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Providers Need To Face Patient Portal Challenges Head On

Law360, New York (May 16, 2014, 7:40 PM ET) -- If you have been to a doctor's office or hospital in the last 12 months, you have no doubt been given a brochure or invitation to register for access to your provider's patient portal. Most portals will allow you to review your upcoming appointments, request prescription refills, and view visit summary reports and laboratory results. Many also provide secure messaging whereby you can request appointments, ask a follow-up question of your doctor, or obtain a referral. While some people can never have enough data and are happy to register and log on, the reality is people are not registering in droves, which is cause for alarm among hospitals and providers.

The ever-increasing push to get patients to register for the portals is tied to deadlines faced by many physicians and hospitals to demonstrate compliance with several meaningful use stage 2 requirements or face reductions in federal health care program reimbursement beginning in 2015. One of those requirements involves rolling out a patient portal, and demonstrating that people are using it to access certain information about recent inpatient hospital stays or emergency department visits (in the case of hospitals), or office visits (in the case of individual health care providers).

Specifically, eligible providers and hospitals must, on a going-forward basis, demonstrate that 5 percent of all unique patients (or their representatives) seen in that fiscal year used the portal to view, download, or share with a third party, information maintained on the portal. Furthermore, the meaningful use requirements also include timeliness elements. Information for at least 50 percent of unique patients must be posted to the portal by hospitals within 36 hours of discharge from the emergency department or an inpatient service. The physician must comply, and by within four days of the information becoming available to them. Compliance is measured over a consecutive 90-day period for 2014, and thereafter will be measured across the entire fiscal year for hospitals and calendar year for physicians.

As providers and hospitals roll out and enhance their portals, challenges continue to emerge. Two of the more significant challenges are: 1) how to get a sufficient number of patients to use the portal, and 2) how to ensure that the portal appropriately takes into account the heightened sensitivity, and legal protections, surrounding specific types of information that might be posted on the portal — while providing patients, and sometimes their proxies, with broad access to information.

Getting Patients Registered

With respect to recruiting people to use the portal, the challenges include simplifying the registration process, finding a way to engage with patient populations who do not have ready access to a computer or mobile technology that supports the ability to view and use the portal as intended. Institutions that have only isolated encounters with patients face particular challenges.

On the hospital front, CMS has issued FAQs indicating that hospitals can register patients for the portal while they are still inpatients and show them how to access the portal before they go home. If the hospital has uploaded information regarding their stay by the time the patient accesses the portal, that access will count. This still leaves a significant challenge, however, for hospitals with very busy emergency departments — and especially those located in tourist or vacation spots where many emergency department patients live out of state and may have no desire to register for access to a portal for an institution they hope never to visit again. CMS has created hardship exceptions for physicians and hospitals located in areas with inadequate broadband services, but did not create any hardship exceptions for physicians whose practices focus on elderly patients or the poor for whom access to technology (mobile or otherwise) may be more restricted — taking the position that since only a 5 percent usage rate is necessary, all providers should be able to meet the requirements.

Giving Patients What They Want

Once a patient is registered as a portal user, the provider's focus shifts to ensuring that patients can find the information they want or need easily, and that patients are willing to use the portal repeatedly. Some patients may want or expect that their entire medical record will be available via the portal, which in most cases is not what they will find when they log in. The meaningful use standards only require portals to provide specific types of information to patients, including but not limited to current/past problems, procedures, laboratory results, medication lists and allergies, vital signs, smoking status, demographics and basic care plan information (e.g., patient goals and care instructions).

Some providers and institutions have decided that the best course of action for now is to limit their portal offerings to only those pieces of information required to be shared. This may help limit initial portal development and implementation expenses for those not using a portal module from their EMR provider, but it may leave patients disappointed and unwilling to use the portal on a regular basis.

Sensitive Information

Even with respect to basic reporting elements, hospitals and physicians have the flexibility to withhold information from the portal, including laboratory results or procedure summaries that are particularly sensitive or that might cause patient harm. Some hospitals simply refuse to post such results, while others build in posting delays to allow providers sufficient time to call or otherwise relay the results to the patient before the information is available on the portal.

For example, posting delays are often built into the system for HIV or other STD testing results, genetic screening results, pregnancy tests, or biopsies. While such delays may make sense for a patient receiving an initial diagnosis, patients with an established diagnosis — even one that is considered particularly sensitive — may find a portal that delays or withholds critical information to be a hindrance, not a help.

It is also important that hospitals and providers keep in mind that meaningful use regulations do not trump federal, state or local privacy laws, which may further restrict access to sensitive medical information — an especially important issue if anyone other than the patient himself can view or download information on the portal (e.g. HIV test results).

Caregiver/Proxy Access

One portal feature that many patients or their caregivers are expected to request is the ability to obtain proxy access to another individual's medical information (e.g., spouses, adult children involved in a parent's care, siblings). While this sounds relatively innocuous, proxy access is typically "one size fits all," meaning that proxies have access to everything on the portal. A wife may feel differently about giving her husband access to medical records on a go-forward basis than she might if she knew that her husband's portal access would allow him to see records dating back several years before they were married, and that might include mental health or sexual health information that she would prefer to keep private. If she cannot cut off access to past records, she may prefer not to give her husband access to the portal at all.

Then there are the access questions patients do not think about when they register for the portal, but that may become critically important down the road. How can I shut off access to my records if I am filing, or thinking about filing, for divorce or if I do not want my adult children to know that I'm being tested for cancer or treated for a mental illness? What if I reported to the emergency department that my spouse hit me, but I forget that I had already authorized my husband to have proxy access to my records? In the moment, a patient may not think to ask the emergency department staff what will be posted on the portal, whether domestic violence references are removed, or whether she can cut off her spouse's access before leaving the hospital.

Ideally, patients would have the ability to customize caregiver or proxy access to limit the records available for review (e.g., going forward only or excluding mental health), receive a prompt on a regular basis (e.g., at least annually) to verify the patient's desire to continue the proxy's access to records, and be able to request an immediate shut off of proxy access. Such features, however, are not standard fare on most portals and unlikely to be developed absent patient demand or regulatory intervention.

Parental Access to Children's Records

Parental access to children's medical records has always been a thorny issue — at least with respect to adolescents. Now that access is as simple as a few clicks and may not require speaking with the child's clinician or completing a form with the medical records department, the issues have grown even more complex.

In many states, children over the age of 12 or 13 have the ability to seek various forms of treatment without their parents' knowledge or consent — including mental health treatment, substance abuse treatment, and pregnancy and other family planning services. In such situations, providing parents with access to information about their child's care may violate state privacy laws. Some institutions have gone the route of removing adolescent records from the portal if the child does not consent to his or her parent having full access to the records placed on the portal. Others provide adolescents with the option of giving their parents' access to their records once they turn 13. Still others are developing special forms of care notes for "protected" visits (and not posting those visit notes on the portal), so that parents can access all portal materials, while knowing that summaries about or notes regarding upcoming appointments for protected visits will not be displayed.

Where To From Here?

Earlier this month, the Department of Health and Human Services Office of the National Coordinator (HHS-ONC) began winding down its Data Segmentation for Privacy Initiative (DS4P), having issued and tested technical specifications to facilitate the segregation of sensitive information. By implementing their recommendations, which include tagging metadata for certain services, diagnoses, medications, visits with specific providers or visits occurring in specific locations, it is hoped that hospitals and physicians will better be able to provide patients with a customized portal experience that meets their needs while protecting their privacy. This will require patience and some measure of trial and error, but hopefully portals that everyone will want to use, or at least not be afraid to use, are not too far off in the future.

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