

Federal Stimulus Legislation
The American Recovery and Reinvestment Act (ARRA)

Q: What are the key health IT provisions in the federal economic stimulus law of the American Recovery and Reinvestment Act of 2009 (ARRA)?

A: Health IT has a critical role to play in reforming the U.S. health care system. For this reason Congress included it as an important component of the American Recovery and Reinvestment Act of 2009 (ARRA), also known as the federal stimulus legislation. ARRA includes the Health Information Technology for Economic and Clinical Health (HITECH) Act which provides approximately \$36 billion in new funding for health IT projects. Notable were the following provisions:

- **Medicare and Medicaid Health IT Incentives:** The legislation includes \$34 billion in the way of incentives through the Medicare and Medicaid programs designed to encourage doctors and hospitals to acquire and use electronic health record (EHR) technology in “meaningful” ways.
- **State-Level Health Information Exchange Grants:** The legislation includes money for investment in planning and implementation of state-level health information exchange (HIE) activities, which can be directed to “State-Designated Entities,” such as NYeC, to ensure coordination with existing efforts.
- **Regional Health IT Extension Centers Grants:** The legislation includes funding of “regional health IT extension centers” which are intended to provide critical technical assistance to doctors and other providers implementing health IT systems.

Q: Why is the federal government interested in funding health IT?

A: The federal government supports several goals for health care IT delivery, which are outlined by the Office of the National Coordinator (ONC), a division of the Department of Health and Human Services:

- Ensuring that each patient’s health information is secure and protected
- Improving health care quality, reducing medical errors, reducing health disparities and advancing the delivery of patient-centered medical care
- Reducing health care costs resulting from inefficiency, medical errors, inappropriate care, duplicative care and incomplete information
- Facilitating health and clinical research and health care quality
- The HITECH Act makes ONC a formal office in the federal government. ONC provides an administrative process to coordinate health IT policy and standards

Q: Who is eligible for the Medicare and Medicaid incentives?

A: Under the HITECH Act, for Medicare incentives an eligible professional is defined as, “a physician, as defined in section 1861(r)” of the Social Security Act. This includes doctors, osteopaths, dentists, podiatrists, optometrists, and chiropractors. For Medicaid

incentives, an eligible professional means 1) a physician, 2) dentist, 3) certified nurse-midwife, 4) nurse practitioner, or 5) physician assistant practicing in a rural health clinic led by a physician assistant or practicing in a Federally qualified health center led by a physician assistant.

The Medicare and Medicaid incentive programs will be administered separately (Medicare by the federal government, Medicaid by state government). Both require that a provider demonstrate “meaningful use” of a “certified” EHR product to be eligible for the incentives. Providers can only participate in *one* of these incentive programs and so will need to analyze their organization’s public payer mix to determine where they stand to benefit the most.

Q: What does "meaningful use" mean?

A: The final definition of “meaningful use” for the Medicare program is expected in early 2010. The legislation defines some foundational components for the definition of “meaningful use”:

- Electronic prescribing
- Use of certified EHR technology that provides for the electronic exchange of patient health information and reporting on clinical quality measures
- Other measures and/or requirements as determined appropriate by the Secretary of Health and Human Services (HHS)

Further details about what reporting will be needed, what level of connectivity will be required and the final criteria for standards will be determined by the Secretary of HHS before the utilization incentives begin. The Secretary may also develop more stringent measures of “meaningful use” over time. States may include additional “meaningful use” requirements for the Medicaid incentives program.

The current draft federal description of “meaningful use” can be found here:

http://healthit.hhs.gov/portal/server.pt?open=512&objID=1269&parentname=CommunityPage&parentid=4&mode=2&in_hi_userid=10741&cached=true

Q: What are the details of the Medicare Incentives?

A: Commencing in 2011 and for the first five years, doctors and other providers who are “meaningful EHR users” will be compensated in an amount equal to an *additional 75* percent of the allowed charge for professional services provided (Medicare Part B). The payments are capped, with amounts decreasing each year (see table below). No incentive payments will be made after 2016 and those for whom the first payment year is after 2014 will receive no incentive payment. Doctors and other providers who practice in an area that is designated as a health professional shortage area shall receive an additional 10 percent incentive. Hospital-based providers are not eligible for these incentives.

Payment Schedule for Eligible Professionals through Medicare

The following table¹ details the Medicare incentives totals that eligible professionals can receive through 2016 for demonstrating “meaningful use” of certified EHR technology. Incentives are not available to eligible professionals after 2016.

	2011	2012	2013	2014	2015	2016	Total
Period							
1st	\$18,000	\$12,000	\$8,000	\$4,000	\$2,000	\$0	\$44,000
2nd	-	\$18,000	\$12,000	\$8,000	\$4,000	\$2,000	\$44,000
3rd	-	-	\$15,000	\$12,000	\$8,000	\$4,000	\$39,000
4th	-	-	-	\$12,000	\$8,000	\$4,000	\$24,000

Q: What about practices that have already implemented an EHR?

A: Current practices that conform to “meaningful use” criteria by 2011/2012 will be eligible to receive up to \$44,000. There is no guarantee that any EHR system bought today will meet the expected certification criteria under “meaningful use,” so it is advisable for providers to get commitments from their EHR vendors that the EHRs will get certified for compliance with “meaningful use” standards.

Q: What about practices that decide NOT to implement an EHR?

A: Beginning in 2015, unless the Secretary exempts a provider due to a significant hardship, doctors and other providers who are not meaningful EHR users will find their Medicare reimbursements reduced by 1 to 3 percent each year, with authority granted to HHS to further reduce the reimbursement rate beginning in 2018 if the proportion of eligible professionals who are meaningful EHR users is less than 75 percent.

Medicare reimbursements to providers without EHRs meeting “meaningful use” criteria will be cut by 1 percent in 2015, 2 percent in 2016, and 3 percent in 2017.

Q: Does purchasing a hospital-based discounted EHR program affect eligibility for Medicare incentive payments?

A: At this time, it appears that practices may accept financial contributions towards the expenses of EHR software (and certain other related expenses) from hospitals without running afoul of Stark law limitations or losing eligibility for the health IT stimulus incentives. There are rules about how large those contributions can be and what expenses they can cover, so doctors should consult legal counsel before accepting discounted programs.

¹ [HIMSS Legislative Overview & Policy, 3/24/09](#)

Q: What about practices that are owned by a hospital?

A: Doctors and other providers whose practice is solely hospital-based (such as ER providers, anesthesiologists, and pathologists) are not eligible for incentive funds, as the hospital incurs the EHR system expense. The law also contains incentives for hospital adoption of health IT. However, if a hospital-owned practice provides a significant number of services outside of the hospital setting, it may be eligible for incentive payments. These practices should check with their hospital administration for more information.

Q: Is there an advantage to waiting until all the details of “meaningful use” are finalized before implementing an EHR?

A: It is not recommended that eligible providers wait for the final determination on “meaningful use” before initiating EHR implementation. It takes many months to implement an EHR successfully: steps include practice readiness assessment, EHR vendor selection, hardware selection and implementation, network selection and implementation (internet, wireless, etc.), EHR implementation and training, connectivity to an HIE, implementation of e-prescribing, quality measures, system optimization, etc.

Q: What are the details of Medicaid incentives?

A: States may make payments to Medicaid providers to encourage adoption and use of certified EHR technology. Those doctors, other providers and institutions eligible for Medicaid incentives include:

- Eligible professionals (Physicians, dentists, certified nurse midwives, nurse practitioners, and physician assistants as described above) who are not hospital-based and whose patient base includes a minimum of 30% who are insured by Medicaid
- Pediatricians who are not hospital-based and whose patient base includes a minimum of 20% who are insured by Medicaid
- Any of the above professionals who practice predominantly in a Federally qualified health center or rural health clinic whose patient base includes a minimum 30 percent who are insured by Medicaid or are “needy individuals” (as defined by Medicaid)
- All children's hospitals
- Acute-care hospitals whose patient base includes a minimum 10 percent who are insured by Medicaid

Details of the states’ Medicaid incentive programs are still being developed. New York Medicaid will require that eligible professionals be enrolled as Medicaid providers to receive incentive payments. Under HITECH’s provisions, the federal government will reimburse state payments of Medicaid incentives to eligible professionals up to the following limits:

- 85% of \$25,000 or \$21,250 for the purchase of initial implementation of EHR technology, which must occur by 2016, plus

- 85% of \$10,000 or \$8,500, per year for a maximum of five years for operation and maintenance of the technology, with no payment made after 2021
- Therefore the total possible payment for a provider is (\$21,250 + \$8,500/year for five years) \$63,750.²

Q: What provisions related to patient privacy are included in the HITECH Act?

A: The HITECH Act includes provisions affecting the exchange of data, including:

- Extension of Important Privacy and Security Rules: The bill requires RHIOs, health IT vendors and other organizations that contract with providers to comply with the same security rules that apply to providers, including adherence to similar physical and technical safeguards and restricting use and disclosure of patient' health information to authorized reasons.
- Security Breach Notification Mandate: The bill establishes the first national data security breach notification law. The law requires providers, health plans and other entities as well as personal health record vendors to notify affected individuals, government agencies and the media of the unauthorized acquisition of electronic, unencrypted protected health information.
- New Restrictions on the Use and Disclosure of Protected Health Information: The bill restricts certain uses and disclosures of patients' health information. For example, providers are prohibited from receiving or paying money for the disclosure of patients' health records, except for disclosures for limited purposes such as treatment, research and fraud prevention.
- Additional Patient Rights: Doctors and other providers maintaining electronic health records are required to give patients copies of such records in electronic form. They are also obligated, at a patient's request, to provide an audit trail of all disclosures of the patient's protected health information made for treatment, payment and health care operations during the prior three years. This obligation is phased in over the five years following the date an electronic health record system is acquired by the entity.

² Center for Practice Improvement and Innovation, American College of Physicians "Health Information Technology Incentives in the American Recovery and Reinvestment Act of 2009—FAQ—3/22/09"