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HITECH LAW

Fox Rothschild Podcast

Featuring Health Care Partner Bill Maruca in Pittsburgh

We are talking today with Bill Maruca on Fox Rothschild Podcast. Bill is a partner with Fox Rothschild in Pittsburgh, and he advises health care clients on regulatory compliance, transactional and reimbursement issues.

***Question:** What is the HITECH Act and how does it affect physicians?*

Bill Maruca: The acronym stands for the **Health Information Technology for Economic and Clinical Health** Act. It was signed on Feb. 17, 2009 as part of the federal stimulus package. It was intended to encourage the adoption of electronic health records through incentive payments to physicians. It also beefs up existing portions of the HIPAA privacy and security rules.

***Question:** What are the government incentives for adopting electronic health records?*

Bill Maruca: There are two programs, one under Medicare and the other under Medicaid. The Medicare program would provide eligible practitioners up to \$44,000 in additional Medicare payments per physician for “meaningful use” of a certified Electronic Health Record starting in 2011. The Medicaid program offers up to \$63,750 to eligible practitioners. To be eligible, you must treat at least 30% Medicaid patients or meet other criteria for pediatricians, federally qualified health centers or rural health clinics. Dual-eligibles must select either Medicare or Medicaid incentives, not both.

***Question:** Are there any advantages to being an early adopter? Are there any penalties for not adopting EHR?*

Bill Maruca: Yes, under the Medicare program, if you implement certified EHR in 2011 or 2012, you can collect the maximum of \$44,000 over five years. If you wait until 2013 to start, the maximum is \$39,000, and if you don’t start until 2014, you only get \$24,000. Certain hospital-based practitioners are not eligible since there are other incentives for hospitals to adopt their own EHR.

The Medicaid incentives are more front-loaded. If you qualify, you can get up to \$21,250 in the first year to cover the cost of purchasing or upgrading certified EHR, and an additional \$8,500 per year for up to five years.

If a practitioner is not meaningfully using EHR by 2015, the penalties start to kick in. In 2015, you only get 99% of the Medicare fee schedule; in 2016, 98%; and in 2017 and after, 97.

Question: What is Certified EHR? Who does the certifying?

Bill Maruca: The federal agency is the Office of the National Coordinator for Health Information Technology. They proposed a rule on December 30, 2009 that sets initial standards, implementation specifications, and certification criteria. The goal is to require systems to use a common language to ensure accurate and secure health information exchange across different systems.

Question: What does “meaningful use” mean?

Bill Maruca: It is being rolled out in three stages. The Proposed Stage 1 criteria focus on electronically capturing health information in a coded format, using that information to track key clinical conditions, communicating that information for care coordination purposes, and initiating the reporting of clinical quality measures and public health information. Stages 2 and 3 will expand on this foundation to include additional quality improvement and public health goals.

The proposed rules that were published on December 30 include a list of specific steps that a provider must meet for a minimum number of patients or patient encounters -- under Phase I, usually 80%. For instance, the EHR will need to electronically capture demographic information, medication lists, and vital signs. It must also capture at least one diagnosis, smoking status, and summary of care records for 80% of patients and use EHR for 80% of claims submissions, insurance eligibility checks and order entry.

Question: What else did the HITECH Act do that physicians should know about?

Bill Maruca: It expanded certain penalties under HIPAA and makes business associates directly responsible for violations of the privacy and security rules. It also imposed new breach notification rules.

Effective February 22, 2010, covered entities and business associates must comply with notification requirements upon discovery of a breach of unsecured Protected Health Information. A breach is the unauthorized acquisition, access, use, or disclosure of health information that compromises the security or privacy of such information or poses a significant risk of harm to the individual.

In the event of a breach, the covered entity must notify the affected Individuals; the Department of Health and Human Services if there are more than 500 individuals involved, and the media if more than 500 individuals in same state or jurisdiction are involved. Business associates who discover a breach must notify their covered entities. Generally the notice must be made without unreasonable delay but no later than 60 days after discovery.

Also, the HITECH Act requires covered entities who use electronic records to provide patients with electronic copies of their records or transmit them electronically as requested by the patient.

Question: What should medical practices do to comply with HITECH?

Bill Maruca: There are several steps you should take right away.

- First, you should identify all your business associates and update your business associate agreements to include expanded new requirements.
- Then, develop and implement a detailed Breach Notification Policy. This rule is already in effect.
- Update your internal HIPAA privacy and security policies and the Notice of Privacy Practices you hand out to patients
- Expand business associate lists to include vendors and others covered by HITECH.
- And, if you are looking to maximize the incentives for adoption and use of EHR, determine whether you are eligible for Medicare or Medicaid subsidies or both, then contact EHR vendors as the certification process moves forward so you can meet the criteria in 2011 or 2012 and get the maximum government funding.

Well thank you, Bill. To speak with Bill directly on HIPAA, HITECH or other health care questions, please contact him at 412-394-5575 or at wmaruca@foxrothschild.com.

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