

## Health Information Compliance Alert

### Electronic Health Records ~ You Could Soon Get Help Upgrading Your Computer Systems

**CMS, OIG loosen up on donations of e-prescription, EHR systems.**

Hospitals will be able to donate equipment and software to allow physician practices to make prescriptions electronically, thanks to two new final regulations from the **Centers for Medicare & Medicaid Services** and the **HHS Office of Inspector General**.

And you won't have to fear violating the Stark self-referral law or the anti-kickback (AKB) statute if you accept computer systems from hospitals, as long as you follow the rules.

The proposed version of the Stark rules allowed donations of electronic health records (EHRs), but the proposed AKB rule didn't. Now both rules will allow hospitals to provide EHR systems.

With electronic prescribing, you'll be able to transmit the prescription electronically to the patient's preferred pharmacy or other provider, reducing errors. EHRs will let you coordinate your patient records with records at the hospital and elsewhere.

Restrictions: Your office must pay 15 percent of the costs of EHR technology and software. Also, the safe harbors for EHRs will "sunset" on Dec. 31, 2013, so you have to take advantage of them in the next seven years.

In the final rule, the OIG says you can only accept e-prescribing systems that are used "solely" for prescriptions. But you can accept EHR systems that can be used for a variety of other purposes as well, as long as you use them "predominantly" for EHRs. The OIG adds that "depending on the circumstances, some software that relates to patient administration, scheduling functions, and billing and clinical support can be included."

The idea that you could only accept EHR systems if you only used them for EHRs was always a "real problem," says attorney **John Christiansen** with Christiansen IT Law in Seattle, WA. "It's just not realistic to say you can only use this for one thing. It's not the way computers work."

The OIG hasn't yet provided any guidance about what counts as using a computer "predominantly" for EHRs, cautions attorney **Sarah Fink** with Brown McCarroll in Austin, TX. You shouldn't accept any software donations unless they're for the purpose of medical record keeping, and any other uses are just "ancillary," says Fink. For example, you can't use EHR software for all of your patient administration, but only some of your patients' medical records.

Get it in writing: You should have a written agreement with any hospital that donates technology to your office, and it should cover everything the hospital plans to donate, Fink advises.