# 15 questions to ask before signing an electronic medical record or electronic health record agreement

Many definitions exist for "electronic medical record" (EMR) and "electronic health record" (EHR). Although the terms are frequently used interchangeably, EMR refers to the electronic record within a specific practice and a basic digital or electronic representation of the paper chart, while EHR generally refers to a longitudinal record across time and providers.

The multitude of EMR/EHR vendors—each claiming to be the best—can make procuring a system for your practice an intimidating process. While there is no fail-safe way to negotiate a vendor agreement, having a clear idea of the specific functions and features that are important to your practice will help you make an informed decision.

**AMA Practice Management Center resource tip:**
Visit the AMA Private Sector Advocacy Web site at *www.ama-assn.org/go/psa* to access the educational resource "How to select a billing software vendor for the physician practice," which provides a proactive approach to determine the specific needs of your practice.

Before signing any EMR/EHR agreement, consider the following questions:

## 1. Have you defined your needs?

☐ Do you know what benefits you're trying to get from the EMR system? The EMR system will serve you better if you know beforehand what you are trying to accomplish with its use.

☐ Have you reviewed your practice's key workflows? A workflow analysis provides critical information on how your practice creates, maintains and exchanges the information contained in medical records, which can help you determine the key features you need in an EMR/EHR system. This analysis may also help you identify business process changes you should make and specific inefficiencies you can improve before implementation, saving you time and money.

☐ Will you need to integrate with other systems, such as your reference laboratory or hospital, or with your practice management software? These can be difficult and complicated processes that you should map out in advance and then carefully discuss with the proposed vendor(s).

☐ Have you conducted a readiness assessment?

## 2. Does the EMR system function appropriately for your practice?

☐ Does the software impose new limitations on your practice? Make sure the EMR provides all necessary functionality for your practice operations.

☐ Does the new software provide features you don't need or will likely never use? Does the vendor offer customization options or a la carte services for a package that best suits your requirements?

## 3. How will the new software and technology interface with key systems you use regularly?

☐ Will your practice management system (PMS) interface with or "talk to" the vendor's EMR/EHR software?

☐ Will you need to interface with medical devices or equipment in the office?

☐ Do you need a separate interface that enables your system to talk to other software programs? How will you pay for it? Current costs for an interface can range from $500 to $15,000 or higher. Consider also that your practice may require multiple interfaces depending on how your PMS was installed and whether you require interfaces to additional software (e.g., laboratory, electronic prescribing, imaging).

☐ How many interface programming hours does the agreement include? What happens when you exceed those hours?

☐ Who will provide support if there are problems with the interface? How will these costs be allocated?

☐ Should you buy an EMR/EHR that provides an integrated PMS to avoid interface issues? What is the cost? How will that affect your budget for this project?

## 4. How will your data populate in the new system(s)?

☐ During your workflow and readiness assessment, did you determine the most efficient way to handle the conversion of existing data? If you are considering obtaining an integrated PMS/EMR/EHR, have you developed a specific plan to ensure that all patient financial information is correctly converted or entered and reconciled to your existing system? Have you determined the length of time during which you may keep both systems operational?

☐ Does the vendor offer any data conversion services? At what cost? Or will your practice staff manually transfer your paper or electronic records to the new system? Your practice staff may have to scan old paper records or manually enter data into the new system.

☐ How long will it take to transfer the data?

## 5. Will you have the opportunity to test the software?

☐ Are you able to test the EMR/EHR software before signing the agreement? How long is the testing period?

☐ Does the vendor offer fully interactive sample software to download? Document all of the functional specifications (capabilities) of the software that the vendor promises. Review this portion of the agreement as you test the software. If there are items missing from previous discussions or sales presentations, document their deficiencies and follow up with the vendor. There may have been a problem with the installation, or perhaps a discount is in order. Careful documentation may help protect you if you experience future performance failures.

## 6. What is the vendor's track record in providing information technology services to physician practices?

☐ How long has the vendor been in business? How many employees does the vendor have? How many sales and support staff are dedicated to your geographic region?

☐ How long has the vendor offered this EMR/EHR product? How many live sites does the vendor have? Ask for references and case studies to confirm their experience.

☐ What were the vendor's sales last year? What were the vendor's sales last quarter?

☐ What is the vendor's ranking with health information technology review organizations, such as KLAS (*www.klasresearch.com*)?

☐ Is the vendor involved in any litigation with a customer?

☐ What percentage of the vendor's physician practice customers are from a similar specialty?

☐ Does the vendor guarantee in its contract that the software provides you with the necessary functionality to comply with all federal and state mandates, and with

the Health Insurance Portability and Accountability Act (HIPAA) Privacy and Security Rules? Does the vendor guarantee that its software can submit and receive HIPAA standard transactions?

☐ Does the vendor provide security and privacy functionality to prevent breach of unencrypted computerized information?

☐ Is the vendor certified by the Certification Commission on Health Information Technology? Does the vendor plan to recertify on a regular basis?

☐ What is the cost to contact support staff with inquiries? Is this cost included in your package, or is there an additional fee?

### 7. Are all of your costs understood and documented?

☐ What are the software license fees? Do you have to buy more than one license? Are software licenses sold per physician or user? If so, how are part-time physicians, physician assistants and/or advanced nurse practitioners calculated?

☐ Are there other per-user license fees, such as for the database or for using reference libraries?

☐ Does the vendor have a legal license to essential code sets, such as the AMA Current Procedural Terminology (CPT®) file? Will the vendor maintain this license annually as part of your service or maintenance agreement?

☐ What about upgrades and maintenance costs? Will the maintenance fees include upgrades and minor fixes? The contract must specify the areas covered in maintenance, including remaining compliant with appropriate regulations and industry standards. For example, what happens if HIPAA standard transactions or the CMS-1500 claim form are changed?

☐ Are maintenance services, such as software upgrades, new features, product offerings and customer service

(e.g., a 24/7 help desk or other tech support), available to keep systems operating effectively? These services are often referred to as "vendor service and support provisions" and should be included as part of your practice's maintenance fees; the details may be part of the initial agreement or addendum.

☐ What are the service-level guarantees for maintenance? How quickly will the vendor respond?

☐ Are you required to buy certain enhancements?

☐ Have you calculated the costs for conversion of existing data and training? Data conversion and training costs can be as costly as implementation costs, so make sure you factor them into your purchase.

☐ Have you calculated the costs for upgrades to your office—e.g., making space for the server, electrical power, staff training time, new furniture, new computer desks?

☐ Have you calculated costs related to additional telephone lines and high-speed connectivity?

☐ Have you calculated the cost of reduced productivity during the initial implementation?

### 8. Who will implement the system?

☐ Will the vendor set up the system? How much time will your practice staff need to devote to the implementation? Can the vendor or your practice staff implement the system after hours so that patient flow is not affected? Can you run parallel systems for a time to ensure problems are resolved before they cause any interruptions to operations and clinical care? (This is recommended, especially if a PMS change is part of the new system.)

☐ What services and materials (e.g., project plan, guides and specifications) will you receive? How many hours of installation service are included?

☐ If you purchase new hardware, is the vendor responsible for installing it?

☐ Does your agreement tie implementation milestones to payment? A progressive payment plan will benefit your practice.

☐ Has the vendor negotiated reciprocal obligations? For example, if your practice is not ready to receive the software because of "substandard" equipment, will you be held liable? Be sure to document the requirements for technical readiness hardware and specifications, and ensure the equipment is ready before the implementation.

**9. Who will train you on the new technology?**

☐ How many hours of training are included in the agreement?

☐ Does the vendor use a "train the trainer" approach? If so, do you have a practice staff member capable of being an internal trainer?

☐ Does the vendor's training schedule seem comprehensive?

☐ How will you modify practice schedules to allow sufficient time for training?

☐ Will you need additional training beyond the software? For example, if you use voice recognition software to transcribe directly into the EMR/EHR, this may require the physician to train the system with his or her voice.

☐ Will the training take place in your office? What additional charges for travel does the vendor impose for training at your office?

☐ Does the vendor offer off-site training? How many practice staff members may attend?

☐ Does the vendor offer Web-based training?

☐ Does the vendor provide follow-up training?

☐ Does the vendor hold regular training clinics that new practice staff can attend?

☐ Does the vendor hold regular user group meetings?

**10. Will you receive upgrades, customer service and new service training?**

☐ Does the maintenance agreement include ongoing training for new upgrades and features?

☐ How and when will you receive notification about new upgrades and services? How does the vendor schedule and install upgrades?

☐ Are there periodic upgrades that require the system to be unavailable and then restarted?

☐ Does the vendor offer a "test environment" in which upgrades are loaded to allow you time to test and learn their functionality without affecting your live system?

☐ What happens if the vendor's upgrades negatively affect your system? What is the vendor's plan to restore your system to its state before the upgrade?

☐ Does the agreement include a plan for issues that are not resolved remotely? For example, will the vendor visit your site? Within what time frame will the vendor resolve the issues? Will you be compensated for longer delays? What constitutes resolution?

**11. According to the vendor agreement, who has access to your data?**

☐ Are you clearly identified as the owner of practice data? Does the agreement identify all parties who will have

access to your data, including during upgrades and maintenance?

☐ When and how will the vendor have access to your data? Depending on the business model, the vendor will likely have access to some of your practice's data. Ask about the vendor's security measures and backup procedures. You will need a HIPAA-compliant business associate agreement with the vendor, and you will be responsible for ensuring the vendor meets all HIPAA privacy and security requirements.

☐ Upon the termination of a license or agreement, is there an orderly process for you to extract your data? This is applicable if you access the vendor's software within an application service provider (ASP) model. The agreement should also specify instances when the vendor must return or destroy data and the time frame in which the vendor will destroy that data. The HIPAA business associate agreement must contain these specifications.

☐ Are the termination provisions clear? Both your practice and the vendor should know when and how to terminate the agreement.

☐ Are you able to terminate the agreement without cause? What about the vendor? Some agreements allow both parties to terminate without cause, meaning that each party may terminate the agreement at any time by giving notice (usually written) within a certain time frame. Make sure you have enough time to transition to another system between the time termination notice must be given and the final termination date.

**12. Where does your data reside?**

☐ Are you going to use an ASP model in which the software and hardware reside at a secure data center and not at your office? If so, what are the terms of this agreement and the services provided? At a minimum, the ASP vendor should handle hardware security, upgrades and disaster recovery/backup services.

☐ If you use an ASP model, what are the high-speed connectivity requirements? Who will provide these services, and are these services available in your area?

☐ An ASP agreement should provide:
  1. Guarantees for uptime and service level agreements
  2. A guarantee of data availability
  3. Notification of service and scheduled downtime
  4. A plan for security, backups and restoration, which includes the testing methodology used
  5. Notification of any data breach
  6. A plan for extended downtime

☐ If you own the hardware and software, the vendor agreement should specify:
  1. An outline of when service will be performed
  2. A plan for who covers which hardware backups and when
  3. A plan for failures and extended downtime
  4. An outline of which security measures are required for supporting connectivity to the Internet (e.g., firewalls, virus protection, spyware protection, password security and other security devices to limit access to networks and applications)

☐ Will you purchase the EMR/EHR software and necessary servers and hardware to run the system at your office? If so, will you store and maintain your own data? How will you and the vendor handle upgrades and backups, etc.? Storing and maintaining your own data entails paying large upfront costs, but you will control all of your data.

☐ If you own and host the hardware, what are the warranty costs?

☐ Who will provide the server support and assist you with adding new workstations and changing configurations and security settings? The typical hourly charge for this kind of network support is more than $100 per hour, and many physicians underestimate the amount of time and cost associated with keeping the hardware running.

☐ Do you understand the data provisions of your contract?

Regardless of whether you are renting or purchasing the software, the contract should include provisions regarding software and proprietary information; claims and medical data ownership with respect to both original and copies of records; data access, storage and recovery; and termination procedures.

### 13. What type of license can you choose?

☐ Most EMR/EHR vendors sell a license to use the system; you don't actually own the software. Vendors typically sell licenses on a perpetual basis (one time), but require an annual maintenance contract to remain valid. In limited cases, you may find a term license that renews each year and may have a lower upfront cost.

### 14. What happens if the system fails?

☐ What do the damages, disclaimers and limitations on liability provisions include? In the event that the software fails, ideally the vendor should "make the practice whole." In reality, vendors will try to limit their liability to the amount payable under the agreement. In most cases, this does not reflect the scope of the physician practice's potential loss.

☐ Does the vendor provide the option of a third party that holds the software in trust? This account would create a fiduciary relationship between your practice and the third party, so that you have access to the vendor's source code in case the vendor is bought out or goes out of business.

☐ Does the vendor offer indemnity if the coding component of its software malfunctions and causes you to have a Medicare or Medicaid fraud and abuse investigation with a negative finding?

☐ Are you adequately insured to cover software malfunction? Consider instances when a software malfunction can harm your patients.

☐ Does the vendor specify a cap on its responsibility for breaches of confidentiality?

☐ Does the agreement allow the vendor's insurance company to take advantage of any caps or limitations of liability pertaining to third parties?

### 15. What kind of warranty exists?

☐ Are you protected from possible infringements (e.g., when a third party files suit against a vendor over propriety information)? The vendor should pay damages and provide defense, if necessary, and your operations should not be inhibited.

The AMA has developed a collection of health information technology (HIT) information and tools that you may find helpful. For more information:

• E-mail *hit@ama-assn.org*

• Visit *www.ama-assn.org/go/hit* to browse the AMA's HIT Web site.

**Questions or concerns about practice management issues?**

AMA physician members and their practice staff may e-mail the AMA Practice Management Center at *practicemanagementcenter@ama-assn.org* for assistance.

For additional information and resources, there are three easy ways to contact the AMA Practice Management Center:

• Call **(800) 262-3211** and ask for the Practice Management Center.

• Fax information to **(312) 464-5541**.

• Visit *www.ama-assn.org/go/pmc* to access the AMA Practice Management Center Web site.