

# Philadelphia Medicine



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## EMRs may increase liability claims in the short term

Medical liability insurers once said electronic medical records would let physicians earn discounts on their premiums, because the potential benefits of the technology included improving patient safety. But those discounts haven't materialized. The reason, a study says, is that liability insurers are betting that claims will rise during a so-called adjustment period, when practices new to the technology are working out the kinks in their systems.

Conning Research and Consulting published a study looking at medical liability and factors that could influence the industry, including the adoption of

electronic medical records.

It found that EMRs have the potential to reduce the number of liability claims in the long term. In the short term, "as systems are tested, errors with coding data input and software-interoperability failures may occur," the study authors wrote.

Because patient data will be easier than ever for attorneys to obtain, the study said claims frequency probably will increase, and the cost of claims defense is expected to rise. These potential pitfalls associated with adopting EMR differ from many studies that have shown the potential benefits of EMRs—benefits that, at one time, had some carriers considering offering discounts to physicians who use EMRs.

There is widespread agreement that once the kinks are worked out, EMRs could help reduce the number of liability cases as the risk of harmful errors decreases. They have the potential to help improve clinical decisions as well as physician-to-physician and physician-to-patient communication. Experts also believe EMRs could improve physicians' ability to defend themselves against liability claims, because better documentation of appropriate care will be possible.

A recent survey of insurers found that most companies are running with a combined ratio (claims versus expense ratios used by insurers to measure profitability) of about 85%, while most other insurance sectors are operating with a combined ratio of more than 100%.

### Liability risks

A *New England Journal of Medicine* article looked at the potential liability  
Please see *EMRs may increase* on page 2

## New Pennsylvania law requires physicians to wear photo IDs

States are working to guarantee that patients know whom they are seeing and are not deceived by health professionals who misrepresent their training.

A new Pennsylvania law aims to make it clear for patients who is taking their blood pressure, giving them an injection or preparing to operate on a loved one.

Under the law signed Nov. 23 by Gov. Edward Rendell, physicians, nurses and other healthcare professionals soon will be required to wear photo identification badges that state their credentials in large block letters, with descriptions such as "physician" or "registered nurse."

Beginning in January 2011, the state health department will have 90 days to develop interim regulations and then 18 months to finalize them. All Pennsylvania healthcare employers will need to comply by June 2015.

## PCMS NEWS

### The Wohl Lecture

Wednesday, February 23, 2011

11:30 am – Program; Lunch to follow

Location: Erny Amphitheatre of Temple University Hospital

Speaker: William Hsu, MD, Joslin Clinic and Harvard Medical School

RSVP: 215-563-5343, Ext. 101

### Upcoming event: Save the date

The 6th Annual Tools for Success Conference

Thursday, April 14, 2011

2011 Practice Management Toolbox

Join our panel of specialists for a full day of learning, support, networking and, of course, a terrific lunch!

Presentations will include information and strategies for dealing with issues of HIPPA security, human resources, EMR, PQRI, Medicare cuts, meaningful use and more.

For more information, call 215-563-5343, Ext. 113

### PMSLIC to host a complimentary seminar to residents, fellows and interns

Topic: The Importance of Proper Documentation

Speaker: Daniel F. Ryan, III, Esq. of O'Brien & Ryan, LLP

Monday, February 28, 2011

Hilton City Avenue, Philadelphia

Registration and hors d'oeuvres at 6:00 pm followed by dinner and presentation

RSVP: 800-445-1212



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 HEALTHCARE MEDIA INTERNATIONAL

*Continued from page 1*

## EMRs may increase liability claims in the short term

risks of electronic medical record use and show that although the adjustment period comes with risk, as EMR use becomes more prevalent, failure to use an EMR eventually could become a liability risk.

### During initial implementation:

- Transition from paper to electronic may create documentation gaps.
- Failure to implement procedures that a prudent or reasonable provider would put in place to avoid errors could leave physicians legally vulnerable.
- Inadequate training on systems may create error pathways.
- Errors by a new system may create incorrect or missing data entries.
- Failure of clinicians to use system consistently may lead to gaps in documentation and communication.
- Systemwide EMR “bugs” and failures could affect clinical care adversely, leading to injuries and claims.

### As systems mature in place

- E-mail advice multiplies the number of clinical encounters that could give rise to claims and may heighten the risk of claims if advice is offered without thorough investigation and examination of the patient.
- More extensive documentation of clinical decisions and activity creates more discoverable evidence for plaintiffs, including metadata.
- Temptation to copy and paste patient histories instead of taking new histories risks missing new information and perpetuates previous mistakes.
- Failure to reply to patient e-mails in a timely fashion could constitute negligence and raise patient ire.
- Information overload could cause clinicians to miss important pieces of information.
- Departures from clinical-decision support care guidelines could bolster plaintiffs' case.

### As EMRs and health information exchanges become widespread

- Better access to clinical information through EMRs could create legal duties to act on the information

- Widespread use of clinical-decision support may solidify standards of care that otherwise might be subject to debate.
- Rise of HIEs may heighten clinicians' duties to search for patient information generated by other clinicians.
- Failure to adopt and use electronic technologies may constitute a deviation from the standard of care.

### Potential liability benefits of EMR use

Although many believe EMR use initially could cause more claims during the so-called adjustment period, EMR use potentially could reduce liability risks for physicians after an adjustment period.

### After successful implementation

- EMR systems may lower discontinuities and errors in care, reducing adverse events and claims.
- EMR systems with integrated clinical-decision support may improve clinical decisions, reducing adverse events and claims.
- Better documentation of clinical decisions and activity—through user-entered data and metadata—may improve the ability to defend against malpractice claims when care was appropriate.
- Compliance with clinical-decision support care guidelines may constitute helpful evidence that the legal standard of care was met.
- Secure messaging may improve patient satisfaction and communication and reduce propensity to sue.
- Secure messaging could improve patient communication of clinically significant information, reducing adverse events and claims.

### As EMRs and health information exchanges become widespread

- Adherence to clinical-decision support recommendations may protect providers from liability.
- Rise of HIEs may facilitate sharing of information about cases, leading to better care and fewer claims.

Source: “Medical Malpractice Liability in the Age of Electronic Health Records,” *The New England Journal of Medicine*, [www.ncbi.nlm.nih.gov/pubmed/21083393](http://www.ncbi.nlm.nih.gov/pubmed/21083393)

## 2011 electronic prescribing (eRx) incentive program update

The Centers for Medicare and Medicaid Services (CMS) announced last year that, beginning in 2012, eligible professionals who are not successful electronic prescribers may be subject to a payment adjustment on their Medicare Part B Physician Fee Schedule-covered professional services.

Section 132 of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) authorizes CMS to apply this payment adjustment whether or not the eligible professional is planning to participate in the eRx Incentive Program.

We encourage you to visit the CMS site at [www.cms.gov/erx/incentive/](http://www.cms.gov/erx/incentive/) for additional information.

## Avoid tax penalties

Effective January 1, 2011, virtually all businesses will need to switch to the IRS Electronic Federal Tax Payment System (EFTPS) for all federal tax payments. New regulations will eliminate the IRS paper tax deposit system that employers have used since World War I. Businesses must use EFTPS or face 10% penalties for taxes paid by check.

PCMS's endorsed broker, USI Affinity, has partnered with ADP. Members should be prepared for changing regulations. Streamline your tax payment process. ADP offers USI Affinity clients a 20% discount.

For more information, contact Jim Pitts at USI Affinity at 610-537-1377 or [jim.pitts@usiaffinity.com](mailto:jim.pitts@usiaffinity.com).

## Host your event at PCMS

Host your next party or conference/seminar at PCMS headquarters. Ample free parking. Contact Louise Eder on 215-563-5343, Ext. 107 to schedule an appointment.

## Restrictions on medical records copying charges for 2011

Physicians generally may charge for providing copies of patient medical records. However, the Pennsylvania Judicial Code and federal law limit the allowable charge and in some cases prohibit any charge. The lesser of the Judicial Code and federal limits applies when both are applicable. Healthcare providers are not required to charge for providing copies. Physicians often waive any charge that otherwise would be allowed, especially when providing a copy to the patient or another physician or healthcare provider for treatment purposes.

The following charts show the maximum charges allowed by the Judicial Code for 2011. The Judicial Code limits do not apply to X-ray film or any other portion of a medical record that cannot be reproduced photostatically. Unless otherwise noted in the chart, for paper copies provided to a patient or the patient's personal representative HIPAA permits only a reasonable cost-based fee for copying and postage. For electronic protected health information (PHI), upon request of a patient, federal law requires healthcare professionals to provide an electronic copy to the patient and to transmit an electronic copy to a third party. The fee may not exceed the labor cost to copy and transmit the record.

\*The chart does not address patient confidentiality considerations, including whether a HIPAA patient authorization is required.

General Rules				
Source of request	Copying (per page)		Retrieval	Postage, shipping, and delivery
Patient	Paper Pages 1-20 Pages 21-60 Pages 61+ Microfilm	\$1.34 \$0.99 \$0.33 \$1.97	Prohibited by HIPAA privacy rule	Actual cost
Personal representative, such as parent of minor	Same as limits for patients		Prohibited by HIPAA privacy rule	Actual cost
Designee of patient, such as attorney with authorization	Same as limits for patients		\$19.92	Actual cost

Special Purpose Requests			
To support	Copying	Retrieval	Postage, shipping, and delivery
Social Security claim or appeal	\$25.24 flat rate	No additional charge permitted	Actual cost
Federal or state needs-based benefit program	\$25.24 flat rate	No additional charge permitted	Actual cost
The physician may require the requester to provide documentation of the purpose of the request, such as an appointment of representative form SSA-1 696-U4) when the patients attorney makes the request for a Social Security claim or appeal.			

Third party requests			
Source of request	Copying	Retrieval	Postage, shipping, and delivery
Subpoena (except as below)	Same as limits for patients		\$19.92
Subpoena from district attorney	\$19.92	No additional charge permitted	No additional charge permitted
Commonwealth agency (executive or independent), such as licensing board	Allowed only if required by law or authorized by agency guidelines, statements of policy, or notice in Pennsylvania Bulletin		

# pcms people

## Attention: Physician Artists

PCMS is looking for physicians who are interested in displaying their art works—paintings, clay sculptures, artistic photos, glass works, etc.—during the Annual PCMS President's Installation on Saturday, June 11, 2011.

This is a one-day exhibit and there is no fee.

Please contact Mark Austerberry at 215-563-5343, Ext. 101 for additional information and exhibit details.



## SAVE THE DATE

Saturday, June 11, 2011  
PCMS President's Ball and  
Awards Night  
Celebrating the  
Inauguration of  
Lynn A. Lucas-Fehm, MD, JD  
as the 150th President of  
The Philadelphia County  
Medical Society  
Details to follow

### Change of address?

Phone 215-563-5343, Ext. 102 with any change of address, phone, fax number, or e-mail address.

## Necrology 2010

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