In Push for Electronic Health Records, Feds Paid Millions to Ineligible Doctors

Under Obama-era programs designed to encourage doctors and hospitals to use electronic health records (EHRs), the federal government doled out over $730 million to doctors who were not eligible to receive payments, a Department of Health and Human Services (HHS) audit has found.

As part of the 2009 American Recovery and Reinvestment Act — the "stimulus" law that failed to stimulate the economy — Congress, with President Barack Obama's assent, established programs that paid healthcare providers for making "meaningful use" of EHRs. Since these payments were based on providers' Medicare and Medicaid reimbursements, the Centers for Medicare and Medicaid Services (CMS) were charged with administering the programs.

Physicians who began making "meaningful use" of EHR technology between 2011 and 2014 were eligible to receive up to five years' worth of payments. The earlier the doctor started using EHRs, the longer the payments continued, decreasing in value each succeeding year. A doctor who began using EHRs in 2011 could have received as much as $43,720 from CMS. All told, CMS shelled out over $6 billion to more than 250,000 physicians between 2011 and 2014. (Some payments continued into 2015 and 2016.)

Auditors reviewed a random sample of 100 doctors who had been paid under the programs and found that 14 of them "had not demonstrated meaningful use." Twelve of the 14 could not provide documentation proving they had met criteria such as "conduct[ing] or review[ing] a security risk analysis" or "generat[ing] at least one report listing patients … with a specific condition." Another doctor "based his attestation of meaningful use on 90 days of encounter data instead of a full calendar year," while still another "had less than 20 percent of his patient encounters at a location that used certified EHR technology," though the law requires doctors to have at least 50 percent of their patient visits at such locations to be eligible for incentive payments.

The 14 doctors were paid a total of more than $291,000 despite their failure to meet program criteria. Extrapolating this to the entire program, the auditors estimated that CMS paid over $729 million to ineligible doctors over the four-year period.

Some of this may be attributable to fraud, but much may be the result of poor guidance on the part of CMS. As Lawrence Huntoon pointed out in the *Journal of American Physicians and Surgeons*, CMS initially offered only "vague guidelines" as to what "meaningful use" of EHR technology meant, providing "specific guidelines" five years later and then demanding repayment from doctors who had failed to meet them. “The government’s EHR Incentive Program for some physicians,” he asserted, “was nothing more than a giant bear trap with a wad of cash in the middle for bait.”

Another cause of inappropriate payments had to do with the fact that doctors were only allowed to be enrolled in either the Medicare incentive program or the Medicaid incentive program, but not both, according to the audit report. CMS was supposed to ensure that if a doctor switched from one program to the other, his payments continued on the same schedule as before. In other words, if a doctor was in his second year of receiving payments under the Medicare program and decided to switch to the Medicaid program, his payment should be what he would have received in his second year under the Medicaid program. Auditors found, however, that CMS paid a total of $2.3 million to 471 doctors who switched programs. The doctors, they wrote, “received payments as if they were in their first program year under the program to which they switched.”

The auditors chalked up the various overpayments to lax oversight and bureaucratic bungling. While it’s true that some doctors couldn’t back up their claims of EHR use, “CMS limited the documentation reviews that it performed,” said the report. “CMS’s minimal oversight of self-attestations left the EHR program vulnerable to abuse and misuse of Federal funds.” As to the program-switching debacle, “CMS did not have edits in place to ensure that [doctors] who switched from one program to the other were placed in the correct payment year upon switching.”

The report recommended that CMS perform better oversight, put the edits in place, and try to recover as many of the overpayments as it can. CMS concurred with most of these recommendations but contended that its “targeted risk-based audits” were sufficient to recover any inappropriate payments; the auditors disagreed, stating the “audits are not capturing errors such as those identified in this report.”

The auditors also discovered that CMS is rather slow at deactivating the accounts of doctors who have died. Eleven deceased doctors remained active in the system for more than 60 days after their deaths, and two were still active at the end of the audit period. One dead doctor even got $11,760 in EHR incentives. The report noted that such failures have been documented in previous audits and that they “place the integrity of the Medicare program at risk and present vulnerabilities in all health care programs.” It is unlikely, therefore, that yet another report will make much difference. After all, CMS isn’t spending its own money, so why should it be careful about how the cash is disbursed?

Thus far, the EHR incentive program has been considerably less successful than anticipated. Back when Obama was stumping for the “stimulus” bill, he said, “Within five years, all of America’s medical records [will be] computerized. This will cut waste, eliminate red tape, and reduce the need to repeat expensive medical tests.” Eight years later, many doctors and hospitals are still not utilizing EHRs. That is likely to change, however, because ObamaCare includes a provision reducing Medicare and Medicaid payments to healthcare providers who do not make meaningful use of EHRs.

Of course, if EHRs were the boon that Obama — and, among others, President George W. Bush, who created a federal office specifically to develop EHRs and other healthcare information technology — claimed they would be, the government would not have to pay doctors to adopt them. In reality, for many physicians they are nothing but a needless, burdensome expense that interferes with the doctor-patient relationship, forcing doctors to spend time making computer entries instead of talking to their patients. Moreover, as Huntoon observed, “in many cases the EHR has become a completely fictitious record” containing true-but-outdated data about a patient and, often, false data imported from other patients’ records that have been cloned to create new records.

From the government's perspective, however, having data in a standardized, electronic format is a great asset. It allows the feds and the big insurance companies to mine the data and control both doctors and patients. In addition, because the burden of EHRs is so great, many physicians are leaving private practice and becoming employees of hospitals and medical groups, making it that much easier for Uncle Sam and his cronies to keep them in line.

While the inappropriate payments under the EHR programs are a minor scandal, the EHR near-mandate from Washington is a major — and unconstitutional — danger. It, along with everything else in ObamaCare, needs to be scrapped. But will Congress and President Donald Trump have the guts to make that happen?