

# Office of National Coordinator for Health Information Technology Releases New Guide on Buying Electronic Health Record Systems

Article By:

Health Care Practice at Covington & Burling

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Last month, the ***Department of Health and Human Services' Office of the National Coordinator for Health Information Technology (ONC)*** released a [new guide](#) for prospective buyers of ***Electronic Health Record systems (EHRs)***. ONC provides detailed information and suggestions that merit the serious consideration of anyone that contracts or plans to contract with an EHR vendor.

ONC begins with a broad introduction that explains what kinds of options exist and offers advice on how to select an appropriate system. Then, ONC provides detailed advice on a number of important topics, including safety and security, system performance, data rights, interoperability, IP, risk management, dispute resolution, and transitions. For each of these topics, ONC identifies common pitfalls and provides buyer friendly form contract language. Sprinkled throughout the guide are descriptions of common pitfalls and advice about how to avoid them. Some of these points are worth further emphasis.

ONC notes that some buyers have complained about inconsistencies between vendor demonstrations and their actual products. It is important to remember that marketing materials and demonstrations are not necessarily reliable. ONC suggests requiring that any such materials presented to a buyer be attached and incorporated into the final EHR contract. Furthermore, core service and performance obligations should be memorialized with express warranties. This should provide some security against falling victim to a bait and switch.

ONC emphasizes the importance of data rights by pointing out that EHR vendors may:

- seek to commercialize protected health information that has been de-identified or other data such as information about clinical and business operations, in ways that health care providers or patients would find unacceptable;
- fail to take reasonable steps to protect, back up, and recover data in the event of a disaster, outage, security incident, or other unexpected event involving a cloud-based EHR; or
- stop performing services- or design the system or software to automatically stop functioning- if the health care provider fails to make payments, even if due to a good faith dispute.

The rights and responsibilities of vendors and buyers with respect to data, particularly confidential patient information, cannot be over-emphasized. ONC correctly points out that, at a minimum, buyers must remember that they cannot give the EHR vendor more rights than they have under HIPAA and other laws.

It is also important to remember that there are numerous laws and regulations that impact the use of EHR and that they can change. ONC flags “meaningful use” and “interoperability” as key areas but correctly notes that buyers should generally seek contracts that have carefully allocated responsibilities, in the event of statutory or regulatory shifts, to the parties that are in the best position to respond to those shifts. In many cases this will be the EHR vendor.

ONC also provides a list of common reasons that buyers conclude that they need to switch EHR vendors. Switches and disputes tend to occur when an EHR vendor:

- has not developed functionality that will enable compliance with new regulations, quality reporting initiatives, or payment models;
- failed to disclose additional costs that must be paid to realize the full benefit of the EHR’s functionality or limitations that have interfered with access or use of the EHR’s capabilities;
- did not provide agreed upon customizations that are critical to the manner in which patient services are delivered;
- provided an unsatisfactory level of support services;
- was responsible for a security failure that had serious consequences;
- increased prices significantly when it was time to renew the contract;
- decided to discontinue support for a specific EHR (or exited the market entirely); or
- was acquired by another company that stops supporting a user’s current EHR and wants that user to switch to another EHR.

The ONC guide will likely prove useful in many circumstances. Before beginning to search for an EHR system, it would be prudent to consider the most common pitfalls identified by ONC. While shopping, ONC’s guide can help identify specific issues that might become important. During negotiations, form contract language, offered by ONC, could be quite useful.

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