medicaid incentive payments.¹² Additionally, federal matching funds will be available to states to support administrative costs associated with the HITECH Act's provisions.¹³ Providers that do not implement EHR programs may incur financial penalties in the form of lower Medicare reimbursement rates beginning in 2015.¹⁴

⁷ General Elec. Press Release, *supra* note 5. The company notes that the program addresses the biggest barriers to EMR adoption, namely, "uncertainty around future standards and interim funding to cover the capital investment."

⁸ *Id.* GE's "healthyimagination" investments include \$3 billion for technology and R&D, \$1 billion for content aimed at consumers, and \$2 billion in finance programs like the Stimulus Simplicity loan program.

⁹ *Id.*

¹⁰ *Id.*

¹¹ See Centers for Medicare & Medicaid Servs., *Fact Sheets: Details For: Medicare and Medicaid Health Information Technology: Title IV of the American Recovery and Reinvestment Act*, June 16, 2009, <http://www.cms.hhs.gov/apps/media/press/factsheet.asp?Counter=3466&intNumPerPage>.

¹² *Id.*; see also Ron Scott, *ARRA Provides Incentives for "Meaningful Use" of Electronic Health Records*, 14:5 UPDATE ON HEALTH at *3 (May 2009).

¹³ *Id.*

¹⁴ *Id.*

Defining “Meaningful Use”

The ARRA defines the terms “meaningful use” broadly and without much detail so as to advise healthcare providers on proper implementation of EHR systems. The ARRA sets forth three broad requirements:

1. [d]emonstrating to the Secretary of Health and Human Services (HHS) that certified technology is being used “in a meaningful manner;”
2. [d]emonstrating that the technology is connected in a manner that provides for the electronic exchange of health information; and
3. [u]sing the EHR to submit clinical quality measures selected by the Secretary.¹⁵

ARRA grants the Secretary of HHS discretion to define the terms in more detail; in an effort to do exactly that, a federal advisory committee, the HIT Policy Committee, was established to investigate possible definitions for “meaningful use.”¹⁶

On June 16, 2009, the HIT Policy Committee released its initial recommendations.¹⁷ Though the 22 objectives/recommendations do not include a formal definition of “meaningful use,” they are a first step in an ongoing process.¹⁸ Most of the objectives cited by the committee cover inpatient and outpatient care, including:

- Use Computerized Provider Order Entry (CPOE) for all order types including medications;
- Generate and transmit permissible prescriptions electronically;
- Maintain an active medication/allergy list;
- Send reminders to patients (according to their preferences) for preventative and follow-up care;
- Document a progress note for each encounter;
- Provide patients with an electronic copy or electronic access to clinical information such as lab results, problem list(s), medication lists and allergies;
- Exchange key clinical information among care providers.¹⁹

In a letter to David Blumenthal, M.D., national coordinator for the HIT Policy Committee, the American Hospital Association (AHA) said the Committee’s timelines for achieving full implementation of some of the objectives was simply “not

¹⁵ See Pub. L. No. 111-05, H.R. 1, Sec. 4101(a)(2)(A), 111th Cong. (2009) (enacted); Rick Pollack, Exec. V.P. of Am. Hosp. Ass’n, Letter to David Blumenthal, Nat. Coord. for Health Info. Tech., June 26, 2009, available at <http://www.aha.org/aha/letter/2009/090626-cl-hit-meaningful-use.pdf>.

¹⁶ U.S. Dep’t of Health & Human Servs., Press Release, *Process Begins to Define “Meaningful Use” of Electronic Health Records*, June 16, 2009, <http://www.hhs.gov/news/press/2009pres/06/20090616a.html>.

¹⁷ *Id.*

¹⁸ Joseph Goedert, *First Look at “Meaningful Use,”* HEALTH DATA MGT., June 16, 2009, http://www.healthdatamanagement.com/news/meaningful_use-38487-1.html. (“This is the beginning of a conversation that will continue for some time,” said David Blumenthal).

¹⁹ *Id.*

achievable.”²⁰ Instead, the association urged the Committee and the agency tasked with drafting a proposed rule on the terms, the Centers for Medicare and Medicaid Services (CMS), to develop a “meaningful use” timeframe that begins with fewer functional requirements and extends the transition to a fully functional EHR system beyond 2015.²¹

The association agreed with the Committee that clinical documentation of patient demographics, problem lists and medication lists, discharge summaries, and lab results and other diagnostic tests were achievable functionalities by 2011, but noted that other functions such as nursing documentation assessments, electronic access by pharmacists to formularies, and medication bar coding should not be added until 2013.²²

Conclusion

The healthcare community is following the EHR “meaningful use” debate closely. With nearly \$19 billion in federal stimulus funds devoted to Medicare and Medicaid financial incentives to those physicians and healthcare providers who implement EHR systems in a meaningful manner, it is a safe bet that those providers will want to adhere to the final rule issued by CMS. A proposed rule issued by CMS may be unveiled later this year.

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<http://www.law.uh.edu/healthlaw/perspectives/homepage.asp>

²⁰ Rick Pollack, Exec. V.P. of Am. Hosp. Ass’n, Letter to David Blumenthal, Nat. Coord. for Health Info. Tech., June 26, 2009, available at <http://www.aha.org/aha/letter/2009/090626-cl-hit-meaningful-use.pdf>.

²¹ *Id.*; see also Am. Health Lawyers Ass’n, *Health Information Technology Stakeholders Comment on Draft Definition of “Meaningful Use” of EHRs*, HEALTH LAWYERS WEEKLY, July 10, 2009, <http://www.healthlawyers.org/News/Health%20Lawyers%20Weekly/Pages/2009/July%202009/July%2010%202009/SakeholdersCommentOnDraftDefinitionOfMeaningfulUseOfEHR.aspx>.

²² *Id.*