



## **Stimulus 101**

### ***Understanding the HITECH Act***

On February 17, 2009, President Barack Obama signed into law the American Recovery & Reinvestment Act to stimulate the lagging U.S. economy. The health IT component of the Bill is the HITECH Act, which, within its 267 pages, appropriates \$19.2 billion dollars to encourage healthcare organizations to adopt and effectively utilize Electronic Health Records (EHR) and establish health information exchange networks at a regional level, all while ensuring that the systems deployed protect and safeguard the critical patient data at the core of the system.

The opportunity presented by the Bill is enormous. After literally decades of slow but steady progress towards converting our paper-based record system into an electronic one, we now stand poised for a monumental leap forward. In a matter of just a few years, the Congressional Budget Office predicts 90% of physicians and 70% of hospitals will be using a comprehensive, robust Electronic Health Record. As a result, the country will save billions of dollars on the provision of healthcare, and our citizens will receive coordinated, informed care from their entire network of providers.

Navigating the language of the Bill is time consuming and onerous, so following is a plain language summary of the health IT provisions within the Stimulus Bill.

#### **Details of the \$19 billion**

There are two portions of the HITECH Act – one providing \$2 billion immediately to the Department of Health & Human Services (HHS) and its sub-agency, the Office of the National Coordinator for Health IT (ONC), and directs creation of standards and policy committees; a second that sets aside \$17.2 billion that will eventually be paid to healthcare providers who can demonstrate their use of Electronic Health Records.

#### **\$2 billion to HHS / ONC**

The Secretary of HHS is directed to spend \$300 million of the \$2 billion fund to establish more health information exchange (HIE) initiatives in regions and towns across the country, as well as helping existing HIEs to progress in connecting providers. Additionally, there's \$20 million allocated to ensure that standards are consistent across products and care settings.

Beyond those guidelines, the Bill does not assign specific dollar amounts to specific programs. The incoming Secretary will announce how the remaining funds will be allocated by May 2009. Areas called out for investment include:

- clarifying and further developing standards related to interoperability and privacy
- building infrastructure for the advances of telemedicine
- expanding health IT in public health departments
- establishing a Health IT Research Center and regional Health IT Extension Centers to provide information to healthcare providers on best practices, vendor selection, implementation, training, etc.
- providing funding through Federal grants via AHRQ, HRSA, CMS and the CDC, as well as grants to states and state-designees to be passed on to healthcare organizations needing assistance with upfront funding for EHRs

Additionally, outside the HITECH Act but in other areas of the Stimulus bill, the Secretary of HHS will have responsibility for building and renovating Federally Qualified Health Centers and increasing their use of health IT, helping Indian Health Services organizations adopt EHRs and telehealth services, and improving the technology used to process disability claims, including determining what role EHRs can play in that modernization effort.



**\$17 billion in incentive payments to physicians and hospitals**

The government is focused on two primary goals in this legislation: moving physicians who have been slow to adopt Electronic Health Records to a computerized environment, and ensuring that patient data no longer sits in silos within individual provider organizations but instead of actively exchanged between healthcare professionals to ensure that patients are receiving informed care. Therefore, the vast majority of the funds within the HITECH Act are assigned to payments that will reward physicians and hospitals for effectively using a robust, connected EHR system. There is a program designed for those that see large volumes of Medicaid patients, and another for those that accept Medicare, and in order to qualify for the incentive payments, both physicians and hospitals have to prove three things:

1. Use of a certified EHR product with ePrescribing capability that meets current HHS standards.
2. Connectivity to other providers to improve access to the full view of a patient's health history.
3. Ability to report on their use of the technology to HHS.

Additionally, because the government wants to spur quick movement in this area, all of the incentives include payments for up to five years but provide the largest payments early in the program, and those that don't adopt will eventually be penalized through lower payments. The incentive payments begin in 2011 to ensure the providers have time to adopt and learn to use the EHR; penalties begin in 2015.

***Specifics of the Physician Opportunity***

As stated, there are two incentive programs for physicians: Medicare and Medicaid. Physicians will choose program participation.

**Medicaid:** Physicians who see more than 30% of patients paying with Medicaid (20% for pediatricians) are eligible for payments of up to \$64,000 over five years. The incentives will be calculated through a formula that factors in the exact Medicaid mix seen by the provider as well as amounts ranging from \$25,000 in the first year to \$10,000 in subsequent years.

**Medicare:** Physicians who do not have a large Medicaid volume but do accept Medicare can receive up to \$44,000 over the five years. Additionally, physicians operating in a "provider shortage area" will be eligible for an incremental increase of 10%, and those delivering care entirely in a hospital environment, such as anesthesiologists, pathologists and ED physicians, are ineligible.

	Amount They'll Receive Each Year						
Year EHR use is first demonstrated	2011	2012	2013	2014	2015	2016	TOTAL
2011	\$18,000	\$12,000	\$8,000	\$4,000	\$2,000	\$0	<b>\$44,000</b>
2012	\$0	\$18,000	\$12,000	\$8,000	\$4,000	\$2,000	<b>\$42,000</b>
2013	\$0	\$0	\$15,000	\$12,000	\$8,000	\$4,000	<b>\$39,000</b>
2014	\$0	\$0	\$0	\$12,000	\$8,000	\$4,000	<b>\$24,000</b>
2015 or Later	\$0	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>

**Fee reductions:** Providers who do not demonstrate meaningful use in 2014 will see, in their 2015 fee schedules from Medicare, a decrease of 1%. An additional decrease will be affected in 2016 and 2017 down to a total of 97% of the regular fee schedule; it can further be reduced to 95% if the Secretary determines that total adoption is below 75% in 2018.

***Specifics of the Hospital Opportunity***

As with physicians, there are two programs for hospitals: Medicare and Medicaid.

**Medicaid:** For hospitals seeing more than 10% of their patients with Medicaid, payments will be determined by the same calculation as the Medicare payment algorithm, though payments will be fully weighted for the first four payment years, rather than follow the descending weights in use for Medicare incentive payments, and will be based on Medicaid patient mix.

**Medicare:** Hospitals stand to make up to \$11 million from incentive payments through a calculation that considers a \$2 million base payment, a payment of \$200 for each discharge between the 1,150<sup>th</sup> and the 23,000<sup>th</sup> discharge annually, and the hospital's total number of inpatient bed days and total charges. Note that Critical Care Hospitals are not eligible for the incentives described above; instead, they will be allowed to expense the acquisition cost of health IT in a single year up to \$1.5 million.

**Fee Reductions:** Eligible hospitals not demonstrating meaningful EHR use by 2015 will see that their fee schedules are not increased as planned but instead will be adjusted increasingly to the disadvantage of the hospital. This reduction only applies to the individual fiscal year; if the hospital begins demonstrating use of an EHR the following year, their fee schedule increase will normalize.

## **Standards and Certification**

Qualified EHR technology means that the EHR is certified to meet standards and includes patient demographic and clinical health information, such as medical history and problem lists, and has the capacity to provide decision support for physician order entry, to capture and query healthcare quality information, and to exchange electronic health information with other sources.

The Secretary of HHS is required by the Bill to review all existing standards, determine the initial set of standards that will affect the Meaningful Use criteria related to certified products, and implementation specifications. All of this must be completed by the HIT Policy Committee and HIT Standards Committee before the end of 2009.

## **Privacy Expansion**

As part of the HITECH Act, Federal privacy and security laws (HIPAA) were expanded to protect patient health information, including:

- Defining which actions constitute a breach (including some inadvertent disclosures)
- Imposing restrictions on certain disclosures, sales, and marketing of protected health information
- Requiring an accounting of disclosures to a patient upon request
- Authorizing increased civil monetary penalties for HIPAA violations
- Granting authority to state attorneys general to enforce HIPAA