

“What keeps you up at night?”

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Progress on Electronic Health Record (EHR) Standards under Economic Stimulus Act

By Scott D. Patterson

The HITECH Act, signed in February 2009 as part of the American Recovery and Reinvestment Act of 2009 (ARRA), set ambitious deadlines for the federal government to establish standards for “meaningful use” of “qualified electronic health records [EHR]” by hospitals and physicians who wish to qualify for substantial Medicare/Medicaid incentives beginning in 2011. HITECH requires the Department of Health and Human Services to issue initial EHR standards by December 31, 2009. April and May 2009 saw excellent progress on the initial stages of this standards-setting process.

- During May, HHS appointed the members of the Health Information Technology (HIT) Policy Committee and the HIT Standards Committee mandated by the statute, and both Committees held their initial meetings in mid-May. This follows the March 2009 appointment of David Blumenthal as the National Coordinator for Health Information Technology, to whom these advisory committees report. The HIT Policy Committee is to develop policy recommendations for a national health information infrastructure, while the HIT Standards Committee has the task of developing specific standards, implementation specifications, and certification criteria.

After its initial meeting on May 15, the HIT Standards Committee reported that it had formed three workgroups to tackle standards for (1) meaningful use of EHR, (2) EHR certification, and (3) electronic exchange of health information.

- On May 29, the Certification Commission for Health Information Technology (CCHIT) (www.cchit.org), a private, nonprofit organization that has been a leader in certification of health information technology, published proposed EHR certification criteria for 2009 (<http://www.cchit.org/certify/>), which have been submitted to the HIT Standards Committee for review. Given CCHIT’s preeminence in HIT certification, its close working relationship with the HIT Standards Committee, and the short amount of time available for the development of alternatives, CCHIT’s proposals will undoubtedly have a strong impact on the final EHR standards.

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The CCHIT certification criteria spell out detailed requirements for demonstration of specific product functionality in the areas of demographic and clinical health information, clinical decision support, physician order entry and electronic prescribing, health care quality information, exchange of electronic health information, security, and workflow.

In prior years, CCHIT would simply have issued its latest criteria to the HIT industry. In the new environment, CCHIT is deferring making its most recent criteria official, so that it can adapt them to the standards to be announced by the HIT Standards Committee and National Coordinator later in the year.

- The Healthcare Information Technology Standards Panel (HITSP), a public-private partnership that has been particularly active in the development and promotion of healthcare software interoperability standards, has also begun consulting actively with the HIT Standards Committee.
- Late in April, the Healthcare Information Management Systems Society, an influential healthcare IT trade group with both vendor and customer members, endorsed the use of CCHIT certification criteria and published a proposed set of definitions of “meaningful use of certified EHR technologies” by hospitals (www.himss.org/content/files/2009HIMSS_DefUseHospitals.pdf) and physician users (www.himss.org/content/files/2009HIMSS_DefUseEHRUsers.pdf).

HIMSS articulated the key criteria for “meaningful use of qualified electronic health records” as:

- Utilization of an EHR certified by CCHIT;
- Demonstrated ability to electronically exchange standardized patient summary data with clinical and administrative stakeholders;
- Demonstrated practice of electronic prescribing; and,
- Demonstrated reporting of quality and patient safety data.

HIMSS has also proposed a multi-year phase-in of increasingly stringent standards.

During the summer of 2009, the HIT Standards Committee’s workgroups will be working under intense time pressure to make their initial recommendations, possibly as early as June or July.

Saul Ewing’s lawyers will be closely monitoring developments in this area and reporting regularly to clients. If you have any question about these developments or any provisions of the HITECH Act, please feel free to contact any of the Saul Ewing attorneys listed below.

Other Saul Ewing updates on HITECH Act issues can be found at: Economic stimulus act toughens HIPAA privacy and security requirements

(http://www.saul.com/common/publications/pdf_1875.pdf)

Part 2: Economic stimulus act provides incentives to adopt electronic health records and other health information technology

(http://www.saul.com/common/publications/pdf_1877.pdf)

Federal Recovery Act provides incentives for physicians to use Electronic Health Records (“EHR”); Hospitals can still provide EHR technology to physicians

(http://www.saul.com/common/publications/pdf_1894.pdf)

Feds release guidance and proposed rulemaking for HITECH Act compliance

(http://www.saul.com/common/publications/pdf_2016.pdf)

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