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Health Information Exchange: What has happened and what is coming?

This update is one of several updates drafted and published live from the New York State Bar Association's Annual Meeting in New York City – January 25, 2017

Per David Blumenthal, MD, President of the Commonwealth Fund, in New York City, nationwide electronic medical record adoption is close to universal. New York itself has been among the leaders for both facility and private physician office adoption.

As the role of the electronic medical records has increased, the role of health information exchanges are the next logical evolution according to Dr. Blumenthal. Use of these exchanges is still low among for profit providers, but non-profits have nearly a 3x as high rate of data sharing through the exchanges currently. Even among non-profit health systems though, there is only a 33% adoption rate.

Robert Belfort, Esq., a health attorney at the New York City firm Manatt, Phelps & Phillips, sees the role of "SHIN-NY", the State Health Information Network of New York, increasing in the future. He also sees New York State Department of Health regulations, as well as HIPAA, having a major impact on the further development of health exchanges. As a voluntary program, the roll out of SHIN-NY has been somewhat limited to date, attributable to competitive reasons.

The goal for the State and federal government is to increase the role of the information exchanges. Concepts being developed include the use of third party "Trusted Intermediaries" as an end around to alleviate the problems with local competitors sharing information. DSRIP too will likely have an impact as a developer of the progress. The key question still exists though of whether the business case for using the health information exchanges has been made and the technological investments are warranted.

As examples of the potential costs and difficulties unique to these programs are HIPAA's concepts of "Minimum Necessary" and "patient consent". These two issues are practically difficult to implement in a health exchange world where all information in the exchange is shared without paying much credence to either concept. Policies, procedures, training and auditing will be necessary to comply, and this adds a great deal of administrative cost. Rule amendments attempting to deal with this problem are swirling about among a variety of New York and Federal agencies.

Other major concerns are related to data security. For providers that struggle to keep their own databases of information secure, it is even more daunting to think about combining all of those databases regionally or state wide and keeping that information secure. The temptation for hacking this vast amount of information will be high and the concerns about the industry's ability to actually maintain security will be paramount to the success of the programs.

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Lastly, as a new administration takes over in Washington, both speakers realize there are major questions about what role the health information exchanges will play in the future. To date there has been a great deal of information shared about changes to the delivery system, but very little detail on the exchanges and the technology involved going forward. With so much time and energy already invested, it is hard to imagine that there will be a total abandonment of these efforts, but it is likely that there will be a major shift.

If you have any questions about this Legal Briefing, please contact any attorney of our Firm at 585-730-4773.

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69 Cascade Dr. Suite 307 • Rochester • New York • 14614 • 585.730.4773

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