

American Recovery and Reinvestment Act Assessment

CIO Healthcare Forum

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ARRA Overview



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ARRA Purpose

- The legislation aims to stimulate the economy through investments in infrastructure, unemployment benefits, transportation, education, healthcare and 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 healthcare IT



Key Components of Healthcare IT

- Standards and Certification (Leadership)
- Funding and Incentives
- Privacy and Security
- Research and Development
- Education and Outreach

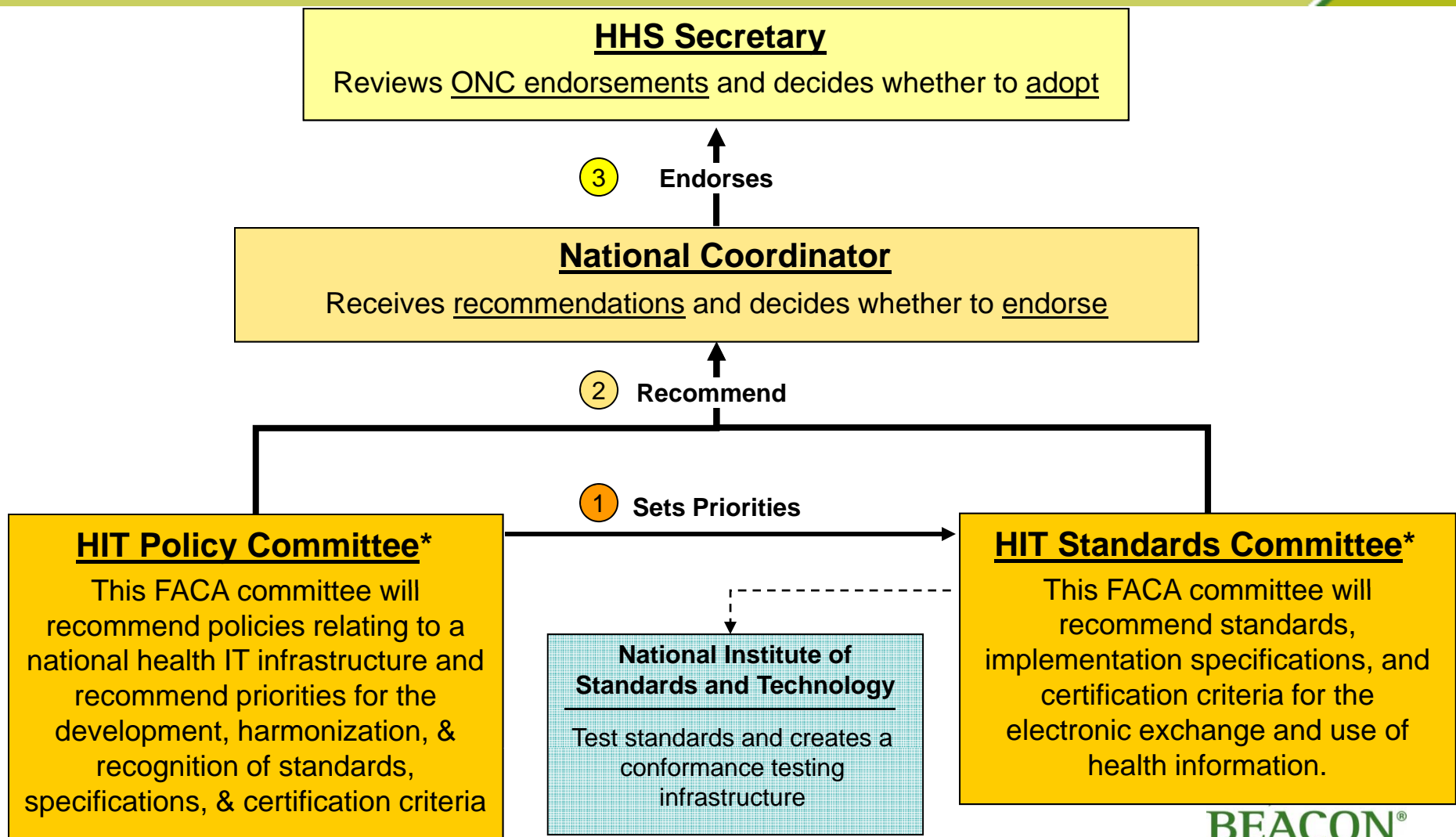


Leadership

- Office of the National Coordinator
- HIT Policy Committee
- HIT Standards Committee
- National eHealth Collaborative



... and a New National Policy and Standards Process



Certified EHR Technology

- Certified EHR Technology: A qualified EHR that is certified as meeting standards applicable to the type of record involved
- Qualified EHR: Electronic record of health-related information on an individual that
 - Includes patient demographic and clinical health information, such as medical history and problem lists
 - Has the capacity to:
 - Provide clinical decision support
 - Support physician order entry
 - Capture and query information relevant to healthcare quality
 - Exchange electronic health information with and integrate such information from other sources



Funding

- \$19 billion for Health Information Technology Funding
 - \$17 billion for Medicare and Medicaid incentives
 - \$2 billion for grants, loan programs through Office of National Coordinator (ONC)
- \$300 million through AHRQ, CMS, CDC and INS to support architecture, development and adoption



Medicare Incentives to Hospitals

- Meaningful use starting in 2011 thru 2013
- Decreasing schedule each year
- Phase down for hospitals after FY13
- Four years of payments, phase down 25% each year
- Penalties start in 2015
- Critical Access Hospitals receive full depreciation in first year for costs of EHR



Adoption Schedule

Year of Adoption	2011	2012	2013	2014	2015	2016	2017
Payment for adopting before or 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 begin if not adopting by 2015: Three-quarters of the applicable market basket update is reduced by:					33.33%	66.66%	100%



Meaningful EHR Use - Hospitals

- Hospitals that demonstrate to HHS that they are using certified EHR technology
- Certified EHR technology is connected in a manner that provides for electronic exchange of health information to improve quality of healthcare
- Submit information to HHS on clinical quality measures
- No e-prescribing requirement (at this time)



Meaningful Use – HIT Policy Committee July 16, 2009

- Refinement of CPOE criteria
- Shorter timeline for personal health records
- Demonstrated use with 2011
- Proposed rule expected Fall 2009



7/16/2009 Policy Committee Workgroup on Meaningful Use

- 2011 criteria to apply to 1st year adoption
- 2013 criteria to apply to 3rd year adoption
- Revised and refined 2 dozen criteria
- CPOE – 10% of orders of any type must be entered by authorizing provider
- PHR by 2013, populated in real-time



Continued 2011 criteria

- One clinical decision support to relevant specialty or high clinical criteria
- Submit claims electronically to payers
- Check insurance eligibility electronically
- Patients requests timely and to include discharge instructions and procedures
- National HIE by 2015



Meaningful Use

- A few of the key objectives for 2011 include:
 - Use of CPOE for all order types
 - Drug-drug, drug-allergy and drug-formulary checks
 - Maintain an active medication list
 - Patient demographics
 - Lab test results incorporated into EHR
 - Provide patients with electronic copies of their record
 - Exchange key clinical information among providers



Medicare Incentives for Physicians

- Money is available commencing in 2011
- Compensate “meaningful EHR users” in an amount equal to an additional 75% of the allowed charge for professional services furnished by physicians
- Incentives are for five years, with a decreasing schedule each year
- Phase down for physicians adopting after 2013
- Physicians whose first payment year is after 2014 receive no incentives
- No incentives after 2016
- Beginning 2015, reduction in Medicare reimbursements by one to three percent each year for physicians who are *not* meaningful EHR users
- Also available to physicians of a qualified organization



Medicare Incentives for Physicians

- “Meaningful EHR users”
 - Physicians who demonstrate to HHS that they are using certified EHR technology
 - Use of electronic prescribing
 - Certified EHR technology is connected in a manner that provides for electronic exchange of health information to improve quality of health care
 - Submit information to HHS on clinical quality measures



Medicaid Incentives

- States may make payments to Medicaid providers to encourage adoption and use of certified EHR technology
- No duplicative Medicare and Medicaid payments
- Medicaid providers include:
 - Physicians, dentists, certified nurse midwives, nurse practitioners, physician assistants practicing in rural health clinics or federally qualified health centers that are led by PA
 - Children's and acute care hospitals
- Requires a percentage of patient volume allocated to either individuals receiving medical assistance or to needy individuals



Implications... Comprehensive Strategies for HIE and Provider Adoption: Sizing the Medicare and Medicaid Incentives

	Medicare	Medicaid
Funding mechanism(s)	Incentive payments	Incentive payments State matching payments (for admin costs)
Payment Agent	Medicare carriers and contractors	State Medicaid agencies
Payment Recipients	Hospitals and physicians	Hospitals and physicians State Medicaid agencies for program admin
Amounts for Hospitals	<i>\$2 million base amount</i> Plus increases for annual discharges, number of inpatient days attributable to Medicare, and charges attributable to Medicare	<i>\$2 million base amount</i> Plus increases calculated using similar methodology as Medicare incentive <i>(eligible entities include Acute Care and Children's Hospitals)</i>
Amounts for physicians & other health professionals	<i>Up to \$44,000 in Medicare reimbursements</i> Over 5 year period	<i>Up to \$67,000</i> Over a 5 year period for 85% of eligible implementation costs
Key Consideration	<i>Hospitals (not physicians and professionals) will qualify for both Medicare & Medicaid funding but must participate in HIE projects & be "meaningful user" to draw down funds</i>	



Physician Integration

- Stark Relief
- Stimulus Funding
- EHR Offerings
 - Goals and Objectives
- Support Models
 - MSO
 - Independent Funding
- Long Term Sustainability
- Interoperability w/ other EHRs



Security and Privacy



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Privacy and Security

- Business associates
- Breach notification
- Accounting of disclosures
- Limited data set/minimum necessary
- Marketing/fundraising/sale of PHI
- Right to request restrictions
- Enforcement/penalties (civil)



Privacy and Security Provisions under HITECH

- Apply to all Covered Entities (CE) and Business Associates (BA) regardless of accepting Federal Dollars as part of ARRA
- Numerous Dates for enactment, however for the most part, will go into effect February 17, 2010



Privacy and Security Provisions under HITECH

- Covered Entity
 - Health Plan
 - Healthcare clearinghouse
 - Healthcare provider
- Business Associate (expanded)
 - Vendors providing administrative services to covered entities
 - Any entity that engages in health information exchanges or provides data transmission of PHI



Business Associates

	Before HITECH	After HITECH	Implications
Security Rule	Agree to certain safeguards	Compliance with administrative, physical and technical safeguards	<ul style="list-style-type: none"> •Upgrade technological capabilities and infrastructure. •Complete compliance with Security Rule
Privacy Rule	Agree to certain standards made applicable in the BAA	Comply with contract as well as all new Privacy provisions in HITECH. Develop and implement written privacy policies and procedures	<ul style="list-style-type: none"> •Revision of HIPAA business associate agreements. •Compliance with all HITECH provisions of the Privacy Rule
HIPAA Violations/ Breaches	BAs had no requirements, however if a CE was aware of a BA violation, they could terminate agreement	BAs must take steps to cure violation, terminate agreement with CE, and report problem to HHS	<ul style="list-style-type: none"> •BAs and CEs are now both HIPAA police, policing one another
Penalties	Not subject to penalties through HHS or any governmental enforcement action	Held directly accountable by Federal or State authorities	<ul style="list-style-type: none"> •Civil and Criminal penalties will now apply directly to BAs

Business Associates

- To Do List:
 - Engage in process to become compliant in HIPAA Security NOW
 - Perform risk analysis
 - Create and/or revise policies and procedures on handling PHI
 - Train your staff
 - Revise Business Associate agreements
 - Develop and implement breach notification process



Security Breach Notification Requirement

- HITECH requires CE to notify each individual
 - Whose unsecured PHI “has been, or is reasonably believed by the covered entity to have been, accessed, acquired, or disclosed as a result of the breach”
- BAs are required to identify the breach and provide notice to the CE
 - Notice to include “identification of each individual”



Security Breach Notification Requirement

- Breach treated as discovered on first day known
- All notifications made no later than 60 days after known breach
- Methods of notice and content clearly articulated
- August 2009 issue regulation, requirements effective for breaches discovered 30 days after that date



Enhanced *Accounting of Disclosures* Requirements

- HIPAA currently requires an audit log of disclosures except for those made for purposes of treatment, payment or healthcare operations (TPO)
- HITECH Act includes TPO (made through an EHR) in the accounting and must be maintained for a period of three years prior to the date of the request
- Business Associates will need to provide the accounting as well



Enhanced *Accounting of Disclosures* Requirements

- Covered entities may impose reasonable fees
- Details of information included in the accountings will be disclosed within six months (August 2009)
- The earliest date this will apply is January 1, 2011



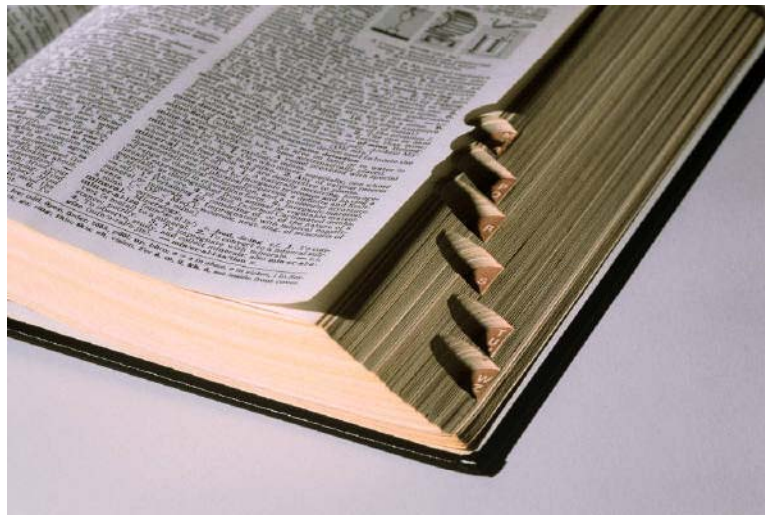
Defined *Minimum Necessary* and Limited Data Sets

- HIPAA currently requires making “reasonable efforts” for “minimum necessary” disclosure
- HITECH requires efforts to be “to the extent practicable”
- HITECH requires guidance on what constitutes “minimum necessary” by August 17, 2010



Defined *Minimum Necessary* and Limited Data Sets

- Limited data sets will be *sunset* once HHS issues guidance on what constitutes “Minimum Necessary”
- Old terminology or different?



Further Limitations in *Marketing, Fundraising and Selling PHI*

- Marketing

- Communication to purchase or use product/service is no longer considered a healthcare operation
- Previously described communications in HIPAA will now require patient authorization if the covered entity receives direct or indirect payment for making them
- Exceptions involve when a drug or biologic is currently being prescribed for the recipient of the communication



Further Limitations in *Marketing, Fundraising and Selling PHI*

- Fundraising
 - Ability to opt out
 - Conspicuous
 - Revocation of authorization



Further Limitations in *Marketing, Fundraising and Selling PHI*

- Sale of PHI

- HITECH prohibits sale of PHI/ePHI without a valid authorization unless it is for the purpose of

- Public health activities
 - Research activities and the price reflects cost of preparation and transmittal of data
 - Treatment of the individual
 - Related to the sale, transfer, or merger of all or part of a covered entity
 - Business associate function pursuant to a business associate agreement
 - Provide an individual with a copy of his/her PHI
 - Any other activity deemed necessary and appropriate by the Secretary of HHS



Right to Request Restriction

- Right to Request Restriction
 - Currently may request restrictions, however not required to comply
 - May request that PHI not be disclosed to a health plan, if treatment paid for out of pocket in full



Improved *Enforcement Provisions*

- Current HIPAA enforcement focus
 - Resolution via corrective action
- HITECH provision – “Improved Enforcement”
 - Imposes mandatory penalties for “willful neglect”
 - OCR under HHS required to investigate



Improved *Enforcement Provisions*

- Increased Civil Penalties

Level of Intent/Neglect	Minimum Penalty (Per Violation)	Maximum Penalty (Cap)
Without knowledge (violator did not know nor could be expected to know about the violation)	\$100 per violation	\$25,000 for all such violations of an identical requirement or prohibition during a calendar year
Reasonable cause (there was reasonable cause, however no willful neglect)	\$1000 per violation	\$100,000 for all such violations of an identical requirement or prohibition during a calendar year
Willful neglect (there was willful neglect, however the violation was corrected)	\$10,000 per violation	\$250,000 for all such violations of an identical requirement or prohibition during a calendar year
Willful neglect not corrected (there was willful neglect and violation was not corrected)	\$50,000 per violation	\$1.5 Million for all such violations of an identical requirement or prohibition during a calendar year



Improved *Enforcement Provisions*

- **Civil and Criminal liability**
 - Covered Entity (CE)
 - Business Associates (BA)
 - Individuals or Employees of a CE/BA
- **Penalties**
 - Support OCR enforcement activities
 - Percentage awarded to individuals
 - Authorize State Attorneys General to file suit
- **HHS required to conduct periodic audits**



To Do List

- Audit Privacy and Security Compliance
 - Pre HHS Audit Readiness
- PHI Workflow
 - Risk Assessment
- Update Policies and Procedures for HIPAA I and II – Breach process, Accounting of Disclosures, etc.
- Review and modify Notice of Privacy Practices
- Review and modify BAAs
- Train!





Thank You

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