



E-HEALTH SUBSIDIES: NOT JUST FOR PHYSICIANS ANYMORE

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By now, most people are familiar with the available subsidies for physicians and hospitals that incorporate electronic health record systems and electronic prescribing systems (respectively "EHR" and "e-prescribing") into their practices. (If you are not, you can check out our articles on those topics [here](#), [here](#), [here](#) and [here](#)). Long Term Care (LTC) facilities, however, have been left out of the government's federal incentives when it came to the adoption of E-health. The recent Patient Protection and Affordable Care Act (PPACA) now brings them into the fold.

Subtitle H of PPACA enacts the Elder Justice Act (EJA) of 2009, as part of title XX of the Social Security Act. The EJA changes many features of the existing elder care legal landscape. This article focuses on Section 2041 of EJA (found in section 6703 of PPACA), which specifically authorizes the Secretary of the Department of Health and Human Services (the Secretary) to "make grants to long-term care facilities for the purpose of assisting such entities in offsetting the costs related to purchasing, leasing, developing, and implementing certified EHR technology...." The act also directs the Secretary to adopt "electronic standards for the exchange of clinical data" by long term care facilities (LTCs) and to develop procedures to accept the electronic submission of data by LTCs (within the next ten years).

The EJA does not provide a timeline for the Secretary to issue regulations implementing this new grant program. It does, however, set aside twenty million dollars to be used for the above mentioned purposes in 2011, with declining amounts each year thereafter through 2014. To qualify for subsidies, LTCs will need to submit an application to the Secretary "at such time, in such manner, and containing such information as the Secretary may require...." In other words, LTCs will not know what they need to do, or precisely how much funding is available, until the Secretary promulgates implementing regulations.

The law does, however, provide the Secretary with certain guidelines as to her as-yet unpublished regulations. LTCs, for instance, will be required to use "certified" EHR technology. PPACA defines "certified" with reference to the use of that term in the Health Information Technology for Economic and Clinical Health (HITECH) Act. Receiving a subsidy under HITECH requires "meaningful use" of a "certified" EHR, and both terms were recently defined in proposed regulations issued by the Secretary. Those regulations have not yet been finalized and were hotly contested by several industry groups. PPACA's use of that definition means that LTCs now also have a reason to follow and perhaps even involve themselves in the coming debates regarding EHR certification standards and "meaningful use."

LTCs will also need to become acquainted with their state's or region's Health Information Exchange (HIE) or regional health information organization (RHIO). As a condition of receiving grant funds, LTCs will be required to "participate in activities conducted by a State or a qualified State-designated entity" that serves as the state's or region's health information exchange.

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Since many of the HIE and RHIO organizations are only currently being organized, staffed, and beginning operations, it would behoove LTCs to become familiar with them now, before they are overwhelmed with individual physicians who face possible penalties for not connecting.

Additionally, LTCs will want to keep a close eye out for regulations setting standards for accountability and compatibility and, where appropriate, add their voices to the chorus demanding simplicity and clarity in this area. Currently, the statutory standards do not impose a penalty on LTC facilities who fail to adopt a conforming system in a certain period of time, but future regulations may seek to conform the LTC grant program to the incentive/penalty system already in place for physicians and hospitals.

Certainly, too, any facility considering purchasing or leasing an electronic health record system should negotiate contractual provisions that commit their EHR vendor or licensor to providing an EHR which will comply with applicable standards, and therefore support the facility's ability to obtain available subsidies without additional charge. Standards in this arena can change as rapidly as the technology, and no provider wants to be "stuck" with an incompatible system that is ineligible for available grant funds.

Until now, LTC facilities have been, for the most part, left out of the EHR debates. PPACA has drawn them in. It is now up to LTCs to play "catch-up" to ensure that they understand their options in the marketplace and their voices are heard on issues that pose unique difficulties for LTCs.

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