

Office of the National Coordinator for Health Information Technology Issues Formal Guidance for Selecting and Negotiating Contracts with Electronic Health Record Vendors

Insight — 10/10/2016

On September 26, 2016, the U.S. Department of Health and Human Services' (HHS) Office of the National Coordinator for Health Information Technology (ONC) released a practical and straightforward tool to assist health care providers as they select and negotiate the acquisition of an electronic health record system (EHR). The document's title accurately encapsulates the content of the 53-page guide: "EHR Contracts Untangled: Selecting Wisely, Negotiating Terms, and Understanding the Fine Print." The guide can be found at https://www.healthit.gov/sites/default/files/EHR_Contracts_Untangled.pdf. The new contract guide explains important concepts in EHR contracts and includes example contract language to help providers and health administrators in planning to acquire an EHR system and negotiating contract terms with vendors.

The EHR guide is divided into two main sections: (1) pre-selection planning and (2) contract negotiations. The pre-selection planning section of the guide offers tips on researching the EHR market, identifying and prioritizing EHR needs, and procurement strategy. Because selecting the right EHR requires an analysis of how a health care organization intends to use the system, the guide advises the reader to "solicit[] input and perspectives from staff throughout your organization and reflecting on how your organization's current IT environment, legacy systems, workflows, and organizational culture will impact the deployment of any new EHR." The ONC's Health IT Playbook website (<https://www.healthit.gov/playbook>) provides a range of resources to assist health care provider organizations to identify and prioritize their EHR requirements. The pre-selection planning portion of the EHR guide also cautions the reader about the importance of using a certified EHR system, the pitfalls of accepting subsidies for EHR products and services, and the ever-present need to comply with HIPAA privacy and security issues.

The bulk of the EHR guide (approximately 45 pages) is devoted to negotiating the terms of a contract with an EHR vendor. It discusses each of the key terms typically found in a standard vendor contract, and it offers

caution on accepting some of the stock terms and more provider-friendly language to suggest as alternatives. The contract negotiation portion of the guide is divided into nine sections ranging from warranties to integration with existing systems and third party products to allocating risk and liability. In response to feedback ONC has received from the provider community, the EHR contract guide also addresses concerns such as managing safety and security risks, ensuring the availability and integrity of data in a wide variety of circumstances, including scenarios that a provider may not have expected, ensuring fair, functional procedures for providers and vendors in the event that things go wrong or disagreements arise, and being able to switch EHRs if needed.

The guide is very comprehensive and is a must-read for any organization making a change in its EHR system. HHS cautions, however, that “[w]hile the guide translates legal and contract terms into easy-to-understand language, it should not be construed as legal advice and does not address all possible legal or other issues that may arise in EHR transactions.” Nevertheless, the new guide is a great education tool and worth the read.

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