Why Electronic Health Records (EHRs) Should Not be Mandated

"It has been my experience, in almost six years now of using EHR, that very little actually improves patient care. It has, however, added tremendously to my overhead..." – Joseph A. Anistranski, MD[1]

In 2009, Congress mandated interoperable EHRs as part of the Health Information Technology for Economic and Clinical Health Act (HITECH). The penalty for this choice was a loss of Medicare dollars, starting with a 1% reduction in 2015 that increases to 5% in the coming years.

However the "Doc Fix" bill, H.R. 2, passed by Congress in April 2015, repealed a longstanding (never implemented) formula for paying doctors, called the SGR (Sustainable Growth Rate) and instituted two alternative payment systems. One of them, the Merit-based Incentive Payment System (MIPS) scores doctors on four items (quality, resource use, clinical improvement activities and use of an interoperable EHR). The higher the score, the lower the pay. The scoring will be arbitrary and harmful.[2]

Under MIPS, 15% of the physician's score is based on use of the EHR, and the maximum penalty for a low score (including for any doctor refusing to provide data) is a 9 percent reduction in fees.

Congress <u>should repeal</u> the EHR mandate and all interoperability and "meaningful use" requirements because:

PATIENT PRIVACY	• **Gives Patients a Choice:** Keeping both paper and electronic charts is rare and increases liability risk.[3] "Universal adoption" of EHRs means most providers will maintain records *exclusively* on EHRs, as hospitals do now. • **HIPAA Fails to Protect Privacy:** HIPAA "privacy rule" allows <u>2.2 million</u> entities, plus government agencies, access to medical records without patient consent, if they claim a need to know.[4] [5] *Computerization of patient data enables this access*. • **Peeking at Public Figures:** "As long as you're a public figure, in the public eye, whether you're a local anchor, or a politician or Kim Kardashian, it [medical information] strikes an interest."[6] "Unauthorized peeking at patient medical records remains an unsolved problem among healthcare providers, and privacy experts contend it's just in our nature to snoop."[7]
HIGH COSTS	• **MN 4-Physician Clinic:** $30,000 *annual* cost for hosted Cloud System, plus *annual* $6,500 software support fee, plus $5,000 per interface with outside EHR systems. Would cost $10,000 if they hooked up to state Health Information Exchange. Would cost about $14,000 more in first year to add a new physician – plus $2,500 a year. *(As reported to CCHF)* • **Ongoing Costs:** $200 - $700/*provider*/*month*. One time fees from $2,000 to $5,000 per provider and collection percentages in the 2% – 7% range.[8] • **Upfront Costs:** $15,000 to $70,000 per practitioner to buy and install an EHR, including hardware, software, training, chart conversion, and implementation assistance. The latter may include the services of an IT contractor, attorney, electrician, and consultant.[9] - *HealthIT.gov* • **Hook-ups:** To connect to labs, health information exchanges or the federal government: $5,000 to $50,000 per connection. "Sometimes additional fees are charged each time a doctor sends or receives data." - *Politico* [10]

EHR COST RISKS	• **Fewer Patients; More Staff:** "We used to see 32 patients a day with one tech, and now we struggle to see 24 patients a day with four techs. And we provide worse care."[11] *(Survey respondent)* • **Financial Burden:** In a 2014 national survey, nearly 70% of doctors said EHR is not worth it, 65% said EHRs resulted in financial losses, and 79% of practices of *more than* 10 physicians said it wasn't worth "the effort, resources and cost."[12] • **Price Shock:** A Maine clinic bought an EHR in 2010. The maintenance fees were $300 a month. A few months later the EHR vendor was purchased by another vendor and fees rose to $2,000 a month. After 10 months of arguing and no payments, the vendor cut access to patient data."[13]
LOSS OF SMALL CLINICS	• **Difficult:** Cost of EHR mandate risks straining "small-provider finances, forcing them under or leading them to join larger health systems."[14] (MPR) • **End of Small MN Clinics:** "Witness the almost complete disappearance of independent, local primary care clinics in the Twin Cities. (Some call the new reality "big-box care.") Rather than go out of business, small groups have no choice but to be merged into ever-larger systems with deep pockets, systems that have far different priorities and service styles than small clinics. Some patients may prefer this, but most of us probably prefer having the option of more personal care in smaller clinics." – Dr. Richard Morris, *Star Tribune* [15]
SMALLER CLINICS	• **Online Risks:** Given cost concerns, many small providers will adopt cloud-based EHRs rather than server-based in-house systems. Cloud-based EHRs are Internet-based EHRs.[16] • **Lack Time and Resources:** "Experience from the REC [Regional Extension Centers] program has shown small providers making purchasing or licensing decisions often lack the time and resources to keep up with emerging health IT trends and products."[17] - Office of National Coordinator • **Small vs. Large Practices:** "Large organizations have the resources and expertise … [and] security team to address cyber security: however, small and mid-sized health care organizations, like other small businesses, may not have these resources and may not be able to afford them."[18]
QUESTIONABLE UTILITY	• **Questions Remain:** "[T]here are questions about whether that transition [to EHRs] will actually improve the quality of life, in either a medical or economic sense." – Report to AHRQ/HealthIT.gov[19] • **No Evidence:** "We do not have any information that supports or refutes claims that a broader adoption of EHRs can save lives." – *Centers for Medicare & Medicaid Services*[20] • **Not Useful:** "A string of numbers containing demographic, laboratory, and other patient information…is not narrative. . . . That is why an ophthalmologist told me that when he gets an EHR summary, <u>he ignores it</u>: 'It does not tell me the patient's story. It does not tell me why the patient is here, what troubles the patient, and what the referring doctor wants me to do.' – Richard Reece, MD[21] *[Emphasis added.]*

PATIENT SAFETY	• **Patient Harm:** "I am unwilling to participate in the program. In my Experience, EHRs harm patients more than they help." - Jeffrey Singer, MD[22] • **Reported Incidents:** 74 of 100 closed safety investigations between August 2009 and May 2013 results from unsafe technology, such as system failures, computer glitches, false alarms or 'hidden dependencies"… Another 25 events involved unsafe use of technology such as an input error or a misinterpretation of a display.[23] • **New Risks:** "EHRs introduce new kinds of risks into an already complex health care environment where both technical and social factors must be considered. … As health IT adoption spreads and becomes a critical component of organization infrastructure, the potential for health IT-related harm will likely increase…"[24] - *The Joint Commission*
DATA SECURITY	• **Breaches Common:** "About 90 percent of health care organizations reported they have had at least one data breach over the last two years."[25] "Healthcare accounted for almost half of 2014 client breaches."[26] • **'Wall of Shame' Grows:** "The US Department of Health and Human Services' (HHS) 'wall of shame' listings of large-scale health IT data breaches passed the 1,000 mark . . . That number doesn't include the 116,000 breaches involving the records of fewer that 500 individuals."[27]
INTERNET-ACCESSIBLE	• **All Patients at Risk:** As health IT systems have become increasingly connected to each other, cyber threats have concurrently increased at a significant rate. In an interoperable, interconnected health system, an intrusion in one system could allow intrusions in multiple other systems." – *Office of the National Coordinator for Health IT*[28] • **Everything is Connected:** "The architecture [of national EHR system] should be based on loosely coupled systems that leverage the core building blocks that have allowed the Internet to scale…The architecture will … create a loose coupling of heterogeneous systems."[29] [Report at HealthIT.gov]
LIABILITY COSTS	• **Outside Sharing:** "Providers are concerned about increased liability risk when they exchange health information outside their walls…."[30] • **Liable Even if Not at Fault:** "EHRs are full of legal risks." Health care providers can be held liable for system bugs, breaches, password loss, and other problems specific to EHRs.[31] • **Fraud and Abuse:** EHRs can result in "serious unintended consequences" that "endanger patient safety or decrease the quality of care" and also "may increase fraud and abuse and can have serious legal implications."[32]

PHYSICIANS SPEAK:

"Healthcare used to be about patient, nurses, and doctors. Now it's about insurers, lawyers, and – most recently – IT people. Doctors' records take so much longer just to read because there's so much boilerplate garbage on them to justify coding levels. You will not stop fraud and abuse by punishing hardworking doctors. You will only drive us crazy, or into early retirement." – Fred Marks, MD[33]

"In the good old days, I could pick up a chart from the rack outside the door, and in what seems life [sic] a few seconds, familiarize myself with my patient's history…before opening the door to greet her.

During the visit, I could sit with the chart in my lap, jotting down notes as we spoke, my focus on my patient and my thoughts rather than a user interface. … My chart was there, sure, but it was not the dominant presence in the encounter the way the EMR is now." – Margaret Polaneczky, MD[34]

"I have never had an emergency need to see records of what a distressed psychiatric patient said to another provider." – Deborah Pollak Boughton, MD[35]

ENDNOTES

[1] McBride, Michael, "Measuring EHR pain points: High cost, poor functionality outweigh benefits, ease of access," Medical Economics, February 10, 2014. http://medicaleconomics.modernmedicine.com/medical-economics/content/tags/ehr/measuring-ehr-pain-points-high-cost-poor-functionality-outweigh-b?page=full
[2] Sullivan, Kip, JD, "MIPS' 'composite performance score' for doctors will be worse than useless," Kip Sullivan, PNHP blog, April 12, 2015. http://pnhp.org/blog/2015/04/12/mips-composite-performance-score-for-doctors-will-be-worse-than-useless/
[3] Fleeter, T. & Sohn, D. H. "Potential Liability Risks of Electronic Health Records," *AAOS* Now, August 2012. http://www.aaos.org/news/aaosnow/aug12/managing9.asp
[4] "Proposed Changes to Privacy Rule Won't Ensure Privacy," *Health Freedom Watch*, September 2010. http://www.forhealthfreedom.org/Newsletter/September2010.html
[5] "Modifications to the HIPAA Privacy, Security, and Enforcement Rules Under the Health Information Technology for Economic and Clinical Health Act," Notice of Proposed Rulemaking, 45 CFR Parts 160 and 164, Office for Civil Rights, U.S. Department of Health and Human Services, *Federal Register*, Vol. 75, No. 134, July 14, 2010. https://www.federalregister.gov/articles/2010/07/14/2010-16718/modifications-to-the-hipaa-privacy-security-and-enforcement-rules-under-the-health-information
[6] Conn, J. "Medical Record Breaches Following Kardashian Birth Reveal Ongoing Issue," *Modern Healthcare*, July 15, 2013. http://www.modernhealthcare.com/article/20130715/NEWS/307159957
[7] Conn, J. "Medical Record Breaches Following Kardashian Birth Reveal Ongoing Issue," *Modern Healthcare*, July 15, 2013. http://www.modernhealthcare.com/article/20130715/NEWS/307159957
[8] Medved, JP. "What Does EMR Software Cost? Capterra Medical Software Blog, Capterra, February 27, 2014. http://blog.capterra.com/emr-software-cost/
[9] HealthIT.gov, "How much is this going to cost me?" http://www.healthit.gov/providers-professionals/faqs/how-much-going-cost-me
[10] Allen, Arthur. "Sticker shock: Doctors say transfer fees are blocking health reform," POLITICO Pro, February 19, 2015. https://www.politicopro.com/story/healthcare/?id=43918
[11] "Physician outcry on EHR functionality, cost will shake the health information technology sector," Daniel R. Verdon, Medical Economics, February 10, 2014. http://medicaleconomics.modernmedicine.com/medical-economics/content/tags/ehr/physician-outcry-ehr-functionality-cost-will-shake-health-informa?page=full
[12] Verdon, D. R. "Physician Outcry on EHR Functionality, Cost Will Shake the Health Information Technology Sector," *Medical Economics*, February 10, 2014. http://medicaleconomics.modernmedicine.com/medical-economics/content/tags/ehr/physician-outcry-ehr-functionality-cost-will-shake-health-informa?page=full
[13] Noteboom, M. R. "EHRs: First, Do No Harm," *HL 7 Standards*, October 21, 2014. http://www.hl7standards.com/blog/2014/10/21/ehrs-first-do-no-harm/
[14] Vogel, J. "Electronic records mandate strains rural hospitals," *MPRNews*, June 20, 2011. http://www.mprnews.org/story/2011/06/20/ground-level-rural-health-care-electronic-medical-records
[15] Morris, R. "Electronic Health Records Could Hurt Small Clinics," *Star Tribune*, March 26, 2015. http://www.startribune.com/opinion/commentaries/297724711.html
[16] "Whitepaper: Hosted vs. On-premise EHRs – Making an Informed Decision," *BEI*, August 2011. http://www.beinetworks.com/Whitepaper_HostedvsOnPremiseEHR.php
[17] "Connecting Health and Care for the Nation," Office of the National Coordinator for Health Information Technology," February 1, 2015, p. 38. http://www.slideshare.net/dgsweigert/health-care-interoperability-roadmap-released-by-hhs-onc
[18] "Connecting Health and Care for the Nation," Office of the National Coordinator for Health Information Technology," February 1, 2015, p. 55. http://www.slideshare.net/dgsweigert/health-care-interoperability-roadmap-released-by-hhs-onc
[19] "A Robust Health Data Infrastructure," prepared by JASON, The MITRE Corporation for Agency for Healthcare Research and Quality," AHRQ Publication No. 14-0041-EF, April 2014, p. 1. http://healthit.gov/sites/default/files/ptp13-700hhs_white.pdf
[20] "Followup to "CMS does not have . . ." *Health Care Renewal*, April 26, 2014. http://hcrenewal.blogspot.com/2014/04/followup-to-cms-does-not-have-any.html
[21] Reece, R. "Why Doctors Don't Like Electronic Health Records," *MIT Technology Review*, September 27, 2011 http://www.technologyreview.com/news/425550/why-doctors-dont-like-electronic-health-records/
[22] Singer, J. A. "ObamaCare's Electronic-Records Debacle," *Wall Street Journal*, February 16, 2015. http://www.wsj.com/articles/jeffrey-a-singer-obamacares-electronic-records-debacle-1424133213
[23] Rice, Sabriya. "Complicated, confusing EHRs pose serious patient safety threats," Modern Healthcare, June 20, 2014. http://www.modernhealthcare.com/article/20140620/NEWS/306209940
[24] "Safe use of health information technology," Sentinel Event Alert, The Joint Commission, Issue 54, March 31, 2015. http://www.jointcommission.org/assets/1/18/SEA_54.pdf
[25] Abelson, R. & Creswell, J. "Data Breach at Anthem May Forecast a Trend," *New York Times*, February 6, 2015. http://www.nytimes.com/2015/02/07/business/data-breach-at-anthem-may-lead-to-others.html?_r=2
[26] Kern, C. "Healthcare Accounted for Almost Half of 2014 Client Breaches," *Health IT Outcomes*, March 12, 2015. http://www.healthitoutcomes.com/doc/healthcare-accounted-almost-half-client-breaches-0001
[27] "Health Data Breaches Affect 31.7 Million," *PTinMotion News*, June 17, 2014. http://www.apta.org/PTinMotion/NewsNow/2014/6/17/HealthITBreaches/
[28] "Connecting Health and Care for the Nation," Office of the National Coordinator for Health Information Technology," February 1, 2015, p. 55. http://www.slideshare.net/dgsweigert/health-care-interoperability-roadmap-released-by-hhs-onc
[29] "Final Report," JASON Report Task Force, October 15, 2014. http://www.healthit.gov/facas/sites/faca/files/Joint_HIT_JTF%20Final%20Report%20v2_2014-10-15.pdf
[30] "Connecting Health and Care for the Nation," Office of the National Coordinator for Health Information Technology," February 1, 2015, p. 38 http://www.slideshare.net/dgsweigert/health-care-interoperability-roadmap-released-by-hhs-onc
[31] Chesanow, N. "8 Malpractice Dangers in Your EHR," *EMR Industry Information & Intelligence*, August 27, 2014 http://www.emrindustry.com/aug-27-8-malpractice-dangers-in-your-ehr/
[32] Bowman, S. "Impact of Electronic Health Record Systems on Information Integrity: Quality and Safety Implications," *Perspectives in Health Information Management*, Fall 2013. http://perspectives.ahima.org/impact-of-electronic-health-record-systems-on-information-integrity-quality-and-safety-implications/ -.VSq7LCgso0s
[33] McBride, Michael, "Measuring EHR pain points: High cost, poor functionality outweigh benefits, ease of access," Medical Economics, February 10, 2014. http://medicaleconomics.modernmedicine.com/medical-economics/content/tags/ehr/measuring-ehr-pain-points-high-cost-poor-functionality-outweigh-b?page=full
[34] Polaneczky, Margaret (MD). "Restoring Office Workflows to the EMR: Or How I Restored Patient Face Time and got Back the Joy in Medicine," The Health Care Blog. http://thehealthcareblog.com/blog/2012/01/17/how-i-restored-patient-face-time-got-back-the-joy-in-medicine/
[35] Pollak Boughton, Deborah (MD). "As health records go modern in Minnesota, a hitch." Star Tribune (Commentary), February 24, 2015. http://www.startribune.com/opinion/commentaries/293933691.html