

American Recovery and Reinvestment Act of 2009

A Perspective for the Health Care Industry

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HEALTH CARE PRACTICE

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act ("ARRA"), commonly referred to as the Stimulus Bill. Set forth below is a summary of the ARRA provisions pertaining to health care. The express purposes of the ARRA include "assist[ing] those most impacted by the recession" and "spurring technological advances in science and health." To help achieve those goals, approximately \$140 billion - or nearly 18% - of the ARRA is dedicated directly or indirectly to health care, including:

- ▶ Approximately \$87 billion in federal matching Medicaid funds
- ▶ Approximately \$25.7 billion for partial subsidies of COBRA premiums
- ▶ Approximately \$19 billion to develop a health information technology ("HIT") infrastructure for use of electronic health records ("EHR")
- ▶ \$2.5 billion to the Health Resources and Services Administration, including \$1.5 billion for construction, renovation and equipment acquisition for public health centers and \$500 million to address health care workforce shortages
- ▶ \$1 billion to the Prevention and Wellness Fund of the Department of Health and Human Services ("DHHS") for immunization, community wellness and infection reduction programs

- ▶ Priority for health care training and placement programs from funds (\$250 million) set aside for job training and education
- ▶ \$1.1 billion to the DHHS and National Institutes of Health ("NIH") to perform comparative effectiveness research
- ▶ Additional \$10 billion to the NIH, including \$8.2 billion for research and \$1.5 billion for renovation of research facilities
- ▶ \$400 million to modernize and improve military medical facilities
- ▶ \$80 million to implement health insurance tax credits
- ▶ \$312 million for Indian health services, including \$227 million for health facility construction and \$85 million for development of telemedicine and HIT infrastructure
- ▶ \$40 million to the Social Security Administration for HIT and EHR implementation
- ▶ \$1 billion to the Veterans Health Administration for maintenance of medical facilities

The highlights of health care related provisions of ARRA include the following:

Electronic Health Records and Health Information Technology

Nearly 1/8th of ARRA outlines the Health Information Technology for Economic and Clinical Health Act ("HITECH"), a program to promote the use of EHR in an integrated HIT system connecting health care providers, health plans, the government and other interested parties. The ultimate goal of the HITECH Act: an EHR for every American by 2014. To achieve that goal, HITECH includes the following provisions:

Organizational Structure: HITECH (1) organizes the Office of National Coordinator for Health Information Technology ("ONCHIT") to oversee and coordinate development of standards and federal investments in HIT programs; (2) creates the HIT Policy Committee and HIT Standards Committee to implement a policy framework to develop HIT infrastructure and recommend standards, specifications and certification criteria; and (3) establishes the HIT Extension Program, HIT Technology Research Center and HIT Regional Extension Centers to provide assistance and promote implementation.

Financial Support and Incentives: HITECH creates an incentive program for physicians and hospitals to incorporate HIT and become "meaningful users" of EHR. Qualifying physicians will be eligible for incentive payments of 75% of eligible Medicare billings, capped at \$44,000 over the course of five years on a declining scale. Additional incentives are available for physicians practicing in Health Professional Shortage Areas or in Medically Underserved Areas whose patient volume is at least 30% Medicaid beneficiaries. Qualifying hospitals are eligible to receive a \$2,000,000 base payment plus an amount based in part on an equation involving the number of discharges attributable to Medicare services. It is estimated

that these incentive payments will total approximately \$17 billion.

However, physicians and hospitals that do not become eligible EHR users before 2015 will suffer a reduction in Medicare and Medicaid reimbursement payments starting in 2015 that accelerates on a yearly basis.

In addition to the incentive provisions, ARRA also provides \$2 billion directly to ONCHIT to execute HITECH; \$20 million to the Department of Commerce to develop and test HIT systems; \$300 million to support regional efforts to develop HIT; and additional grants to states that develop loan programs to fund HIT infrastructure development.

Strategy, Standards and Studies: HITECH calls for extensive study and planning in both the short and long term. It requires (1) immediate development of a strategic plan; (2) adoption of an initial set of standards, implementation specifications and certification criteria by December 31, 2009; (3) a report to Congress regarding need for additional funding and authority in one year; and (4) a complete report on the adoption of a nationwide system within 2 years.

Privacy Protections: HITECH includes provisions addressing privacy concerns of EHR. ONCHIT is directed to appoint a Chief Privacy Officer and conduct studies to create necessary privacy protections for use with an integrated EHR system. HIPAA protections are expanded by HITECH, including widening the scope of application, adding provisions requiring notice to patients when privacy is breached and increasing civil penalties. HITECH further strictly limits the circumstances under which patient information can be sold or used in marketing efforts by health care providers and requires disclosure to patients of information transmitted in EHR.

Health Insurance Coverage

Premium Assistance for COBRA Benefits:

ARRA creates a government subsidy for the cost of electing health coverage under COBRA for workers involuntarily terminated between September 1, 2008, and December 31, 2009. Eligible workers who originally declined COBRA coverage will have 60 days after receiving notice from their employers to elect coverage. The government will pay 65% of the cost of COBRA coverage, which often exceeds \$1,000 per month, for up to nine months. This subsidy begins to phase out for individuals with an adjusted gross income of \$125,000, or \$250,000 for married couples filing jointly.

Tax Credit for TAA Beneficiaries:

ARRA increases the health insurance tax credit for workers who receive Trade Adjustment Assistance ("TAA"), the federal program for those who lose their jobs or whose hours of work and wages are reduced as a result of increased imports. The tax credit is a refundable credit, which the IRS can pay in advance, and is increased from 65% to 80% of the cost of eligible health insurance premiums. Eligible health insurance includes a spouse's health insurance in some circumstances as well as COBRA benefits, which are also extended to the later of 18 months or the end of the worker's TAA eligibility.

Broadband Technology Grants

ARRA provides grants to states, nonprofit corporations or other entities the Commerce Department deems eligible for the purpose of providing broadband education, awareness, training, access, equipment and support to medical and health care providers with the goal of advancing health care delivery.

Comparative Effectiveness Research

In addition to providing \$1.1 billion in funds to DHHS and NIH, ARRA includes provisions to advance "comparative effectiveness research." Specifically, ARRA creates the Federal Coordinating Council for Comparative Effectiveness Research, an inter-agency board that is required to include physicians and other clinical experts, to coordinate comparative effectiveness research efforts and make recommendations to the President and Congress.

State Fiscal Relief Related to Health Care

ARRA increases funds disbursed to the states for programs such as Federal Medical Assistance Percentages (federal matching funds paid to states for their medical and medical insurance expenditures), Disproportionate Share Hospitals (hospitals that treat significant populations of indigent patients through Medicare and Medicaid), Transitional Medical Assistance (assisting low-income families with children transition to jobs by allowing them to keep their Medicaid coverage for a limited period of time after they find a job even though their earnings make them ineligible for regular Medicaid) and others.

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