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Electronic Health Record Certification (EHR):
How Industry Lobbyist's and Politicians Stifle Competition

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The Department of Health and Human Services (HHS) said that the Medicare and Medicaid Health IT provisions in the American Recovery and Reinvestment Act (ARRA) are designed to promote and provide incentives for the adoption of certified EHRs.

To achieve this goal, the ARRA authorized bonus payments for eligible professionals and hospitals participating in Medicare and Medicaid as an incentive to become meaningful users of certified EHRs.

Physicians who implement a certified solution and become meaningful users between 2010 and 2012 will be eligible for up to $44,000 each in incentive bonus payments in addition to Medicare and Medicaid reimbursement.

Physicians who wait to become meaningful users between 2012 and 2014 will be eligible for lower payments.

Physicians who have not become meaningful users by 2015 will not qualify for any payments and will be subject to increasing penalties. Starting in 2015, eligible professionals and hospitals failing to meaningfully use certified EHRs will receive reduced Medicare payments.

Incentives are based on the lesser of either 75% of the provider's Medicare Part B billings or the maximum allowable.

The statute includes three broad criteria for demonstrating one is a "meaningful EHR user" which will be defined as the implementation process moves forward: (1) Meaningful use of certified EHR technology; (2) information exchange; and (3) reporting on measures using EHR.

The problem is that the regulatory agencies have yet to define what the term "certified EHRs" encompasses and includes. The current certification process is being administered by the Certification Commission for Healthcare Information Technology (CCHIT), a private nonprofit organization with the sole public mission of accelerating the adoption of robust, interoperable health information technology by creating a credible, efficient certification process. The Commission operates with a nine-member volunteer board of Trustees, 21 volunteer Commissioners who represent all sectors of health IT and provide strategic guidance and oversight for the certification process and criteria, and 170 volunteers who serve on 15 work groups and bring their expertise to the process of creating the certification criteria. There are now approximately sixty EHR products certified to this standard, in the marketplace and ready for adoption and use and one would expect more products to get certified from which the growing numbers of physicians and hospitals can choose from.

Not so according to industry lobbyist and politicians! There seems to be substantial and significant pressure from large vendors, whose representatives sit on key committees and were major contributors to the presidential election campaign, and from certain politicians to choose one particular certification regime above all others and to limit the discussion about the contained metrics.

According to a proposed bill in New Jersey, (New Jersey Health Information Technology Promotion Act) "a prohibition on the sale or distribution of in this State [New Jersey] of HIT [Health Information Technology] products that have not been certified by CCHIT [yet] will expedite the widespread use of CCHIT-certified products in New Jersey and thereby advance the public interest."

That means that already established and certified vendors will knock out smaller and emerging product developers, even though those may offer a better and more cost-effective product! Needless to say that the big EHR vendors are salivating over the opportunity to eliminate all competition and thereby also innovation. A true scary thought when big industry and big government unite to scuttle free market competition! What's the solution?

Well, according to several postings on a web site called: www.sensiblecertification.com we should resist any efforts to stifle innovation in a rapidly advancing field that may increase the cost of health information technology and preferentially reward specific large vendors.

What can we do?

We are asking the Obama administration to consider sensible certification. Sensible certification will be a boon to the health care industry if it 1) focuses on inter-operability, 2) keeps the door open for innovation, 3) describes the desired end state while allowing varied approaches to flourish.

I look forward to reading your comments and suggestions on our blog at http://miamimedblog.blogspot.com/ or send us a twit at http://twitter.com/dadedoc.

Disclosure: *The author is a practicing family physician, addiction specialist and computer consultant. In addition, he is a founder and managing partner of a medical IT company.*

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