

## Stimulus 101

### Understanding the HITECH Act and Meaningful Use

On February 17, 2009, President Barack Obama signed into law the American Recovery & Reinvestment Act (ARRA). The health IT component of the Bill is the HITECH Act, which appropriates a net \$19.5 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. The Congressional Budget Office predicted when reviewing the legislation that 90% of physicians and 70% of hospitals will be using a comprehensive, robust Electronic Health Record over the next few years. 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 and the regulations stemming from it is time consuming and onerous, so the following is a plain language summary of the health IT provisions within the HITECH and the Meaningful Use Rules.

### Details of the Investment

There are two portions of the HITECH Act – one that provided \$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, as well as supportive programs; a second that allocates billions to be paid to healthcare providers who demonstrate use of Electronic Health Records. The net cost to the Federal government is anticipated to be approximately \$20 billion after savings are achieved through efficiencies, tax revenue and Medicare fee reductions for non-adopters.

#### 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 is actively and securely exchanged between healthcare professionals. 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 incentives, both physicians and hospitals have to demonstrate, at a high level, 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 six years but provide the largest payments early in the program, and those that don't demonstrate Meaningful Use of an EHR under the Medicare component of the program 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 Opportunity**

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

**Medicaid:** Eligible providers (EPs) who see more than 30% of patients paying with Medicaid (20% for pediatricians) are eligible for payments of up to \$64,000 over six years. The incentives will be calculated through a formula that multiplies 85% by amounts ranging from \$25,000 in the first year to \$10,000 in subsequent years. Additionally, those meeting the 30% threshold can begin earning the incentive payments even as they adopt, implement and upgrade their EHR software; they can begin proving Meaningful Use of the EHR in the second year of their program participation.

**Medicare:** Eligible providers (EPs) who do not have a large Medicaid volume but do accept Medicare can earn up to \$44,000 over the five years based on a calculation of submitted allowable charges multiplied by 75%, up to the cap for the year. Additionally, EPs operating in a "health 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 they first file             | 2011     | 2012     | 2013     | 2014     | 2015    | 2016    | TOTAL    |
| 2011                             | \$18,000 | \$12,000 | \$8,000  | \$4,000  | \$2,000 | \$0     | \$44,000 |
| 2012                             | \$0      | \$18,000 | \$12,000 | \$8,000  | \$4,000 | \$2,000 | \$44,000 |
| 2013                             | \$0      | \$0      | \$15,000 | \$12,000 | \$8,000 | \$4,000 | \$39,000 |
| 2014                             | \$0      | \$0      | \$0      | \$12,000 | \$8,000 | \$4,000 | \$24,000 |
| 2015 or Later                    | \$0      | \$0      | \$0      | \$0      | \$0     | \$0     | \$0      |

**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.

**Additional Incentives for Physicians Currently Available**

Even before the incentive payments or grants became available to qualifying healthcare organizations through the HITECH Act, there were already programs in place to reward physicians who adopt that technology. By maximizing the ePrescribing incentives currently available through the Medicare Improvements for Patients and Providers Acts of 2008 and PQRI incentives, a qualified provider can earn between \$6,000 and \$8,000 prior to beginning participation in the Stimulus incentives programs.

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

According to several Funding Opportunity Announcements that have come out of HHS since the passage of the HITECH legislation, there are millions of dollars flowing to the states as they work to establish health information exchange (HIE) initiatives in regions and towns across the country, as well as help existing HIEs to progress in connecting providers. Additional areas of spend are Health IT Regional Extension Centers, which are focused on increasing HER adoption among the smallest primary care offices; the establishment of clarified and strengthened product standards; the extension of the National Health Information Network; and several programs that look to identify best practices in EHR adoption and successful data exchange across communities.

Additionally, outside the HITECH Act but in other areas of the Stimulus bill, Secretary Sebelius has 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.

## Meaningful Use

The Final Rule regarding Meaningful Use was released in a proposed form at the end of 2009 and finalized on July 13, 2010. It provides detail about what physicians and other “Eligible Providers” – EPs – will need to do to qualify for the HITECH incentive payments.

- EPs will need to prove Meaningful Use of their EHR for at least 90 continuous days in 2011 in order to earn an incentive, and then for the entire year each subsequent year.
- Physicians need to prove that they have met 20 of 25 different functional objectives with their use of the EHR product to demonstrate “meaningful use.” These objectives include computerized physician order entry (CPOE), the use of clinical decision alerts, incorporation of lab results into their EHR as discrete data, ePrescribing and electronic information distribution to patients.
- Six clinical quality measures will need to be submitted by an EP: three from a Core set of measures (although three “alternate core” measures are provided), and three from 38 other measures.
- Physicians will be paid on a rolling basis as soon as they have proven to CMS that they have met all the functional objectives of the Meaningful Use requirement and have hit the maximum amount for the year. CMS will then issue a single, annual, consolidated payment for the 2011 amount. Subsequent years will be paid following the end of the calendar year.
- All reporting will be done by attestation in 2011, moving to an electronic form in later years.

The requirements for Meaningful Use were substantially relaxed in the Final Rule. It is expected that the full 25 functional objectives will have to be met for Stage 2, and that the criteria for success will be raised in most cases.

## Standards and Certification

With the assistance of the National Institute for Standards and Technology (NIST), the Department of Health and Human Services (HHS) developed specific testing criteria to certify software as being "ARRA Certified." The certification testing will be conducted by ACTBs – Approved Certification Testing Bodies – who are approved by HHS and managed by the Office of the National Coordinator (ONC). Once approved, these bodies conduct the certification tests, which are then reviewed by them and ONC. There is no particular deadline for bodies to become approved, and approval is issued on a "rolling" basis.

A system may be certified as a "Complete EHR" or an "EHR Module." A Complete EHR is a system which fulfills all the requirements for demonstrating Meaningful Use (and the other certification requirements) as a single unit. An EHR Module performs some subset of those functions. Vendors may certify components as "EHR Modules" and then offer them as a "bundle" which, if it covers all the requirements, will have the same status as a "Complete EHR."

As of this writing, there were three ATCBs announced: Certification Commission for Health Information Technology (CCHIT), Drummond Group and InfoGard Laboratories.

## 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

Additionally, a mandatory HIPAA Security Risk assessment was included amongst the 15 "core" requirements to demonstrate Meaningful Use.