



## ARRA Position Paper

By Kevin R. Burchill and Russell Branzell

### What the Economic Stimulus Package Means to Healthcare IT

#### Overview

On February 17, 2009, President Barack Obama signed into law the American Recovery and Reinvestment Act of 2009, H.R.1 (ARRA). ARRA aims to stimulate the economy through investments in infrastructure, unemployment benefits, transportation, education and healthcare. It includes over \$20 billion to aid in the development of a robust IT infrastructure for healthcare and to assist providers and other entities in adopting and using health IT.

Of the \$787B economic stimulus, \$150B is dedicated to healthcare. Of the healthcare total spending, \$19B is dedicated to healthcare IT. ARRA contains specific provisions geared to IT adoption by providers (hospitals and physicians). It provides money to states, physicians, hospitals and other healthcare providers to encourage the adoption and use of health IT systems and promote health information exchange. Seventeen billion dollars of these funds are to be disbursed as temporary payment incentives through Medicare and Medicaid.

To be eligible for these temporary Medicare and Medicaid payment incentives, hospitals and physicians must have in place a "certified electronic health (EHR) system" and be a "meaningful user" of such a system. The criteria for each definition have not been completely defined by the Secretary of Health and Human Services.

The Medicare incentive is built upon a base amount of \$2M per hospital. This amount is to be adjusted upward based upon the hospital's total all-payer discharges and downward based upon the hospital's Medicare percent. Medicare incentive payments will be phased out over a four-year period beginning in Federal Fiscal Year (FFY) 2011.

The Medicaid incentive payment is similarly designed and is adjusted based upon the Medicaid patient percentage. To be eligible, a hospital's Medicaid volume must be at least 10% of its total volume. In addition to the "meaningful user" criteria, a state may require additional criteria for a hospital to be eligible. An additional \$2B is provided for health IT grants for states, IT infrastructure, training, best practice dissemination, telemedicine and IT inclusion in health education. Medicare and Medicaid payment incentives are capped at \$11M per hospital.

ARRA establishes a process to develop interoperability standards by FY 2010 that will allow for secure electronic exchange of health information. Also, the federal privacy and security provisions for health information and health information exchanges will be expanded vis-à-vis breach notification, use of database elements for marketing and providing an audit trail for individual record access.

With the multi-billion dollar healthcare economic stimulus plan, one thing is clear. It's time for healthcare organizations to dust off their plans and start developing and reviewing their strategies for healthcare IT adoption to capture the future incentive payments from Medicare and Medicaid. Total funding included for healthcare IT is as follows:

- \$2B for the Office of the National Coordinator (ONC).
- \$17.2B in incentives through the Medicare and Medicaid reimbursement systems to assist providers in adopting EHRs.
- \$4.7B for the National Telecommunications and Information Administration's Broadband and Technology Opportunities Program.

- \$2.5B for the U.S. Department of Agriculture’s Distance Learning, Telemedicine, and Broadband Program.
- \$85M for health IT, including telehealth services, within the Indian Health Service.
- \$500M for the Social Security Administration.
- \$50M for information technology within the Veterans Benefits Administration.

**HIPPA Privacy and Security under HITECH**

The HITECH Act segment of ARRA imposes more stringent regulatory requirements under the security and privacy rules of HIPAA, increases the civil penalties for a violation of HIPAA, provides funding for hospitals and physicians for the adoption of health IT and requires notification to patients of a security breach. These broad new requirements will necessitate compliance by covered entities, business associates and related vendors in the healthcare industry.

that allows for the electronic use and exchange of information” and that ensures that patients’ health information is secure and protected.

ONC is responsible for:

- Establishing national standards for the exchange of health information.
- Coordinating health IT policy and programs.
- Ensuring that privacy and security protections are incorporated in the electronic exchange of health information.
- Implementing strategies to enhance the use of health IT.
- Assessing the impact of health IT in communities with health disparities.
- Evaluating the benefits and costs of the exchange of health information.
- Appointing a Chief Privacy Officer of ONC within twelve months.

Year of Adoption	2011	2012	2013	2014	2015	2016	2017
Payment for adopting before of in 2011	100%	75%	50%	25%			
If first adopting in 2012		100%	75%	50%	25%		
If first adopting in 2013			100%	75%	50%	25%	
If first adopting in 2014				75%	50%	25%	
If first adopting in 2015					50%	25%	
Penalties if not adopting by 2015*					33.33%	66.66%	100%

\*Three quarters of the applicable market basket update reductions percentage.

HITECH codifies and funds the office of the National Coordinator for Health Information Technology (ONCHIT) and provides for the infusion of \$19B over a four-year period, in grants and loans, for infrastructure and incentive payments under Medicare and Medicaid for providers who adopt and use health HIT. It also expands security and privacy provisions and penalties to HIPAA business associates of covered entities. The implications of HITECH for hospitals, healthcare providers, vendors, HIEs and RHIOs are far-reaching.

ONCHIT was established by Executive Order in 2004. HITECH appropriates \$2M to the ONC and codifies the duties of the National Coordinator, with the stated goal of “the utilization of an electronic health record for each person in the United States by 2014.” The ONC strategic plan is to include “the development of a nationwide health information technology infrastructure

In a substantial change to the current security and privacy regulations under the HIPAA, and in response to increased public awareness and debate over the privacy and security of electronic health information, HITECH requires the application of HIPAA security and privacy provisions and penalties directly to business associates of covered entities. Before HITECH, the security and privacy requirements were imposed on business associates only through contractual provisions.

Another key requirement imposed by HITECH is for covered entities and business associates to notify an individual and if an individual’s unsecured or unencrypted PHI “has been, or is reasonably believed to have been, accessed, acquired, or disclosed as a result of such breach.” If the breach affects more than 500 individuals, the notification can be through media outlets. Further, personal health record vendors must notify the individual and the FTC of a breach.

The effective date for HIPAA under HITECH is February 12, 2010. The incentive payments for practitioners and hospitals will commence in 2011 and phase out through 2015.

HIPAA under HITECH applies to covered entities, including hospitals, healthcare providers, health plans, business associates, vendors, HIEs, RHIOs and PHRs. To comply with HIPAA under HITECH, we recommend the following:

- Develop and implement a Red Flag Compliance Program.
- Develop and implement a Breach Notification Compliance Program.
- Review and amend existing business associates agreements and determine if new business associates agreements are needed.
- Strategize and position yourself to obtain loan and grant funding through the stimulus.
- Ensure that your technology is CCHIT certified.

### What Is a “Meaningful User”

Current Government Definition of a “Meaningful EHR User”

- Use certified EHR technology in a meaningful manner.
- Use of electronic prescribing.

- Certified EHR technology is connected in a manner that provides for electronic exchange of health information to improve the quality of healthcare.
- Submit information to HHS on clinical quality measures.

### Beacon Partners Interpretation

Although the federal government has yet to completely define “meaningful user”, Beacon Partners’ interpretation of a “meaningful user” is entities that are using an EHR must:

- Ensure their technology is CCHIT-certified.
- Be a fully implemented EHR (nursing and physician documentation.)
- Use electronic prescribing (CPOE).
- Document clinical findings in electronic records (EHR).
- Integrate results reporting electronically (lab, x-ray, etc.) into patient records.
- Be able to submit information to HHS on clinical quality measures.
- Exportable information.

Beacon Partners will monitor this carefully over the coming months and issue a revised position statement as clarification becomes available.

Kevin Burchill, Esq. is a Director at Beacon Partners and Russell Branzell is a Vice President. Together they have hosted Webinars and spoken on ARRA and how it will impact healthcare. Beacon Partners is one of the fastest-growing privately-held healthcare management consulting firms, coaching organizations in the development of strategies that are centered on maximizing Enterprise Yield performance. To achieve top levels of performance, an organization must factor strategic direction, physician alignment, economic incentives and overall market impact. Our experience has proven that focus on these critical success factors will strengthen an organization’s position in the market and, ultimately, improve the patient’s experience with the provider.

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