

Electronic health records could give rise to more liability risk

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Electronic health record systems likely will soon become a fixture in medical settings. Advocates claim they will reduce health care costs and improve medical outcomes, which could be critical since the new health care reform law increases access for millions of Americans. Although benefits of bringing information technology to health records can be substantial, EHR systems also give rise to increased liability risks for health care providers due to possible software or hardware problems or user errors.

Two Case Western Reserve University professors, in a scholarly article published in the *Berkeley Technology Law Journal*, shed light on liability concerns and [electronic health records](#) systems. Until now, such a linkage has received little attention in the legal literature.

Sharona Hoffman, professor of law and bioethics and co-director of Case Western Reserve's Law-Medicine Center, and her husband, Andy Podgurski, professor of computer science at the university's School of Engineering, have written "E-Health Hazards: Provider Liability and Electronic Health Record Systems," which offers a comprehensive analysis of the liability risks associated with use of this complex and important technology.

Hoffman and Podgurski are well known for their research and findings documenting a national need for effective EHR regulation. They analyzed the need for federal regulation of electronic health record systems in the scholarly article "Finding a Cure: The Case for Regulation

and Oversight of Electronic Health Record Systems" (Harvard Journal of Law and Technology, 2009). That paper came after two previous publications by the two on security and privacy issues of electronic health records.

"This new piece focuses on health care providers' liability. Are they at greater risk for malpractice claims? Are they at greater risk for privacy breach claims? And I think the answer to all of that is yes," Hoffman said in describing the thrust of the article.

"It's very personal to health care providers," she said. "It's what everybody who sits at that computer and uses it to manage patient care needs to know."

At first glance, a quick transition to digital health records seems a normal, even overdue part of the wider flow of high-tech change. It may seem surprising that many health care professionals continue to jot down notes and prescriptions on paper.

Even so, many doctors might not be fully aware of the fresh liability risk, Podgurski said. Problems providing are can arise, for example, if an EHR system contains software bugs, if it is too complicated, or if training for users is insufficient.

"Whether or not there is a software bug, in the sense of a clear error that causes a wrong output, the usability of the system may be lacking, and that may lead a user to make mistakes that have safety implications," he said.

The authors make a strong case that without thoughtful intervention and sound guidance from government and medical organizations, EHR technology may encumber rather than support clinicians and may hinder rather than promote health outcome improvements. Aiming to prevent

potential problems, Hoffman and Podgurski propose a uniform process for developing authoritative clinical practice guidelines, and they explore how EHR technology can assist in determining best practices. They offer recommendations to address liability concerns.

Congress has made a \$19 billion investment in promoting health information technology, provided through the American Recovery and Reinvestment Act of 2009. The U.S. Department of Health and Human Services seeks to achieve nationwide usage of electronic health records by 2014.

So now is the best time to consider pitfalls. While the new Hoffman-Podgurski article draws attention to concerns over how EHR technology can lead to problems with patient care, the authors also point out that EHR system purchasers may never know about product flaws, because no regulation requires such disclosure, and some vendor contracts even prohibit it.

"If a computer problem causes an error in somebody's drug prescription, medication dosage or surgical procedure, that can be catastrophic," Hoffman said.

Provided by Case Western Reserve University

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