

American Recovery and Reinvestment Act of 2009 (ARRA)

H.R. 1 (Conference Agreement enacted on 2/17/09)

Summary of Major Health Care Provisions

Status

The House of Representatives and Senate passed ARRA on February 13th (House vote of 246-183, with no Republican support and 7 Democrats voting no; Senate vote of 60-38, with 3 Republicans voting yes (Senators Collins, Snowe, and Specter). President Obama signed the bill on February 17, 2009.

Health Information Technology (HIT)

Provides approximately \$19 billion for Medicare and Medicaid HIT incentives over five years.

- Officially establishes the Office of the National Coordinator for Health Information Technology (ONCHIT) within HHS to promote the development of a nationwide interoperable HIT infrastructure; President Bush already created ONCHIT by Executive Order in 2004.
- Establishes HIT Policy and Standards Committees that are comprised of public and private stakeholders (e.g., physicians) to provide recommendations on the HIT policy framework, standards, implementation specifications, and certification criteria for electronic exchange and use of health information.
- HHS would adopt through the rule-making process an initial set of standards, implementation specifications, and certification criteria by December 31, 2009.
- ONCHIT would be authorized to make available an HIT system to providers for a nominal fee.
- Provides financial incentives through the Medicare program to encourage physicians and hospitals to adopt and use certified electronic health records (EHR) in a meaningful way (as defined by the Secretary and may include reporting quality measures). Authorizes ONCHIT to provide competitive grants to states for loans to providers.
- Medicare incentive payments would be based on an amount equal to 75% of the Secretary's estimate of allowable charges, up to \$15,000 for the first payment year. Incentive payments would be reduced in subsequent years: \$12,000, \$8,000, \$4,000, and \$2000, after 2015. Physicians who report using an EHR that is also capable of e-prescribing would be eligible for EHR incentives only.
- Early adopters, whose first payment year is 2011 or 2012, would be eligible for an initial incentive payment up to \$18,000. In 2014, the payment limit would equal \$12,000. Adopters, whose first payment year is 2015, would receive \$0 payment for 2015 and any subsequent year.

- For eligible professionals in a rural health professional shortage area, the incentive payment amounts would be increased by 10 percent.
- Incentives under the Medicaid program are also available for physicians, hospitals, federally-qualified health centers, rural health clinics, and other providers; however, physicians cannot take advantage of the incentive payment programs under both the Medicare and Medicaid programs. Eligible pediatricians (non-hospital based), with at least 20 percent Medicaid patient volume, could receive up to \$42,500, and other physicians (non-hospital based), with at least 30 percent Medicaid patient volume, could receive up to \$63,750, over a six-year period.
- Physicians who do not adopt/use a certified HIT system would face reduction in their Medicare fee schedule of -1% in 2015, -2% in 2016, and -3% in 2017 and beyond. E-prescribing penalties would sunset after 2014.
- Allows HHS to increase penalties beginning in 2019, but penalties cannot exceed -5%. Exceptions would be made on a case-by-case basis for significant hardships (e.g., rural areas without sufficient Internet access).

Privacy

- Federal privacy/security laws (HIPAA) are expanded to protect patient health information.
- HIPAA privacy and security laws would apply directly to business associates of covered entities.
- Defines actions that constitute a breach of patient health information (including inadvertent disclosures) and requires notification to patients if their health information is breached.
- Allows patients to pay out of pocket for a health care item or service in full and to request that the claim not be submitted to the health plan.
- Requires physicians to provide patients, upon request, an accounting of disclosures of health information made through the use of an EHR.
- Prohibits the sale of a patient's health information without the patient's written authorization, except in limited circumstances involving research or public health activities.
- Prohibits covered entities from being paid to use patients' health information for marketing purposes without patient authorization, except limited communication to a patient about a drug or biologic that the patient is currently being prescribed.

- Requires personal health record (PHR) vendors to notify individuals of a breach of patient health information.
- Non-covered HIPAA entities such as Health Information Exchanges, Regional Health Information Organizations, e-Prescribing Gateways, and PHR vendors are required to have business associate agreements with covered entities for the electronic exchange of patient health information.
- Authorizes increased civil monetary penalties for HIPAA violations.
- Grants enforcement authority to state attorneys general to enforce HIPAA.

Source: American Medical Association