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Health Information Compliance Alert

Industry News: Will The Feds Use EHR Taxes To Raise $20 Billion Healthcare IT Fund?

Medical device tax could pose big costs for consumers.

Now that the $787 billion **American Recovery and Reinvestment Act of 2009** (ARRA) includes approximately$20 billion for healthcare IT, the administration is getting ready to throw a lot of money around. Seems funny but not many have yet mulled where the $20 billion will be coming from, the source of which could be a new tax on medical devices that hasn't come into the spotlight yet. In a blog-post on www.healthdatamanagement.com, editor-inchief of the Web site **Greg Gillespie** talks about this new tax -- a 2.3 percent excise tax on medical devices set to go into effect in 2013. Gillespie says this figure probably didn't get much exposure in the media because it doesn't sound like much, unless you're in the medical devices market. But the tax could generate almost $2 billion every year, says Gillespie.

Consumers to Bear the Cost Burden

Expert opinion, says Gillespie, is that medical device manufacturers will try to find ways to pass the costs on to the consumers, the middlemen, and device suppliers.Whichever way the cookie crumbles, it's the end consumer whose arm is going to get twisted. (For a reality check, visit: www.cleveland.com/medical/index.ssf/2010/04/health_care_fact_check_the_imp.html.)

Excise taxes like these, according to Gillespie, have almost always seen indiscriminate use of taxes, fees, unfunded mandates, etc., to shift money from here to there. And this time he says EHRs are being perceived as the backbone of a potential national health infrastructure that will use health information exchanges to plug everyone -- patients, provider, insurers, government health agencies, etc. -- into one mammoth-sized health entity that will definitely need sustainable revenue streams.

This could result in, the blog goes on to say, someone in the system deciding that because there's been an artificial expansion in the EHR market on account of the HITECH Act, and because the EHR market has some deep-pocketed players in it, the EHR market should pitch in its contribution in the form of a tax on their products.

But Are EHRs Medical Devices?

Gillespie says that taxing EHRs is something feds have been attempting for some years and now they finally have a foot in the door.The **Food and Drug Administration** (FDA) has been trying for quite some time to add EHR regulation to its host of responsibilities. If it succeeds this time, electronic records will fall into a new category that will make it easier to target. Gillespie further says in the post that in February 2008 the FDA had made some noise by issuing a proposed rule for regulating medical device data systems (MDDS), defined as software that transfers, displays, reformats or storesdata from a medical device without acting upon that device. The rule proposed to classify MDDS as a Class 1 medical device, the lowest risk category.

Industry players are trying to fight back, but the writing on the wall is quite clear. It is just a matter of time before an EHR tax rears its head -- whether the entry will be through the front door, or it'll be stealthier in the form of a medical device tax remains to be seen, says Gillespie in his blog-post.

(**Editor's note:** Greg Gillespie's post on www.healthdatamangement can be read at: www.healthdatamanagement.com/blogs/blog_Gillespie_EHR_tax_FDA_healthcare_regulation_federal_reform-40110-1.html.)