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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Docs Face Tricky Task In Patient Access E-Records Goals

By **Rachel Slajda**

Law360, New York (August 27, 2012, 8:30 PM ET) -- A federal push to give patients online access to their own medical records and their doctors will bring the health care industry a step closer to more coordinated, patient-centered care, experts say — but only if providers can overcome a litany of privacy, security and technology obstacles first.

The government issued a final rule Tuesday that laid out goals for a second stage in its initiative to promote electronic record-keeping in the health field. The plan included several so-called patient engagement objectives, which set benchmarks for patient-provider interactions.

“That’s a really big component because of everything you’re seeing in terms of health reform. You’re looking at more electronic communications so providers don’t always have to see patients” in person, said Paul DeMuro, a partner at Latham & Watkins LLP who specializes in health care informatics.

One patient engagement objective mandates that hospitals and doctors provide patients with online access to their own medical records, while another requires providers to forward summary-of-care records for referrals and transfers. Providers must also set up a secure online messaging system patients can use to communicate with their doctors electronically.

The objectives “tend to go more toward what we’re trying to do in health reform. One of the big issues is the patient-centered nature of care,” DeMuro said. “Many of these things are consistent with the development of accountable care organizations and value-based purchasing” — both of which seek to maximize value for every dollar of health care spending.

The electronic health records incentive program, created by the Health Information Technology for Economic and Clinical Health Act, will push most health care providers into electronic record-keeping over the next few years. The requirements are being put into place in three stages, in which providers must prove that they’re making increasingly “meaningful use” of the electronic records.

Providers that meet the goals get a financial incentive, in the form of a bump in their Medicare reimbursement rates. Starting in 2015, those that don’t meet the goals will see a rate reduction.

The patient engagement goals are among the most worrisome for providers, said Dianne Bourque, a member at Mintz Levin Cohn Ferris Glovsky & Popeo PC who represents hospitals and other providers.

"A lot of my providers are struggling with messaging, with issues of security and privacy when messaging secure health information," Bourque said. Providers must meet strict security requirements for health care information, which the federal government aggressively enforces, she said.

"There's a lot that has to be done to even let another provider into your health records, so to get patients in there and get them access to their electronic health records, there's a lot of thought and care and information technology that goes into that," she said. "That's one example of nothing you want to do hastily."

After complaints about the proposed rule, the Centers for Medicare and Medicaid Services tried to lessen the burden in the final rule by requiring that doctors provide secure messaging for just 5 percent of their patients, rather than 10 percent. But Bourque said meeting the standard would still be challenging.

"I think the government acknowledged there's some complexity involved," Bourque said. "But think about it. If you have the system in place, the infrastructure to allow it, [you might as well] let everybody do it. ... At the end of the day, if it's one patient or 1,000, you need the system in place."

The American Medical Association and other doctors' groups have urged CMS to make the messaging objective one of several optional "menu" objectives, rather than a required core objective. In a comment letter on the proposed rule, the AMA said that doctors shouldn't be required to use one form of communication over another; that the objective relies too much on patient compliance, which the doctors can't control; and that Medicare will not reimburse doctors for time spent on emails.

The AMA also objected to the thresholds for electronic access to medical records, urging CMS to require that providers give access to 20 percent of patients, not 50 percent, and eliminate a requirement that 10 percent of patients download or view their records. CMS did not make the requested changes.

However, others see the requirements as far from burdensome. DeMuro, who often represents integrated providers and other early adopters, said the moves are not nearly aggressive enough.

"These are baby steps in terms of trying to move the system along in the direction we want," he said. "These things are baby steps, but they are very significant because we're nowhere now [when it comes to patient involvement in care]."

The earliest providers will be required to meet Stage 2 is 2014, and providers can choose to use a three-month reporting period rather than the full year, pushing the requirements back to the fourth quarter of 2014.

--Editing by Kat Laskowski and Andrew Park.

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