

Health information technology donations: What physicians should know

Are you considering what health information technology (HIT) could do for your practice? If so, you probably have many questions, such as how much the technology will cost. The answer to this question has changed since 2006 as it is now permissible for organizations such as hospitals, health systems or health plans to donate HIT to your practice.

This flier introduces federal regulations for HIT donations and outlines the conditions surrounding them. It also provides valuable insight if you are interested in accepting an HIT donation, including recommendations to aid your decision-making process. After considering the rules, you may decide that accepting donated technology is a viable and appropriate solution for your practice.

Federal rules create Stark law exceptions and Anti-Kickback Statute safe harbors

Cost remains a major inhibitor to HIT adoption. In an attempt to alleviate the cost burden for physician practices, the Centers for Medicare & Medicaid Services (CMS) and the U.S. Department of Health and Human Services' (HHS) Office of the Inspector General simultaneously established rules creating exceptions to the federal anti-self-referral law, known as the Stark law, and new safe harbors to the Anti-Kickback Statute. Effective Oct. 10, 2006, these rules—intended to support and promote physician adoption of electronic prescribing and electronic health record (EHR) technology—provide parameters for donations of technology that do not violate the Stark law or the Anti-Kickback Statute under certain circumstances.

Conditions of compliance

CMS and the HHS inspector general each defined particular conditions to ensure compliance with their rules. Before you accept any HIT donation, you should understand the specific rules for each of the following conditions:

- Cost-sharing/shifting
- Donor/recipient eligibility
- Recipient selection criteria
- Interoperability requirements

- Electronic prescribing functionality
- Written agreements/contracts
- Technology use and compatibility restrictions
- Legislative sunsets

Considerations for accepting electronic prescribing and EHR donations

Although the Stark law exceptions and the Anti-Kickback Statute safe harbors enable physician practices to adopt electronic prescribing and EHR technology through donations, there are still many things to consider before accepting donated technology. Because of the complex legal environment, potential donation arrangements require additional scrutiny. You must be thorough when considering any donation—mistakes could be costly.

Begin by asking yourself and the donor key questions:

Readiness

- Does the donated system have appropriate functionality for your practice? Does the technology meet your practice needs?
- How will the new software and technology interface with key systems you use regularly (e.g., your practice management system)? If the interfacing capability is not there, what are the future consequences for your practice?

Cost

- Are all of your costs understood and documented? What percent of the total cost are you being asked to pay? Note: Practices that accept donations are required to pay at least 15 percent of the market value of the donation. Are there significant costs beyond the required 15 percent?
- Will fees rise over the term of the agreement? Who will pay for the cost of upgrades and maintenance?

Implementation

- Who will be responsible for training you and/or your practice staff on the new technology? How much training is included? Will you be able to consult with these parties when future problems arise?
- How will data in your current medical records and information systems populate the new software? Who will be responsible for the cost of data conversion? Note: Data conversion is costly, and donors are not required to provide data migration services.

Maintenance/termination

- According to the donation agreement, who will have access to the clinical data generated by the practice? How will you maintain that data if the relationship is terminated? Further, what are the consequences of terminating the agreement and what are your rights in that situation?
- Will upgrades, new features, product offerings and customer service be available to you when they arrive? How will these be communicated to you?

Proceed with caution

Conversations regarding HIT adoption and donations are far from over. Broad definitions (e.g., EHR, interoperability) and relative terms (e.g., necessary, used solely, used predominantly) leave some questions unanswered for both donors and physicians. Undefined Internal Revenue Service implications for recipients are also concerns: Does the donated EHR technology result in taxable income for the physician? How are supplementary items that are not integrated with the EHR system (e.g., patient administration functionalities) treated? Do transfers within the exceptions and safe harbors for less than fair market value result in an excess tax benefit transaction?

In the meantime, the following recommendations can help you move forward with HIT decisions:

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Determine your practice's needs. First and foremost, understand the needs of your practice. Discern whether you would choose the technology if it was not donated. This will require some homework. Not all products are sufficient for each care setting, and not all practices require the same level of technology. You must first understand your practice's needs, then determine whether EHR and electronic prescribing products can meet those needs.

Know the exceptions and safe harbors. After completing a needs assessment and educating yourself about the technology, carefully review the exceptions and safe harbor rulings to understand what is and what is not allowed. It is strongly recommended that you seek legal counsel before entering into any HIT donation agreement.

Proceed with realistic expectations. EHR and electronic prescribing systems will not automatically fix organizational problems. However, implementing EHR and electronic prescribing technology may provide the perfect opportunity to evaluate your current workflow and operations. The technology can facilitate needed changes.

Seek opportunities for dialogue. Initiate discussions with the leadership of local hospitals and integrated health delivery systems to assess their interest in offering EHR donations.

Keep your options open. Seek the widest spectrum of interoperable systems and solutions possible. You will want to compare multiple options—even ones not offered as a donation. Assess whether the technology and services provided by the donor are comparable to your other options.

Create mutually beneficial agreements. The contract must be mutually beneficial to achieve optimal implementation and subsequent goals, such as improvement of care, communication and efficiency. Review the contract carefully to determine how the agreement will affect your practice and your patients.

Visit www.ama-assn.org/go/hit for more information about accepting HIT donations.