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Don't Let an IT Project Crash Your Client's Practice

USEFUL TIPS FOR NEGOTIATING YOUR NEXT TECHNOLOGY VENDOR AGREEMENT

By Bruce Armon, Esq. and Evan J. Foster, Esq.

Physicians and medical practices are at the vortex of the electronic healthcare delivery system. Droids, tablets, smart phones, and other devices are changing the way society generally – and health care practitioners specifically – gather, store, and transmit useful (and sometimes not-so-useful) information.

The initiative to implement an e-system can be voluntary or spurred by government assistance. Many physicians and their practices are moving quickly to implement electronic health record systems and/or e-prescribing functionality. Many are also generally enhancing their current technology to take advantage of the incentives offered to “meaningful users” of health information technology under the Health Information Technology for Economic and Clinical Health Act (HITECH Act) or because of their participation in an Accountable Care Organization (ACO).

Selecting the wrong vendor and/or the wrong technology, however, can be a big mistake and result in cost overruns, delayed billing or reimbursement, and lost time and productivity.

To help ensure the success of your client's next IT project, and even for your own billing company, consider these dos and don'ts in evaluating and selecting the vendor and technology.

Do due diligence on the vendor and the technology

Though it may seem like common sense, many physicians and practices do little, if any, due diligence on their vendor or the technology.

At a minimum, practices should talk to others using the same vendor and technology. These conversations should include practices that are in the implementation process, those

who recently completed implementation, and those who have been using the technology for a significant period of time.

Talk to other practices of similar size, with a comparable number of locations, and within the same specialty (if applicable). Your vendor should be able to provide references.

If you are considering using specialized features or functionality, or have what you believe are a unique set of circumstances, you need to do additional homework and ask further questions. You should also do some online research and review the vendor's support forums. This information can help identify potential problems and let you better understand the vendor's proactive approach to handling customer concerns.

Do not automatically take a solution offered by an existing vendor

With the demands on your professional time, it is tempting to simply accept the proposal from your external practice consultants. Resist the urge.

Although there may be advantages and efficiencies to be gained from expanding your relationship with a current vendor, this can also backfire if the relationship turns sour.

Having all of your critical practice functions performed by one vendor makes you completely beholden to that company and creates a single point of failure should the vendor run into financial issues or otherwise go dark. Transparency in understanding the financial relationship between your practice consultant and the product(s) they recommend is important. Use the same caution and perform the same level of due diligence as you would with any third-party vendor. You should insist that the IT component be severable from the additional services provided to ensure that you can transition a portion of the services you are receiving while keeping others in place.



Don't skip acceptance testing

As technology evolves and systems become more complex, the chance of something not working correctly increases dramatically. It also becomes more difficult to troubleshoot and correct problems once they arise, which often require involvement of multiple vendors and systems.

Engage in a formal testing and acceptance process. This is especially important when it is necessary for software to exchange data with other systems or be compatible with existing software or hardware. To ensure the vendor stays committed to resolving all issues, consider holding back a portion of the payment until acceptance is achieved, or tie payment to the achievement of certain milestones.

Do demand financially backed service levels

With many vendors now offering systems delivered as "software-as-a-service" or from the "cloud," performance issues are not confined to the walls of the practice.

Connectivity to and load on the vendor's systems can all affect the day-to-day operations of the practice, and continual poor performance can reduce buy-in and confidence in the system. To address these concerns, ask the vendor to commit to or guarantee certain levels of uptime, availability, and performance of the technology or system. These are typically called *service levels*.

In addition, consider asking the vendor to provide service levels for support issues, such as time to return a phone



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call or email. In all cases, to ensure that the agreed service levels have “teeth” and are not just window dressings, practices should demand a credit of fees in the event a vendor fails to meet a service level, with multiple or repeated failures giving the practice the right to terminate.

Do have all agreements reviewed by your attorney

When you purchase a product or service, you will need to sign various agreements. You are responsible for all terms and provisions included in the documents.

In addition to the various vendor contract documents (such as software license, subscription, or service agreements), there will likely be numerous exhibits, schedules, and appendices. Caveat emptor – the devil is in the details of every single document.

Beware of vendor proposals, quotations, statements of work, or policies that include legal terms that you are told are standard. Don't assume that they don't require legal review. Be on the lookout for “moving targets,” such as terms contained on a vendor's website or vendor policies that are subject to change. Consider attaching the current version to the contract and requiring the vendor to seek your approval before it can be changed.

Regardless of what the sales team told you – whatever was on the vendor's website, in their demo, or in their RFP response – if a provision is important or meaningful, get it in writing and make it part of the contract. Part of the reason to have your attorney review the documents is that you may not know what to ask for or expect as part of the agreement. When in doubt, err on the side of over-inclusion.

Don't assume pricing is all-inclusive

It is imperative that you understand what the purchase price includes and excludes. Remember the old adage, nothing is free.

Get the total cost for the entire purchase. Understand the incremental costs if you add physicians or staff to the technology. Understand the costs if you need to delete a user because he or she is no longer employed by the group. Recognize that there may be a cost if you are switching from paper to electronic. Who will pay these costs? Is there an annual maintenance fee? Will your fees automatically increase over a period of time? Are there any caps on fees?

Do plan for the worst case

Most people do not welcome change. Changes in technology can be disruptive, frustrating, and make one question the original decision. There can be installation delays, training delays, and other technology glitches.

You will get through the process, although it may take longer than anticipated. Be sure that everyone – from the most senior physician to the most junior staff person – receives meaningful and directed training from the vendor. Delineate in the agreements how much time and resources the vendor will devote to training and follow-up questions. If you are switching from one system to another, make sure both systems are operational for a short period of time to ensure no data is lost or changed.

Do schedule patients accordingly

During the initial transition phase, it will take longer to enter the data from a patient visit. Leave ample time so physicians can accurately enter all data related to patient interactions. As physicians become more nimble with the system, there will be less down time between patients. Set realistic expectations accordingly for everyone to minimize angst and anger.

Electronic healthcare is here to stay. Getting there and staying technologically current in the most cost-efficient and least disruptive manner is a challenge and an opportunity to improve the performance and perception of the physicians and the medical practice as a whole. ■

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Bruce D. Armon, Esquire (barmon@saul.com) is a partner in Saul Ewing LLP's health care group. He assists physicians, physician groups, health care entrepreneurs, and hospitals with regulatory, corporate, and transactional matters.



Evan J. Foster, Esquire (efoster@saul.com) is an associate in Saul Ewing LLP's Healthcare Technology Contracting group. He advises physicians, physician practices, hospitals, and health systems regarding the acquisition of health information technology and related data privacy and security issues.