Considering Meaningful Use Participation when Acquiring a Hospital or Professional Practice

AN ENCORE POINT OF VIEW

Since the inception of the Meaningful Use program through September 2014, 7,701 hospitals and 483,167 eligible professionals have successfully demonstrated to be Meaningful Users of certified EHR technology. Since participation in these programs significantly impacts potential cash flows of organizations seeking to expand their market place with a merger or acquisition, it is critical to consider all MU attestation activities completed prior to, during, and after the business opportunity occurred. MU participation should become part of an overall programmatic approach with careful attention to maintaining readiness for potential audits of MU compliance and associated documentation.
“This letter is to inform you that you have been selected by CMS for an audit of your meaningful use of certified EHR technology for the attestation period. Attached to this letter is an information request list. Be aware that this list may not be all-inclusive and that we may request additional information necessary to complete the audit . . .”

INTRODUCTION

As a hospital executive, you hoped that one audit from the federal government would be enough, but as you re-read the text of the letter from Figliozzi and Company, you realize that your hospital has been selected again for another audit for participating in the Electronic Health Record (EHR) Incentive Program. Your hospital attested for Stage 1 Year 1 and Year 2 Meaningful Use (MU) and received those incentive dollars. You recall that the Office of the Inspector General (OIG) began reviewing incentive payments made under the MU Program in 2013. You feel reasonably confident with the development of this audit response as your team uses a standard process and had successfully submitted a response that was accepted by Figliozzi and Company last year.

However, there is something else bothering you - you just left a meeting with the CEO today where he shared that your hospital system is looking to acquire a two-hospital system. You have seen the acquisition plan and reviewed a high-level analysis, which shared that the targeted hospitals are located in a strategic market, have healthy patient volumes, and have stable and renowned medical staff. Both hospitals have attested for MU in the past, but that is all you know.

Knowing what efforts need to be made to make sure your organization is “audit ready” through collection and documentation of MU evidence, you start to wonder if you should ask the CEO if someone is looking deeper into the past MU reporting activities of these soon-to-be acquired hospitals. You wonder if they have the same operational set up for their MU program participation and a clear process to collect evidence to support future audit responses. You start to wonder if they have a dedicated resource to respond to questions; if they have responded to audits or requests for information; or even if they are in a current reporting period. You wonder what steps you can take to understand the implications of moving forward with the acquisition.

CURRENT STATE OF HOSPITAL MERGERS AND ACQUISITIONS:

According to HealthLeaders Media, hospital mergers and acquisitions in the United States declined in 2013; however, the number of hospitals and hospital beds involved in those transactions hit a five-year high, according to the 2014 Health Care Services Acquisition Report.1 Evidence suggests that mergers and acquisitions of healthcare organizations may increase as the complexity of regulations and drive towards population health management encourage organizations to seek efficiencies that come with growing larger. Encore defines
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healthcare organizational transactions (mergers, acquisitions, and alliances) as follows in Table 1:

<table>
<thead>
<tr>
<th>Transaction</th>
<th>Description</th>
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<tbody>
<tr>
<td>Merger / Acquisition</td>
<td>This involves a legal union of two companies into one parent organization. Merged entities can remain as independent entities owned by a parent organization or can consolidate to a single organization.</td>
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<tr>
<td>Affiliation</td>
<td>Many acute-care hospitals are deciding to form an affiliation with one or more entities. These organizations generally remain independent but agree to share resources, create mutual solutions, or negotiate contracts together. In some cases, a new organization is created to house some shared assets, employees, or contracts.</td>
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Table 1. Organizational Transactions

Since the EHR Incentive Program started to provide incentive payments to eligible hospitals in fiscal year 2012, hospitals have added the “new” source of income to their financial projections. Therefore, the analysis of an organization’s Meaningful Use status should be an important part of any merger, acquisition or alliance evaluation.

**CURRENT STATE OF MEANINGFUL USE AUDITS**

Any provider that receives an EHR incentive payment for either the Medicare or Medicaid EHR Incentive Program may be subject to an audit. Three basic types of audits have emerged to evaluate compliance with MU program rules. First, the Medicare audit, conducted by Figliozzi and Company or other CMS auditors, focuses on documentation proving compliance with the MU measures. Second, the Medicaid audit emphasizes documentation of eligibility and volume requirements for Medicaid payments as well as compliance with the MU measures. Finally, an OIG audit of a state’s Medicaid program ensures that states are correctly validating that a hospital meets the Medicaid eligibility and volume requirements. The OIG Work Plan for Fiscal Year (FY) 2014 has indicated a continued objective of auditing entities receiving EHR incentive payments. Compliance with the program continues to be a focus by CMS and the states, as well as internal compliance officers who are involved in audit readiness. Literature shows that mergers, acquisitions, and/or alliances are becoming common activities for healthcare organizations seeking to diversify and strengthen their footprint in healthcare.
It is critical for all merger and acquisition teams to complete an analysis of the past and current MU reporting activities as the audits are becoming more refined and information-driven. Traditionally, multi-hospital organizations and integrated delivery networks do not plan on returning incentive monies nor do they anticipate future Medicare payment adjustments, due to the lack of “Meaningful User” status of acquired organizations. Conducting a short desk review of applicable evidence collected during the reporting period(s) is one fail-safe way to confidently identify risks or areas requiring immediate attention before or during the acquisition. Simple checks, such as ensuring the completion of a Security Risk Assessment in every year that the organization has attested as a meaningful user, can uncover potentially devastating financial risks.

In a post-acquisition scenario, the acquiring organization should perform a deeper analysis of past and current reporting activities to understand future financial risks. It is normal for many provider organizations to develop slightly different interpretations for how individual measures should be calculated from their source data, and these variations are both legitimate and defensible. But if the merged organization intends to unify their MU programs, such variations will need to be eliminated to ensure consistent, accurate measure calculations, tracking and reporting.

**MERGER AND ALLIANCE PLANNING FRAMEWORK**

The conceptual framework, shown in Figure 1, illustrates a balanced view of Merger and Alliance Planning. This serves to guide hospital and provider organizations in evaluating key areas, while informing the development of a tailored plan for remediation and successful transition.

This approach is comprised of early, structured, and focused analysis of key principles of change, including People, Process, Data, and Technology. Its purpose is to identify strengths and risks that may affect an organization’s future. The approach helps to facilitate decision making, create thoughtful change, and identify opportunities that can leverage existing technology, resources, processes, and solutions as well as vendor relationships.
It is important to identify and retain resources that are critical in understanding historical decisions, technology upgrades, clinical workflows, and documentation repositories.

The framework and associated components identify critical areas necessary to be assessed during the pre- and post-acquisition phases. A brief description of each category is as follows:

**People:** New alliances or mergers often incur the loss of key Clinical and Information Technology (IT) resources that were well-versed in the design, development, and change control of the certified technology, which were necessary to meet MU requirements. It is important to identify and retain resources that are critical in understanding historical decisions, technology upgrades, clinical workflows, and documentation repositories. It will also be important to establish a transitional governing body for maintaining knowledge of the current state and for reviewing weekly performance reports to rapidly address performance issues. To facilitate the transition, this governing body should create clear communication plans and be able to communicate decisions related to MU attestation objectives. To aid in the retention of key, experienced staff, retention contracts may be needed to ensure qualified staff are available for upgrades, version changes, and adoption activities to sustain MU reporting objectives and thresholds.
**Process:** MU Stage 2 has greatly increased expectations for designing and managing complex processes that cover multiple business domains. During a potential acquisition or merger, it is important to deeply analyze workflows, which have been developed to generate the required MU documentation. This includes analyzing processes for generating reports, aggregating required documentation, and remediating areas where performance is below the required threshold. Clear roles and responsibilities are agreed upon and communicated to ensure information flow and the associated knowledge is communicated to the governing body with responsibility for MU. Careful attention must be paid to improvement opportunities identified by the Security Risk Analysis and clear documentation maintained for activities to mitigate risk. During this work, an experienced MU specialist will know what questions to ask, what responses need clarification, and what workflows and processes need to be in place to support attestation activities at each stage, paying special attention to whether the documentation will withstand the scrutiny of an audit.

**Technology:** It is important to understand if the hospital’s certified system and technology meets the requirements for each attestation year as established by the Office of the National Coordinator for Health Information Technology (ONC). For attestations in the 2014 and 2015 reporting periods, the EHR used by the hospital is required to have been certified against the 2014 criteria. It is also critical to maintain documentation of proof of ownership for each certified technology that is used for attestation. This documentation should include certification numbers and the Certified Health IT Product List (CHPL) for each reporting year. Many of the MU measures require the hospital or eligible professional to demonstrate that the technology was enabled during the reporting period. This requires evidence that the system, which generated the reports, is certified for the attestation year, and must include evidence that all required software upgrades have been included in the software and processes used to generate the MU attestation measures.

**Data:** Data is the building block for becoming a Meaningful User in the CMS EHR Incentive program. The information generated from data is an important organizational asset for participation in the MU program. Data is a critical element of measure calculation and the single “source of truth” after validation activities are completed. Reports generated from the Certified Electronic Health Record Technology (CEHRT) need to clearly show if the numerators, denominators, exclusions, and measures are accurate and complete. Methods for measure calculation and data validation need to be documented, showing their exact compliance with measure specifications set out by CMS.
PHASES OF ASSESSMENT

The People, Process, Technology, and Data analysis aspects are addressed in each phase of a MU Merger and Acquisition Assessment. Merger and Acquisition phases are shown below along with a description of each in Figure 2.

Pre-Acquisition: During the pre-acquisition phase, it is important to develop a baseline understanding of the MU attestation history and the analytical framework of the provider organization. This helps to develop a foundational understanding of the incentives obtained to date, potential incentives, and potential payment adjustments. These cash flows, along with their associated probabilities, should be incorporated into the acquisition financial projections. In addition, projected IT obligations and staffing, necessary to maintain Meaningful Use status, must be incorporated into associated financial projections.

Post-Acquisition: If sufficient analysis was not completed before the acquisition, there may be surprises regarding the MU status of the organization. This may include costly upgrade requirements, the potential need for selecting and implementing a different EHR system, and may also include the realization that an audit may bring about severe penalties due to lack of regulatory compliance. A review of the existing IT strategy may need to occur that supports MU activities across new domains and stakeholder groups. The new hospital may need to use another vendor for a time until the reporting period is completed, and additional resources may need to be addressed in the meantime. There will be some gaps that require more analysis, planning, and eventual oversight to meet expected outcomes, based on the size, complexity, and scope. Regardless of the findings, it is never too late to implement proactive planning and governance processes.
The MU program transcends multiple business processes and service lines, and some measures depend on the actions of patients and physicians in order for the hospital to successfully meet the measure.

MU Program Development: The MU program development phase includes the establishment of ongoing MU program management processes. Activities will include the evaluation of staff and organizational knowledge regarding previous MU activities and achievement of MU objectives. Risks to future MU program participation must be identified and mitigated. The MU program transcends multiple business processes and service lines, and some measures depend on the actions of patients and physicians in order for the hospital to successfully meet the measure. Strategies must be developed to ensure optimal data collection, tracking, and reporting of progress towards achievement of each MU objective.

MU Audit Readiness: Along with activities to ensure continued progress and successful attestation, it is important to ensure collection and maintenance of all documentation necessary to readily respond to an MU audit. During the MU audit readiness phase, MU program staff will be educated on MU evidence collection and analysis, and the creation of attestation packets that contain evidence required for audit response. It may also be prudent for the acquiring organization to conduct mock audits which can identify whether the existing program can withstand the scrutiny of multiple audits from different sources and may determine areas for improvement.

SUMMARY

Since the inception of the Meaningful Use program through September 2014, 7,701 hospitals and 483,167 eligible professionals have successfully demonstrated to be Meaningful Users of certified EHR technology. Since participation in these programs significantly impacts potential cash flows of organizations seeking to expand their market place with a merger or acquisition, it is critical to consider all MU attestation activities completed prior to, during, and after the business opportunity occurred. MU participation should become part of an overall programmatic approach with careful attention to maintaining readiness for potential audits of MU compliance and associated documentation.
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REFERENCES

2. CMS EHR Incentive Program Website, Registration and Attestation page, Audit and Appeals section.

ABOUT ENCORE

Encore, A Quintiles Company, is one of the most successful consulting firms in the health information technology (HIT) industry. Founded in 2009 and led by Encore CEO Dana Sellers and President Tom Niehaus, the company provides consulting services and solutions that assist its expanding client base with a wide range of HIT strategy, advisory, implementation, process-redesign, and optimization initiatives. Encore focuses on capturing the right data at the right time, establishing analytical capabilities that meet the evolving information and reporting needs of healthcare providers to document and improve clinical and operational performance. For more information about Encore, please visit www.encorehealthresources.com.