

OIG and CMS extend EHR donation exceptions even longer than proposed and add other changes

January 2, 2014

Mere days before the existing safe harbor and Stark Law exception were set to expire, CMS and the OIG issued separate, but companion, rulemakings on December 27, 2013 to extend and modify the exceptions that allow agreements to donate electronic health records (EHR) software and related training services. In their April 10, 2013, proposed rules, both agencies suggested extending the exceptions three years to December 31, 2016; however, in the final rules, the exceptions were extended eight years to December 31, 2021.

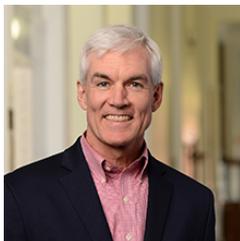
The final rules made four additional changes or clarifications:

1. Laboratory companies are now expressly excluded from the types of entities that are permitted to donate EHR software and services.
2. The requirement that the EHR software possess electronic prescribing capability is removed, since that incentive is sufficiently covered by other programs.
3. The language regarding certification of EHR software was clarified to tie more closely to the process used by the Office of the National Coordinator for Health Information Technology.
4. In the language prohibiting an EHR donor from limiting or restricting the donation on the use of other EHR systems, illustrative language was added: "including but not limited to health information technology applications, products or services."

The four changes above are effective as of March 27, 2014; the extension of the expiration date was effective as of December 31, 2013.

The preamble discussion accompanying these rules includes confirmation about the limits on the exceptions and insight as to abusive practices that may be occurring with EHR donation practices. For instance, the preamble discusses questions about what is considered within the scope of the types of technology and services within the EHR exception. The preamble makes clear that only non-monetary remuneration is covered, but otherwise resists the request to change its previous discussion of such scope in the August 2006 initial rulemaking.

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