



Bonding with Physicians: Hospitals and IT Donations

BY JOHN C. WHITHAM AND STEPHEN W. BERNSTEIN

HOSPITAL AND HEALTH SYSTEM LEADERSHIP may still be hesitant to use the recently implemented Stark exceptions for the donation of health information technology to their community-based medical staffs. The financial and legal risks are still perceived to be high, and many organizations are waiting to see what others will do.

However, despite some risks, hospitals and their boards must consider acting now to lead their community-based physicians toward electronic health record (EHR) adoption. The EHR will enable greater access to clinical data and participation in quality initiatives for both physicians and hospitals.

The majority of physician organizations cannot financially or operationally adopt an EHR themselves and therefore need hospitals to donate this technology, a major impetus for the change in the Stark law.

With pay-for-performance initiatives increasing, demands by payers and others for reporting hospital quality and costs are at an all-time high. Consumers are becoming more responsible for managing their own care and associated costs and are increasingly demanding access to quality care and performance data.

Permitting hospitals to foster physician adoption of health information technology (IT) signals the federal government's willingness to tip the regulatory balance in favor of health care efficiency and quality over the risk of fraud and abuse.

This new legal flexibility represents an unprecedented opportunity for hospitals to work with physicians in ways previously viewed as legally problematic. The adoption of EHR technology now stands as a clear gateway toward reducing medical errors, enhancing quality, and

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improving physician and hospital performance. With a well-orchestrated strategic, operational, financial and legal plan, hospitals can facilitate physicians' willingness to make changes in care delivery and assimilate more logically ordered and stored clinical data into daily practice.

The Stark-related rules that now permit hospitals to donate certain health IT components became effective in October 2006. They state that such donations must include "items and services necessary and used predominantly to create, maintain or receive EHRs." Software must be interoperable—i.e., enabling standards-based data exchange with oth-

er sources of health care information as so deemed by a recognized certifying body, such as the Certification Commission for Healthcare Information Technology.

Permissible donors are entities that bill for Stark-designated health services. Recipients need to be physicians, and criteria used for selection of donees may not take into account the volume or value of referrals or other business between the parties.

Physicians need to contribute at least 15 percent of the total cost of the EHR software and 100 percent of associated hardware costs. The terms of the donation must be documented by written agreement and must have e-prescribing capabilities. Donations may be made up to Dec. 31, 2013.

On May 11, 2007, the Internal Revenue Service released specific guidance for tax-exempt hospitals that further helps them take advantage of these new rules. The IRS indicated it would not treat benefits provided by a hospital to its medical staff as impermissible private benefit or inurement in violation of section 501(c)(3) of the IRS Code if the benefits fell within the range of health IT items and services permissible under the rules, subject to a few caveats. In June 2007, the IRS confirmed that provision of these items and services was acceptable while reimbursement or provision of cash subsidies was not.

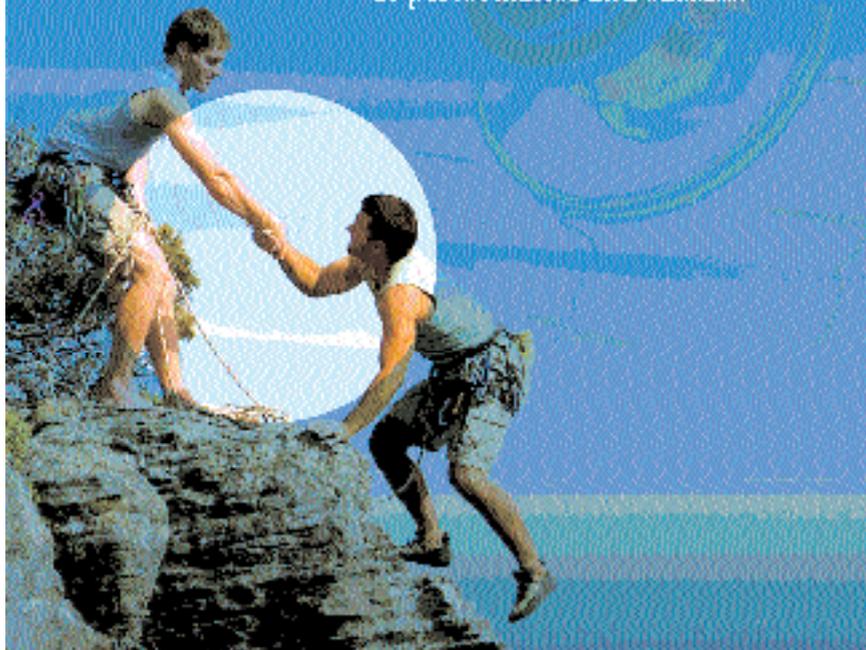
The IRS noted that sharing information among hospitals and physicians

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would be viewed as critically important to tax analysis and that health IT donation activities would continue to be evaluated on a case-by-case basis.

In developing an EHR deployment plan, follow these critical steps:

1. Identify items and services that physicians want and need and that hospitals are financially able to donate.
2. Identify which items and services qualify for donation under applicable law.
3. Identify vendor(s) who can deliver.
4. Identify how these items and services will integrate physician EHRs with the hospital's computerized provider order entry and other record systems.

A wait-and-see approach to evaluating donation of health IT capabilities to physicians does not seem viable. Physicians want to know that hospital leadership is evaluating the situation because, more than likely, their hospital's competitors are.

They also know that payers will soon demand information and proof of performance; without sufficient technical and financial support, physicians will have trouble delivering the data. It is important for hospitals and their boards to design an infrastructure that supports community-based health IT capabilities and puts the hospital at the center of this activity.

An EHR initiative is complex, but it can be done very successfully with proper planning and guidance. Failing to begin building an EHR technology platform now could reduce a hospital's ability to do so later. **T**

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