Where EMRs Hit a Wall in the HIM World

A white paper by G. Michael Bellenghi

August 2009

The American Recovery and Reinvestment Act (ARRA) of 2009 includes a section called The Health Information Technology for Economic and Clinical Health Act (HITECH) that is slated to provide $19 billion for health information technology—specifically providing funding to those healthcare organizations that can demonstrate their use of an electronic health record (EHR) in a meaningful way by 2014. The recent discussions around the HITECH Act has led to concerns and confusion, not only about what will guarantee an acceptable EHR solution, but also about the very definition of what an EHR is and how it differs from the business, or legal, health record (LHR). While EHRs do hold great value in the clinical world, they require significant human oversight in the LHR and release-of-information (ROI) world.

This white paper defines the differences between the clinical EHR and the LHR, explains where the clinical record hits many walls, or roadblocks, once it enters the ROI world in the form of an LHR, and why it is imperative that every healthcare organization has human intervention in the health information management (HIM) environment. Finally, it will also explain the extreme complexity of the actual ROI process, further justifying the need for human oversight.

The Two Worlds of Medical Records: Electronic Health Records and Legal Health Records

The LHR — also known as the business health record or the "post-discharge health record" — is a subset of the entire patient database and serves as the legal record for a healthcare organization. It is used to support decisions made during a patient's treatment in a hospital or at a physician's office; to support the revenue sought from third-party payors and document the services provided as legal testimony regarding the patient's illness or injury. Additionally, an LHR differs from an EHR in that it is finite and complete. Unlike the EHR, which is constantly updated with new clinical information and subsequent episodes of care, the LHR documents individual episodes of care and has a clear, defined beginning and end.

An EHR serves a very different purpose. The EHR is a clinical document that is primarily used by physicians for review and input of clinical information, such as clinical documentation, lab and medical imaging reports, drug prescription data and treatment. It is designed for clinical decision support at the point of patient care so that physicians have the information at their fingertips in order to provide the safest, highest quality medical care possible.
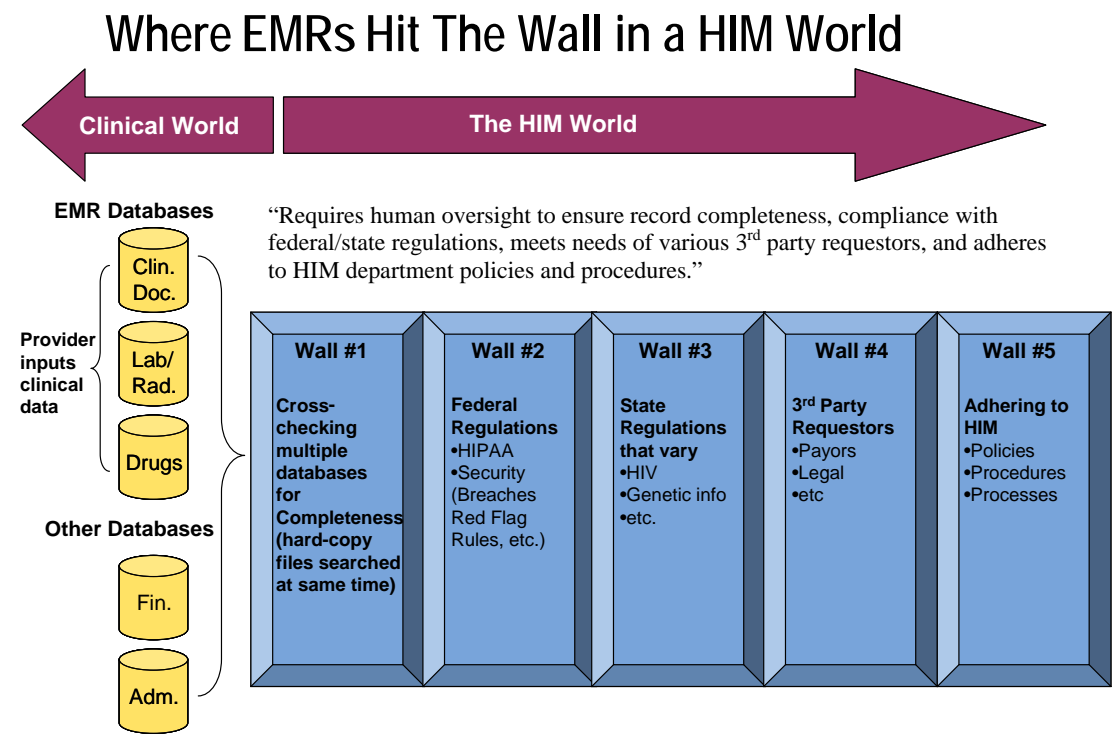
The Complexity of Release of Health Information

As healthcare begins to adjust to all the changes created by ongoing healthcare reform, new sets of HIM-related issues arise. One of these issues involves the release of information (ROI) process. Although the perception may be that fulfilling a ROI request is made significantly easier by the existence and usage of technology that enables both EHRs and LHRs, the reality is that the addition of technology and related regulations often makes the ROI process even more complex.

One of the major reasons that healthcare organizations maintain LHRs is to adhere to ROI requests made by authorized requestors (this may include third-party payors, legal requestors and patients). However, there are very specific and complex processes that must be adhered to in order to legally provide any portion of the LHR, and this process — the ROI process — requires significant human oversight.

Many outside the health information management (HIM) arena believe that providing medical records is a simple, instantaneous process, much like pressing the button on a photocopying machine to reproduce a piece of paper. However, those inside the HIM industry know that it is characterized by high levels of complexity and risk that must be carefully balanced with the public's need for health information. There are critical time-sensitive and strictly regulated steps that well-trained ROI specialists must abide by in order to ensure that both patient information and healthcare organization liability are always protected.

The Five Roadblocks in the ROI Process

Where EMRs Hit The Wall in a HIM World

Clinical World   The HIM World

EMR Databases

Clin. Doc.

Provider inputs clinical data

Lab/ Rad.

Drugs

Other Databases

Fin.

Adm.

"Requires human oversight to ensure record completeness, compliance with federal/state regulations, meets needs of various 3rd party requestors, and adheres to HIM department policies and procedures."

Wall #1

Cross-checking multiple databases for Completeness (hard-copy files searched at same time)

Wall #2

Federal Regulations
•HIPAA
•Security (Breaches Red Flag Rules, etc.)

Wall #3

State Regulations that vary
•HIV
•Genetic info
•etc.

Wall #4

3rd Party Requestors
•Payors
•Legal
•etc

Wall #5

Adhering to HIM
•Policies
•Procedures
•Processes

Roadblock #1: Multiple Databases

An EHR is composed of data from multiple databases, including clinical documentation databases, laboratory and radiology databases and ePrescribing databases. They are all compiled in different media, in different locations (on-site and off-site), which presents a paper-chase challenge that most ROI specialists tackle using a variety of well-established, though not fool-proof, procedures.

All protected health information needs to be assembled into a specific format as it is turned into an LHR that can be used in an ROI request. When an ROI request is made, a trained specialist first verifies the request to ensure it is viable. They then work to ensure that all patient information from all databases is tracked and compiled in one record. However, by retrieving information from multiple locations, stored in varying formats, one runs the risk for slow or improper information release that may result in complaints from healthcare managers, hefty fines or even lawsuits.

Roadblock #2: Federal Regulations

When an ROI request is processed, each and every page of documentation must be carefully reviewed to ensure that no legally protected or misfiled information is being released without appropriate patient authorization. This step is actually the most critical and also the most time-consuming part of the ROI process. If any sensitive personal information is inadvertently released it could damage that patient's employment or insured status, personal relationships or even reputation. However, in order to protect patient privacy, there are many laws and regulations that govern exactly how, what, when and to whom protected health information can be released. The HIPAA Privacy Rule is one that contains such specific requirements for the management of protected health information to ensure the utmost level of confidentiality while attempting to balance the need for prompt and informed delivery of healthcare services with that of protecting the individual.

There is also an identity theft Red Flag Rule (going into effect November 1, 2009) that specifically focuses on the organization's ability to prevent identity theft and medical identity theft. This is a federal regulation that HIM professionals must comply with at all times to avoid heavy monetary fines and/or other legal action taken against the healthcare organization. The Red Flag Rules state that organizations are required to identify patterns, practices and specific forms of activity (red flags) that indicate the possible existence of identity theft.

Additionally, it is imperative that HIM professionals handling ROI requests are knowledgeable about the privacy regulations of each medical condition, as not all conditions are treated equally when it comes to privacy. Without human oversight, it would be nearly impossible to differentiate between the way medical records are handled that contain information such as an HIV diagnosis or other sexually transmitted diseases with how a record that contains information related to drug and alcohol or

spousal abuse is handled. HIPAA specifies that healthcare organizations and its associated service vendors can be liable for all breaches of confidentiality by releasing this information without authorization, so knowing exactly what information may and may not be released is critical to abiding by HIPAA regulations.

Roadblock #3: State Regulations

While an LHR is a static set of information that does not change once complete, there are many variations as to what subset of that record will be reproduced and delivered depending on the purpose and the statutory and contractual regulations that apply to a specific ROI request. For example, the version of the patient's LHR produced for a worker's comp claim in Massachusetts may differ from one sent for the same purpose in California, and differ significantly from one produced to appeal a surgical implant claim that was denied by a commercial payor. ROI professionals are trained to recognize and act according to the specific state laws and regulations in order to avoid lawsuits or penalties.

Additional confusion around state regulations and laws are due to the fact that there is no standard, uniform state privacy law in use by all 50 states. State laws also vary in focus (e.g., HIV or genetic information) as well as degree of strictness or protection of patient privacy. Some states require that additional patient authorization be obtained prior to release, some states do not. This variation in laws requires that healthcare organizations develop, implement, and maintain thorough policies, processes, and procedures around ROI and ensure that all employees specializing in the ROI process be educated about their states' specific laws.

Roadblock #4: Third-Party Requestors

Third-party requestors, including authorized parties such as private and commercial payors and attorneys, add another roadblock in the ROI world. All third-party requestors who receive/request records must be logged, verified and tracked by the HIM specialist. The person or entity requesting information must have legal standing to receive the information requested. Evidence of legal authority may require a witness signature or notary public seal on the request form, evidence of the relationship between the requestor and the patient, documentation from a court of competent jurisdiction or other means. For requests considered routine (rather than an emergency), this may require direct contact with the patient, where the requesting entity is not known to the healthcare organization processing the request.

In addition, for each request, HIPAA requires a signature and date, identification of the specific information to be released, an expiration date for the authorization and identification of the party who is authorized to receive it. Some of these questions are not easily resolved. For example, if the patient is a minor, incompetent, or deceased, who is authorized to represent him/her? It requires ROI specialists skilled in both federal and state regulatory requirements to ensure that information is only released to authorized requestors.

Another issue with which HIM professionals must comply during the ROI process involves the fees that attorney requesters pay for the release of medical records. Under HIPAA, patients are entitled to a discounted rate for copies of their medical records to ensure that costs do not impede record access. However, some attorneys seeking records for litigation purposes demand the same discount, claiming that they are simply agents of individual patients and therefore eligible for the same consideration. HIPAA clarifies that only the person who received treatment qualifies for the below-market HIPAA rate. Those managing the ROI process must be knowledge of mandated fees and bill requestors accordingly.

Roadblock #5: Adhering to HIM

In addition to dealing with the issue of multiple databases, complying with federal and state regulations and knowing standard procedures for each third-party requestor, HIM professionals must also ensure they are complying with their hospital or health organization's own HIM policies, procedures and processes. Some of those procedures and policies include redacting social security numbers on the pages of the printed or copied medical record (for security purposes), sending records up to the date on the authorization even if the authorization states that records created after the authorization was signed can be released, and accepting authorizations specifically naming the provider rather than the generic "any healthcare provider."

Conclusion

Though EHRs are an important clinical tool that significantly enhances the quality of patient care, they do create some difficult situations once they become LHRs in the HIM world. As detailed in this paper, it takes a lot more than the simple click of a button on a photocopy machine to properly release medical information. The process is both labor-intensive and complex, requiring at least 32 individual steps to complete the entire ROI process. These steps are very specific and the consequence of not fulfilling each step according to state, federal and other regulations can be legally and financially damaging. Consequently, HIM departments need to be staffed with highly trained specialists who possess the necessary knowledge and expertise to complete each request correctly and in a timely manner. One way to guarantee this is to consider outsourcing the ROI function to an HIM outsourcing specialty company with trained, certified professionals who can handle the entire ROI process for your organization.

About G. Michael Bellenghi

As executive vice president of AHIOS, G. Michael Bellenghi is the organization's primary spokesperson and works directly with the association's president to administer its business affairs and coordinate operations under the general policy guidelines of the board of directors.

Bellenghi has over 35 years of diversified experience working with a broad range of healthcare organizations. He is presently co-owner and managing director of BF Healthcare, Inc., a privately held physician staffing company in Philadelphia. Bellenghi was a founder and director of SOURCECORP, Inc., a national provider of business process outsourcing solutions for the healthcare industry as well as other information-intensive industries. Before this, he was chairman and CEO of Recordex Services, Inc., one of seven founding companies of SOURCECORP, Inc. He also co-founded and served as managing partner of a management consulting firm that provided a vast array of strategic planning, operating, financial, and business development support to various sectors of the healthcare industry.

Bellenghi began his career in the public accounting profession, where he spent more than 20 years with the firm Deloitte & Touche. A partner in the firm's audit function, he was partner-in-charge of the Philadelphia office's healthcare practice for 10 years. A certified public accountant, he holds a BS degree in accounting from LaSalle University. He is a member of both the American and the Pennsylvania Institutes of Certified Public Accountants, a former chairman and current member of the board of trustees of The Center for Autism in Philadelphia, and a member of the board of trustees of Riddle Memorial Hospital in Media, PA.

About the Association of Health Information Outsourcing Services (AHIOS)

Established in 1996, AHIOS exists to promote, strengthen and enhance the health information management outsourcing industry while ensuring excellence in the handling and dissemination of confidential patient-identifiable information. Its goals are to:

- Increase awareness of the value, importance and complexity of the industry's services, particularly ROI services

- Establish standards of excellence for the industry of health information management outsourcing

- Pursue fair and equitable treatment of the industry through legislative, regulatory and legal processes

- Create educational and networking opportunities for members

For further information, please visit www.ahios.org.