

## E-Health Records (EHRs) – 10 Things to Know

Advocates claim federally-certified electronic health records (EHRs) will transform health care delivery in America. However, concerns include:

### 1. Computerized medical records give government health officials easy access to private details of the confidential patient-doctor relationship.

Electronic health records (EHRs) record [everything](#).<sup>1</sup> Requiring EHRs to be interoperable across the United States (able to work together and link together) gives outsiders and strangers easy access. Outside access is authorized under federal law. Specifically, because of the federal [HIPAA](#)<sup>2</sup> “privacy rule,” [2.2 million entities](#),<sup>3</sup> including state and federal government, have access to private health records without patient consent and often without patient knowledge.

### 2. The federal government is paying \$20 billion to doctors and hospitals to buy expensive government-certified online EHR systems.

Federal incentive [payments](#)<sup>4</sup> under the 2009 [HITECH Act](#)<sup>5</sup> only cover about [a third](#)<sup>6</sup> of the EHR system costs—and none of the hidden administrative, training and other costs. Beginning January 1, 2015, physicians will be [penalized](#)<sup>7</sup> by Medicare for not using certified interoperable EHRs.

### 3. To receive federal incentive payments, doctors and hospitals must demonstrative “meaningful use” of EHRs.

“Meaningful use” (MU) of EHRs for clinicians and facilities is similar but different. Professional MU includes e-prescribing, reporting “quality measures” to the federal government, implementing one “clinical decision support rule,” maintaining active medications list, and recording “smoking status.” Stage 1 and 2 MU requirements have been issued. Proposed Stage 3 is called [“too harsh.”](#)<sup>8</sup>

### 4. EHRs interfere with the practice of medicine and have harmed patients.

EHRs have been called [“clunky,”](#)<sup>9</sup> frustrating, user-unfriendly and inefficient.” The federal mandate to use computerized medical records has led to [reduced](#)<sup>10</sup> productivity, alterations in medical decision-making, at least six [deaths](#),<sup>11</sup> 22 new medical [errors](#),<sup>12</sup> [misdiagnoses](#),<sup>13</sup> and [doubled](#)<sup>14</sup> pediatric fatality rates. Doctors are reduced to data clerks that engage less with patients.

### 5. “Patient engagement” gives individuals a false sense of control and encourages patients to feed more data into computerized systems.

The [Personal Health Record](#) (PHR)<sup>15</sup> or [collaborative](#)<sup>16</sup> health record has been [touted](#)<sup>17</sup> as giving patients access to their own data. However, the PHR is merely a subset of the EHR (over which patients have no control due to HIPAA). In addition, PHRs encourage patients to feed the system more private information. Meanwhile, technology allows off-site [monitoring](#)<sup>18</sup> and [genetic](#)<sup>19</sup> sequencing allows patient [profiling](#)<sup>20</sup> down to the DNA.

### 6. EHRs are part of a larger research agenda to statistically analyze everyone’s patient information and use the “findings” to rationalize health care rationing.

The HITECH modifications to HIPAA provide 2.2 million entities with patient data for study and [predictive](#)<sup>21</sup> analysis. Proponents claim algorithms can be created to theoretically [“see”](#)<sup>22</sup> things in the data that people cannot see and this will lead to [“cures”](#)<sup>23</sup> for cancer. Failure to do so would be blamed on insufficient data, and data withholding—including refusal to share genetic data—would be a [crime](#).<sup>24</sup>

### 7. When EHR research finds “cures,” doctors may be required to provide certain treatments or face financial penalties and prosecution.

[“Decision Support” \(DS\)](#),<sup>25</sup> standardized treatment protocols based on data and algorithms embedded in a physician’s computer, will push doctors to prescribe [one-size-fits-all treatments](#)<sup>26</sup> rather than customized care. Not using the standards could be considered [fraud, waste or abuse](#).<sup>27</sup> Doctors using DS are [less trusted](#).<sup>28</sup>

### 8. EHRs have captured the interest of investors.

Private equity [firms](#)<sup>29</sup> (the kind that only acquire companies with at least \$100 million in revenue) are [bidding](#)<sup>30</sup> on EHR companies to expand their portfolios.

### 9. Congress can act to protect patients.

Repealing HITECH, defunding it, or at least repealing the penalties it imposes for failure to use interoperable EHRs would be [effective](#)<sup>31</sup> in protecting patients.

### 10. States can act to protect individuals from harm.

Blocking a state health information exchange (HIE), refusing to connect to the NHIN, refusing a state health insurance exchange (HIX), and [not allowing](#)<sup>32</sup> state data storage or analytics would protect individuals from harm.

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<sup>2</sup> *Summary of the HIPAA Privacy Rule.* Department of Health & Human Services. <http://www.hhs.gov/ocr/privacy/hipaa/understanding/summary/index.html>

<sup>3</sup> *Modifications to the HIPAA Privacy, Security, and Enforcement Rules Under the Health Information Technology for Economic and Clinical Health Act.* Department of Health & Human Services. <https://www.federalregister.gov/articles/2010/07/14/2010-16718/modifications-to-the-hipaa-privacy-security-and-enforcement-rules-under-the-health-information>

<sup>4</sup> *Analysis of the HITECH Act's Incentives to Facilitate Adoption of Health Information Technology,*" Robert Hudock/Patricia Wagner, EpsteinBeckerGreen Health Care & Life Sciences Client Alert, 4/09.

<sup>5</sup> *HITECH Act.* CCHF. [www.cchfreedom.org/files/files/HITECH%20ACT%202009%20-%20LAW\(1\).pdf](http://www.cchfreedom.org/files/files/HITECH%20ACT%202009%20-%20LAW(1).pdf)

<sup>6</sup> *Physician Adoption of Electronic Health Record Systems: United States, 2011.* NCHS Data Brief, Centers for Disease Control and Prevention, July 2012. <http://www.cdc.gov/nchs/data/databriefs/db98.htm>

<sup>7</sup> *Special Report: Tackling population health management: It boils down to HIT.* MGMA Connexion magazine, October 2012. <http://www.mgma.com/WorkArea/DownloadAsset.aspx?id=1372070>

<sup>8</sup> *Proposed meaningful use stage 3 criticized as hasty and too strict.* American Medical News. <http://www.ama-assn.org/amednews/2013/01/28/gvl10128.htm>

<sup>9</sup> *A Major Glitch for Digitized Health-Care Records.* Wall Street Journal Online. [http://online.wsj.com/article/SB10000872396390443847404577627041964831020.html?mod=googlenews\\_wsj](http://online.wsj.com/article/SB10000872396390443847404577627041964831020.html?mod=googlenews_wsj)

<sup>10</sup> *Public comment on Stage 3 Definition of Meaningful Use of Electric Health Records.* <http://www.regulations.gov/#!documentDetail;D=HHS-OS-2012-0007-0178>

<sup>11</sup> *FDA on Health IT Adverse Consequences: 44 Reported Injuries and 6 Deaths in Two Years, Probably Just 'Tip of Iceberg'.* Health Care Renewal. [http://hcrenewal.blogspot.com/2010\\_02\\_01\\_archive.html](http://hcrenewal.blogspot.com/2010_02_01_archive.html)

<sup>12</sup> *Role of computerized physician order entry systems in facilitating medication errors.* National Center for Biotechnology Information. <http://www.ncbi.nlm.nih.gov/pubmed/15755942>

<sup>13</sup> *Electronic medical records draw frequent criticisms,* Alexi Mostrous, The Washington Post, 10/25/09.

<sup>14</sup> *Unexpected Increased Mortality After Implementation of a Commercially Sold Computerized Physician Order Entry System.* American Academy of Pediatrics. <http://pediatrics.aappublications.org/content/116/6/1506.full>

<sup>15</sup> *Personal Health Record.* Wikipedia. [http://en.wikipedia.org/wiki/Personal\\_health\\_record](http://en.wikipedia.org/wiki/Personal_health_record)

<sup>16</sup> John Moore, @john\_chilmark. Twitter. [https://twitter.com/john\\_chilmark/status/275630867739713536](https://twitter.com/john_chilmark/status/275630867739713536)

<sup>17</sup> *Blue Button Provides Access to Downloadable Personal Health Data.* Office of Science and Technology Policy. <http://www.whitehouse.gov/blog/2010/10/07/blue-button-provides-access-downloadable-personal-health-data>

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<sup>19</sup> *Healthcare Execs Must Prepare for Big Data.* InformationWeek Healthcare. <http://www.informationweek.com/healthcare/clinical-systems/healthcare-execs-must-prepare-for-big-da/240008670>

<sup>20</sup> *Visit Us at the Care Continuum Alliance's Voice on Population Health.* WebMD Health Services. <http://www.webmdhealthservices.com/blog/index.php/2012/09/27/visit-us-at-the-care-continuum-alliances-voice-on-population-health/>

<sup>21</sup> *Can Computers Predict Medical Problems? VA Thinks Maybe.* Nextgov. <http://www.nextgov.com/health/2013/01/can-computers-predict-medical-problems-va-thinks-maybe/61000/>

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<sup>23</sup> *A cure for cancer? This 'big data' startup says it can deliver.* The Washington Post. [http://articles.washingtonpost.com/2013-01-17/business/36384178\\_1\\_big-data-breast-cancer-cure-cancer](http://articles.washingtonpost.com/2013-01-17/business/36384178_1_big-data-breast-cancer-cure-cancer)

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<sup>26</sup> *Prosecutors See Medical Research as Emerging Trend in Health Care-Related Fraud.* Main Justice. <http://www.mainjustice.com/2012/11/07/prosecutors-see-medical-research-as-emerging-trend-in-health-care-related-fraud/>

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<sup>28</sup> *Clinical Decision Support a Turnoff for Patients, Says Study.* InformationWeek Healthcare. <http://www.informationweek.com/healthcare/clinical-systems/clinical-decision-support-a-turnoff-for/240147681>

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<sup>30</sup> *Allscripts Said to Get Bids from Blackstone, Carlyle.* Bloomberg. <http://www.bloomberg.com/news/2012-10-08/allscripts-said-to-get-first-round-bids-from-blackstone-carlyle.html>

<sup>31</sup> *The Effects of Sequestration on Health IT.* HIMSS Blog. <http://blog.himss.org/2011/11/23/the-effects-of-sequestration-on-health-it/>

<sup>32</sup> *Senator Stephen H. Martin of Virginia: proposed limitations on use, storage, sharing, & processing of electronic medical record data.* Health Care Renewal. <http://hcrenewal.blogspot.com/2013/01/senator-stephen-h-martin-of-virginia.html>