The American Recovery and Reinvestment Act of 2009 authorized the Centers for Medicare & Medicaid Services (CMS) to provide incentive payments to eligible professionals and hospitals who adopt, implement, upgrade, or demonstrate meaningful use of certified electronic health record (EHR) technology.1 The primary goal of EHR technology is to store and exchange information electronically between providers. In general, adopting EHR technology has been challenging for the psychiatric profession as compared to other medical specialties. However, more and more individual as well as group behavioral health practices are converting paper records to electronic.

Electronic Medical Records (EMR) are one aspect of EHR technology and can be highly beneficial for providers and the overall exchange of information. However, there are some unique risk management considerations when using an EMR as compared to paper records.

**EMR versus EHR**

You may often hear of the terms EMR and EHR being used interchangeably. There are some unique differences between an Electronic Medical Record and an Electronic Health Record:

**ELECTRONIC MEDICAL RECORD VS. ELECTRONIC HEALTH RECORD**

**EMR**

- A digital version of a single paper chart
- Contains all patient medical information from one practitioner or medical office
- Does not easily travel outside that medical office
- Patient rarely has access

**EHR**

- Contains multiple charts
- Shares information with other provider / organizations
- Information moves with the patient
- Access across state lines
- Patient and multiple providers have access
System Selection
When deciding to convert from paper records to an EMR system, the first step is to select an EMR system that is optimal to meet your/your patient’s needs. To qualify for incentives, a system should be chosen that is certified by a federally recognized EMR certifying body. When considering an EMR system, it is important to exercise due diligence in the selection process. Consider asking colleagues what they use for a system, how much capital is needed as well as required training when transitioning from paper records. Determine whether you are going to use a system based in your office or if it is through a web-based platform. In either respect, ensure that the system used is HIPAA compliant. If using an outside vendor, it is important to determine if a Business Associate Agreement is needed. The following are additional considerations when selecting an EMR vendor:

WHAT IS THE FUNCTIONALITY?
• Does the system have the ability to implement a scheduling function?
• What are the billing and coding applications?
• Can paper records/documents be scanned and stored?
• Can prescriptions be transmitted to pharmacies?
• Is there a patient portal or secure electronic communication available with patients?

TECHNICAL QUESTIONS
• Is the system HIPAA compliant?
• Is remote access or mobile access available and is it in a secure platform which is HIPAA compliant?
• What hardware is required?
• Where are the records stored and who owns the records?
• Are they stored off site or in a cloud server and are they maintained by another company?
• Is there 24/7 access available?
• What is the disaster recovery plan and what is the system of back up for records in the event something adverse should occur?

IMPLEMENTATION QUESTIONS
• What are the available training resources?
• What is the timeframe for implementation?
• Do they utilize Business Associate Agreements?
• Is there a written contract (which can be reviewed by your attorney)?
Your records involve confidential psychiatric and/or substance use treatment and it is important that only authorized staff has access to the records and that they are stored in a way that the information is protected from inadvertent disclosure. It is important to be aware of what your requirements are for patient privacy under HIPAA and state regulations. Note: many states have heightened protection for mental health or substance use records. Should you have questions, consult your local attorney or risk management professional.

**Psychotherapy Notes**

Psychotherapy notes are provided a higher level of confidentiality under HIPAA but only if they are kept distinct from the patient’s clinical record. This is so they can be retained when other records are requested. Thus, it is important that you have an EMR system that allows psychotherapy notes to be maintained in a separate manner as some may not have the ability to separate out psychotherapy notes.

**Does Your Office EMR Communicate with Larger System?**

If you are in private practice but part of a larger healthcare or clinic system, it is important to know whether your office EMR system communicates with the larger system or if they are incompatible. If the systems are incompatible, there may be opportunities for the information to “fall through the cracks;” in other words, there may difficulty in sharing information among providers who cannot access your office records. This is of particular importance if the patient is hospitalized or seeks additional treatment outside of the private practice.

**Documentation and EMRs**

One issue that routinely occurs when multiple providers access a patient’s record, is “copy and pasting.” In other words, a later provider copies and pastes the note into their note rather than re-typing in an effort to save time. Many errors can occur by implementing this method, notwithstanding that a diagnosis by one provider may differ from your impression of the patient. Ensure that you create your own note versus carrying forward another’s.

Just as with written documentation, the premise of the importance of complete documentation holds true in electronic medical records. Additionally, many EMR systems have the narrative function whereas others have check boxes. It is important that check boxes are completed and that, when applicable, text is not omitted. This could be problematic should the records be at issue in a legal dispute.

**Handheld Devices**

Psychiatrists use portable devices more and more every day. However, if accessing patients’ medical records on a portable device, it is important to ensure that the data is encrypted and password protected. A few strategies to consider when using mobile devices include:

- Do not share your personal password with others or allow access under your user name/password by others.
- Maintain control of the device.
- Ensure that the data is encrypted, use secure connections and disable wi-fi. Disable Bluetooth when not in use and make sure the device is set to “non-discoverable.”
- Know what apps you are installing and use up to date software.
Electronic Prescribing

EMRs can also facilitate electronic prescribing capabilities. This can reduce issues with illegible prescriptions, lost or stolen prescription pads or the risk that your prescription can be altered. An EMR with electronic prescribing can also cut down on phone calls and faxes for refill requests from pharmacies. Additionally, an EMR system able to communicate with the pharmacy can also track refill history to help monitor the patient is taking his medication as prescribed.

Breach of Privacy

Ensure that you have policies and procedures to minimize the risk that a patient’s records may be breached. In the event that you have a privacy breach, it is important to contact your insurer. Talking with a knowledgeable professional can help guide you through the potential breach notification process, including what you may or may not be required to do.

Conclusion

There are a number of considerations when implementing and using electronic medical records, particularly when implementing an EMR system with psychiatric or substance use records. It is always advisable to talk with an attorney in your state or risk management professional to ensure that you are adhering to applicable regulations.