Switching EHRs: Common issues and lessons learned

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DermWorld covers legal issues in "Legally Speaking." This month's author, Daniel F. Shay, Esq. is a health care attorney at Alice G. Gosfield and Associates, P.C.

The use of electronic health records (EHRs) has become a ubiquitous aspect of the practice of medicine. However, given that EHRs have been in use for decades now, many physician practices find themselves needing to switch EHRs, due to wanting different functionality, practice mergers or purchases, or even EHR vendors merging, going out of business, or simply dropping support for a given product. This article addresses issues that dermatologists should consider when switching EHRs. The primary focus is on the intersection between legal concerns and practical and technical considerations.

Legal duties

Physicians have a legal duty to retain copies of patient medical records, but this duty comes from multiple sources. State law usually requires that patient records be retained for several years. For example, in Pennsylvania, physicians must retain copies for seven years (or seven years from the age of majority for minor patients). However, HIPAA also imposes a duty upon physicians, requiring that they retain records for at least six years. As a practical matter, at least two years of clinical records will need to be retained to respond to potential malpractice suits, given that many states have a two-year statute of limitations for medical malpractice suits. For physicians treating federal health care patients (e.g., Medicare or Medicaid), at least six years of records should be maintained to respond to potential government audits and repayment requests.

Moreover, failure to return overpayments when they are identified or could have been identified through the exercise of reasonable diligence will convert the overpayment to a false claim under the Federal False Claims Act, potentially exposing the practice to over $11,000 per claim, plus up to three times the amount of damages. Preserving your records when switching between EHRs is critical for compliance efforts.

Compatibility questions and license considerations

Several issues can arise with respect to data compatibility when switching EHRs. Most EHRs use their own proprietary format for storing information. Although the information itself may be common across EHRs, converting from one EHR to another may not be easy if it is possible at all. When considering a new EHR, there may be issues such as whether and how much data will be lost in translation from one system to another. These issues can be compounded with EHRs designed for specialties like dermatology, when attempting to switch to another EHR, especially for non-specialized software. For example, conversion could mean that the physician can no longer easily access a patient's pathology reports from within their record. The information may be in the new EHR, but the new system may not have maintained the link between the two documents. In a worst-case scenario, the pathology reports might not convert at all, and would have to be stored as simple PDFs.

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Another issue when considering switching EHRs is the current license's termination language, specifically how much notice must be provided and when does the license renew. If a license automatically renews for a long term, it may lock the practice into using the old EHR or require payment of early termination fees. Any practice considering switching should make certain that they time their termination notice to avoid being stuck in another payment cycle.

Lessons learned

Several of our clients have switched EHRs, providing us with insight into the process and its pitfalls. One common problem is that data does not fully convert from the old EHR to the new one. This may require using "tabbed" PDFs — PDFs that are more searchable and better organized than simple scans may produce, but which can require additional data entry by the client's staff. One client's EHR was so old that it was impossible to extract data and the client had to maintain a legacy, read-only license for the old EHR on an older machine. Other clients have used read-only licenses for shorter durations, such as to work down old accounts receivable once the new EHR is fully functional. Doing so allowed the client to continue using the old software up to the point where the new software was working properly, thereby avoiding any loss in cash flow.

When conversion is possible, the costs can be high. One client was required to pay almost $20,000 to convert their data. The client's license agreement did not address any kind of conversion duty for the vendor, nor reference any costs. Worse, the agreement did not even state that the vendor would return data upon termination and included language allowing the vendor to destroy data — on the vendor's own initiative — upon termination, even though this would violate HIPAA.

While some issues, such as the eventual inability to convert data altogether, cannot be avoided, many of these issues could have been addressed when the license was first signed. For example, the license agreement could explicitly require that the EHR vendor return data and could specify that conversion would be done in a specific format unless otherwise requested (e.g., CSV, PDF, etc.). Estimated costs for conversion could have been included as well. The license could also have included the option for a read-only license and its estimated costs.

Conclusion

The best solution for physicians is to plan for the future today. By anticipating issues when first reviewing the license agreement, many future problems can be avoided. Physicians should assume that they will switch EHRs at some point, and therefore must plan for such eventuality. Knowledgeable legal counsel can help. **DW**

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