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March 13th, 2009

Major Healthcare Provisions of the American Recovery and Reinvestment Act of 2009

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Key areas

- State Medicaid Assistance - \$87 billion
- COBRA Subsidies - \$24.7 billion
- Health Information Technology - \$2 billion
- Provider Incentives- \$17 billion
- Prevention - \$1 billion
- Comparative Effectiveness - \$1.1 billion
- Privacy Protections

Medicaid/ COBRA Provisions

- Medicaid:
States will receive an additional \$87 billion with the aim to provide incentive payments to cover costs incurred when acquiring, implementing and maintaining EHRs. The potential recipients to these incentives include eligible professionals, federally qualified health centers, rural health clinics, children's hospitals, non-hospital-based pediatricians and certain acute care hospitals.
- COBRA: \$24.7 billion in federal subsidies
For those with private health insurance coverage, the government will subsidize

65% of the premium charged if employees are involuntarily terminated during the period between September 1, 2008 and January 1, 2010. The balance 35% will be paid by the individual. This subsidy will last for nine months with the employer or insurer paying the subsidy amount initially against payroll tax credits. There is a cap on the income eligibility for this provision.

Health Information Technology

- Total \$19 billion - \$2 billion in direct funding for HIT and \$17 billion in Medicare incentives
- These funds will be channeled through the Office of the National Coordinator for Health Information Technology (ONCHIT)

The National Coordinator (NC) is responsible for keeping the Federal investments in HIT on target. The NC coordinates with the HIT Standards Committee and the HIT Policy Committee and serves as a liaison between the Committees and the Federal Government. The key components that the NC will be coordinating on are - electronic exchange, use by 2014, privacy and security, specification of framework, engagement of public, use to support improvements, and addressing unique needs. They will also be maintaining the website, certifications in consultation with NIST, various other reports and publications, provide financial assistance to consumer advocacy and not for profit groups and establish a governance program for NHIN (Nationwide Health Information Network). The office will appoint a Chief Privacy Officer who will advise the NC on privacy, security, and data stewardship. He will also coordinate with other federal agencies, state and regional efforts and foreign countries.

- Policy Committee

This committee is an application of FACA (Federal Advisory Committee Act). This committee is responsible for recommending a policy framework for development and adoption of a nationwide health information technology infrastructure. The committee will also be looking at standards and implementation specifications, appropriate

population health uses, and provide a forum for broad stakeholder input.

- Standards Committee

This committee, also an application of FACFA, is responsible for recommending to National Coordinator standards, implementation specifications, and certification criteria. It will also provide for testing by NIST, conduct open public meetings, devise a schedule for the HIT Policy Committee and provide for a balance among sectors.
- Certification Criteria for electronic info exchange

The Office of the NC consults with NIST will recognize a program for voluntary certification of HIT if it complies with specific certification criteria. The areas in which these criteria are needed are recommended and prioritized by the Policy Committee while the specifications are provided by the Standards Committee. Previous or new standards will be adopted by 31st December 2009
- HIT infrastructure grants

The Secretary will be investing through different agencies with expertise (ONC, HRSA, AHRQ, CMS, CDC, IHS) and will cover health IT architecture, EHR adoption, training and dissemination of best practices, etc.
- Other Grants & Loans
 - State Grants:

These are planning and implementation grants established through the office of the NC. They are targeted at states or qualified non-profit state designated entities with the principle goal of improving health care through the exchange and use of health information.
 - Grants to States and Indian Tribes for Loan Programs:

These optional grants are based on private sector contribution towards entities creating loan programs to support provider adoption of EHR.

- Education Assistance:

Aimed at establish and expanding medical informatics education programs, these grants will support the creation of demonstration projects to integrate electronic health records into the clinical education of health professionals.
- Implementation Assistance:
 - Health IT Extension Program which is created to assist providers in adopting, implementing and using EHRs.
 - Health IT Research Center which is created to provide technical assistance and develop best practices to support EHR adoption.
 - Health IT Regional Extension Centers which will provide technical assistance to public/not-for-profit hospitals, federally qualified health centers, rural/underserved, and individual or small group practices.
- \$17 billion in investments and incentives:
 - Hospitals

Hospitals can receive up to \$16 million over four years if they are using health IT starting in 2011. They can annually receive payments based on an initial \$2 million plus a \$200 per-discharge payment for the 1,149th through 23,000th discharge. They will only be paid a pro-rated amount of the total based on Medicare share and transition factor. These payments are based on a complex formula and will be phased out over 4 years with payments being reduced for non-users beginning 2015.
 - Physicians

These incentives apply to all physicians who can prove use of a qualified EHR regardless of purchase date. A qualifying EHR constitutes using certified EHR technology which demonstrates information exchange and improves clinical quality. Physicians using a qualified EHR by 2011 can receive up to \$44,000 and those practicing in “health professional shortage areas” can receive a 10% additional payment for a total of

\$48,000. 2015 onwards there will be penalties for not using EHR with total payments reducing by 1% every year

Prevention

- \$1 billion for a “Prevention and Wellness Fund”

These funds will be administered by the Department of Health and Human Services. Out of these funds, about \$650 million is allocated “to carry out evidence-based clinical and community-based prevention and wellness strategies authorized by the (US) Public Health Service Act, as determined by the (Health and Human Services) Secretary, that deliver specific, measurable health outcomes that address chronic disease rates.” This includes some level of discretionary funding which AIDS activists hope can be directed towards fighting HIV.

Comparative Effectiveness Research

- Total: \$1.1 billion is allocated to researchers to compare drugs, medical devices, surgeries and other methods used to treat specific conditions. The underlying assumption is that doctors have little evidence of the value of many treatments and this move will help drop the use of expensive and ineffective treatments.
 - \$300 million will be allocated to AHRQ (Agency of Healthcare Research and Quality)
 - \$400 million will go to NIH (National Institute of Health)
 - \$400 million will be allocated at the discretion of DHHS (Department of Health and Human Services) with the purpose of accelerating development and dissemination of effective treatments. The DHHS will
 - Conduct , support and synthesize research
 - Compare clinical outcomes with the effectiveness and appropriateness of services and procedures
 - Encourage development and use of electronic health data such as clinical registries and clinical data networks so that they can be used to generate and obtain data on outcomes of treatments.

Privacy Protections

- **Business Associates:** The privacy provisions listed in the Act extend to all business associates both directly and through contracts. HIPAA (Health Insurance Portability and Accountability Act) details security standards that must be adhered to. There will be civil and criminal penalties for violating those standards. Business Associates are required to
 - Provide notification of breach of unsecured protected health information (PHI) within a specific time period. In some breach cases, notice must be provided to “prominent medical outlets.”
 - Prevent disclosure a PHI unless disclosure is permitted by a Business Associate Agreement.
 - Prohibit sale of PHI without patient authorization (except in certain specified circumstances)
 - Obtain patient authorization for marketing and fund raising activities.

- **Patient Privacy Rights:** the privacy provisions as applied to patients provide them with the rights to
 - Receive an electronic copy of their PHI, if it is maintained in an electronic health record.
 - Request that specific PHI not be disclosed to a health plan if the patient paid for specific service out-of-pocket
 - Receive an accounting of PHI disclosures (up to three years prior to the date requested).

- **PHR Vendors:** PHR vendors and other entities offering products/services through a PHR vendor website (e.g., Google, Microsoft) are required to provide notification of any security breaches immediately.
- **Enforcement:** the rules detailed above will be enforced by having increased penalties. The Office of Civil Rights will conduct investigations and levy penalties for criminal HIPAA violations (if Justice Department has not already prosecuted). However, the bill still does not provide any private right of action.

For more information please contact CHIDS at chids@rhsmith.umd.edu. CHIDS is an academic research center with collaboration from industry and government affiliates, and is designed to research, analyze, and recommend solutions to challenges surrounding the introduction and integration of information and decision technologies into the health care system. CHIDS serves as a focal point for thought leadership around the topic of health information and decision systems.