

**ILLINOIS STATE MEDICAL SOCIETY**

**Resolution 02.2019-23  
(A-19)**

Introduced by: Jason Tjaden, M.D., ISMS Member

Subject: Mandates by ACOs Regarding Specific EMR Use

Referred to: Medical Legal Council

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1           Whereas, the private practice of medicine has protected the relationship between  
2 doctor and patient; and

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4           Whereas, the patient chart and its data are protected under HIPPA; and

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6           Whereas, the ownership of the chart rests with the doctor originating the chart;  
7 and

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9           Whereas, the private practice of medicine is the model in this State; and

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11           Whereas, the continued art and science of the practice of medicine depends on  
12 the protected relationship of the patient-doctor relationship and the documentation of  
13 that relationship; and

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15           Whereas, electronic medical records have improved the documentation of the  
16 doctor-patient relationship; and

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18           Whereas, the access to the patient chart is protected by HIPPA; and

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20           Whereas, the private practice is affected by forces in the free marketplace; and

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22           Whereas, the access and ownership of the patient chart has effect on its value in  
23 the marketplace; and

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25           Whereas, the ownership of the chart has not been ruled on in most states including  
26 the State of Illinois; and

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28           Whereas, the spread of ACOs may direct referrals within a geographic area and  
29 have restricted trade; and

1           Whereas, all electronic medical records are to move to interoperability as defined  
2 and mandated by CMS for compliance with federal programs; and

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4           Whereas, there are means of sharing data between organizations in accordance  
5 with HIPPA via alliances like *Commonwell Health Alliance* and *Carequality*  
6 *Framework* that are in common usage for patient data and its interoperability; and

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8           Whereas, the use of alliances like *Commonwell Health Alliance* and *Carequality*  
9 *Framework* have accelerated the ability for unrelated healthcare entities including  
10 inpatient and outpatient facilities to share data through interoperability; and

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12           Whereas, ACOs have begun to mandate the use of single and specific EMR  
13 software vendors; therefore, be it

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15           RESOLVED, that an ACO cannot mandate its membership to use a specific  
16 EMR; and be it further

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18           RESOLVED, that ISMS will move to affect legislation that prevents this type of  
19 abuse from ACOs within the State of Illinois; and be it further

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21           RESOLVED, that ISMS will take an emergent resolution to the AMA to effect  
22 legislation to prevent EMR mandates by ACOs and similar entities.

References:

[https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201810&RIN=0938-AT79&operation=OPERATION\\_PRINT\\_RULE](https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201810&RIN=0938-AT79&operation=OPERATION_PRINT_RULE)

<https://www.cms.gov/Center/Special-Topic/Interoperability/CMS-9115-P.pdf>

**Fiscal Note:**

N/A

**Existing ISMS policy related to this issue:**

The decision to purchase electronic medical record (EMR) technology should be voluntary and not mandatory; and for physicians who purchase EMR technology and/or updates not reimbursed by an insurance plan, the federal government should provide a tax credit for the cost of the purchase. (HOD 2007; Reaffirmed 2017)

It is the policy of ISMS to champion the development of an “Employed Physician’s Bill of Rights;” which calls for the following ... ‘that physicians should not be solely responsible for data entry, coding and management of the use of electronic medical record systems.’ (HOD 2017)

ISMS supports appropriate changes to Medicare rules that would allow physicians of all disciplines, including those who practice in skilled nursing facilities and as medical directors of nursing facilities, to participate in multiple accountable care organizations, if they so choose. (HOD 2013; BOT 2013-OCT; Reaffirmed 2015-JAN; Reaffirmed 2018; Last BOT Review 2014)

It is ISMS policy that the Centers for Medicare and Medicaid Services' proposed "meaningful use" criteria should be changed to lessen the burden on physicians in any proposals intended to support implementation of electronic medical records. (HOD 2010; Reaffirmed 2017)