

ECLINICALWORKS SETTLEMENT - IMPACT ON PROVIDERS

The news of the \$155 million settlement between eClinicalWorks ("eCW"), several eCW employees and the U.S. Department of Justice has left many current users of the eClinicalWorks EHR ("eCW EHR") wondering what impact it will have upon them. First, the terms of the settlement provide several rights to current users. Second, actions taken to date have little impact upon prior or future attestations to being a meaningful user of a certified electronic health record technology ("CEHRT") under the Medicare and Medicaid EHR Incentive Program ("EHR Incentive Program").

eCW CUSTOMER RIGHTS

The terms of the settlement require eCW to provide all current users of the eCW EHR with free upgrades to the latest versions of the eCW EHR and the latest updates to any drug database supported by the eCW EHR, including, where relevant, the user's preferred drug database from among the supported options. Additionally, the upgrade option must be provided without any additional charges to the user with respect to eCW mandated fees for implementation, installation or training services. eCW may charge for training and/or implementation services, which are not mandated by eCW for implementation of the upgrade option but nonetheless may be requested in connection with an update or upgrade.

Further, the terms of the settlement permit any user of the eCW EHR to request a data transfer option within one year of receiving notice of the settlement from eCW. The data transfer option requires eCW to provide all data within the eCW EHR to users in a commercially reasonable, structured format that allows for the user's data to be migrated to and useable by the user's subsequent EHR system and vendor and provide timely good faith instructions on how this data is to be accessed by the user or by the user's subsequent EHR vendor. The data transfer right also includes the right to terminate the existing agreement between the user and eCW without any break or termination fees (the user must pay all fees owing for services prior to the data transfer).

IMPACT UPON PRIOR MU ATTESTATIONS

For prior attestations of being a meaningful user of a CEHRT under the EHR Incentive Program, users should not have any concerns because the eCW EHR was a CEHRT as certified by Drummon Group, which is an ONC-Authorized Certification Body ("ONC-ACB") as required to make the attestation. Even if the eCW EHR were to be decertified, which (as of June 6, 2017) it has not been, providers should have no worries as to prior attestations. CMS has issued an FAQ on this subject (FAQ12657). In this FAQ, CMS stated that "if your product is decertified, you can still use that product to attest if your EHR reporting period ended before the decertification occurred."

Because the eCW EHR remained certified as of June 6, 2017 by Drummon Group (per a search of the CMS CHPL website), users can continue to attest to being a meaningful user of CEHRT in future attestation periods so long as it remains certified. If the eCW EHR is decertified, users will need to seek hardship exceptions in future attestation periods if they continue to use the eCW EHR (see the above mentioned FAQ). Additionally, as users make the conversion to MIPS/APMs under MACRA, there is still little guidance as to whether a hardship exception would be available or how it would work under these programs.

If you have questions or would like additional information about this topic, please contact Jeff Short at (317) 977-1413 or jshort@hallrender.com or your regular Hall Render attorney.