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A Summary of the HITECH Act

WHITEPAPER

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Introduction

The $19.2 billion Health Information Technology for Economic and Clinical Health (HITECH) Act that President Obama signed into law on February 17, 2009 will have dramatic and lasting effects on the adoption of Electronic Health Records (EHR) in this country. However, what it should not do is induce physician practices to make hasty decisions regarding the selection of an EHR.

athenahealth, Inc. has prepared the following overview of the HITECH Act to help practices better understand the breadth and depth of this new law. The focus of this summary is on how the HITECH Act affects physicians in ambulatory care practices.

On its surface, the HITECH Act seems very straightforward and clear. "Eligible professionals" (in most cases, physicians) who demonstrate "meaningful use" of a "certified" EHR beginning in 2011 will be eligible to receive incentive payments of up to $44,000 from Medicare and $65,000 from Medicaid per individual physician to help cover the cost of EHR adoption. However, as many experts have pointed out, "meaningful use" and "certified" have not yet been defined. Many of the specifics of the HITECH Act, including these criteria, will be developed by the United States Department of Health and Human Services (HHS) over the coming year and released as late as December 31, 2009.

While much remains unclear, what is clear is that even before the ink of President Obama's signature was dry, vendors started pushing aggressive "the clock is ticking" marketing efforts to prompt physicians to make immediate EHR purchases. Despite the urgent tenor of these marketing efforts, practices should wait until HHS has released additional information about the Act and then use this information to help make considered decisions about what EHR solution works best for them.

Moving too quickly just to take advantage of the incentives being offered could cause practices to jump into a quick-fix EHR solution that might not meet their needs. Research has shown that successful EHR adoption depends on careful planning, which includes determining which EHR solution meets the specific needs of that individual practice.[1] As John Moore of the independent research firm, Chilmark Associates, cautioned on February 17th:

> "*Aggressive schedules ... while well-meaning, have the very real danger of causing more harm than good. The harm will come in the form of far too many poorly executed HIT deployments by physicians racing to capitalize on the reimbursement. While these deployments may meet the "letter of the law" and receive reimbursement, over time we predict that the "hassle-factor" as a result of rushed, poorly thought-through deployments will become ever larger and longer-term meaningful use of EHR will fade.*"[2]

This summary is intended as a first step toward helping practices carefully think through their EHR strategies by understanding some of the basics of the HITECH Act.

The Purpose Of The HITECH Act

The HITECH Act is part of President Obama's $787 billion stimulus package (known as the American Recovery and Reinvestment Act of 2009) signed into law on February 17th. The HITECH Act is designed to help fulfill a promise that President Obama made in a speech on January 8, 2009 at George Mason University. In that speech, he said:

> "*To improve the quality of our health care while lowering its costs, we will make the immediate investments necessary to ensure that, within five years, all of America's medical records are computerized. This will cut waste, eliminate red tape and reduce the need to repeat expensive medical tests...But it just won't save billions of dollars and thousands of jobs; it will save lives by reducing the deadly but preventable medical errors that pervade our health-care system.*"

To help accomplish this goal, the Act creates a system of incentives to encourage practices to implement EHRs and disincentives to penalize slow adoption.

Exactly how effective will the $19.2 billion Act be in accelerating the adoption rate of EHR? Prior to the HITECH Act, the Congressional Budget Office (CBO) anticipated that under existing laws, 65% of physicians would have adopted an EHR by 2019. It now estimates that the incentive mechanisms of the HITECH Act will boost these adoption rates to 90% of physicians. According to the CBO, this acceleration will deliver net savings to the U.S. healthcare system of 0.3% between 2011 and 2019, or more than $60 billion over eight years.[3]

Leadership

The HITECH Act will be administered by the Office of the National Coordinator for Health Information Technology (ONC). This office, created by President George W. Bush in 2004, is led by the National Coordinator who is appointed by and reports directly to the Secretary of HHS. As a result of the HITECH Act, an HIT Policy Committee and an HIT Standards Committee will be appointed to help shape the details of its provisions.

Major Incentives/Disincentives Of The HITECH Act

The bulk of spending in the HITECH Act, more than $17 billion, goes towards incentives for hospitals and healthcare professionals to encourage the widespread adoption of EHRs. In this summary, we focus on reimbursements for ambulatory physicians with an emphasis on Medicare. Because Medicare is managed on a federal level entirely by HHS, the provisions for reimbursement are the most straightforward. Medicaid reimbursement will be dictated and managed by the states; however, the states' guidelines must be aligned with those of Medicare.

Medicare Incentive Payments

In order to qualify for incentive payments, Medicare physicians must:

- Use a "certified" EHR. The Act does not specify the details of "certification" or who will provide certification. Before the end of the year, the ONC will recognize a program(s) that will manage the voluntary certification process. It is widely believed that the certifying organization will be the independent Certification Commission for Healthcare Information Technology (CCHIT). Although the details have yet to be defined, the HITECH Act does specify that to be qualified as a certified EHR, the

certified technology must: (1) protect the privacy of health information; (2) ensure the comprehensive collection of patient demographic and clinical data; (3) include patient demographic and clinical health information; and (4) have the capacity to provide clinical decision and physician order entry.[4]

- Demonstrate "meaningful use" of an EHR. Again, the ONC will define "meaningful use" by the end of the year. The HITECH Act, however, does stipulate that the following conditions for "meaningful use" must be met. The EHR must:
  - Use ePrescribing. Specifically, "the professional… shall include the use of electronic prescribing as determined to be appropriate by the (HHS) Secretary."
  - Electronically exchange information. The healthcare professional must demonstrate that the EHR allows for the "electronic exchange of health information to improve the quality of health care, such as the promoting of care coordination."
  - Submit clinical quality measures. The healthcare professional must "submit clinical quality measures," such as PQRI, to HHS. The bill does not specify what these measures will be.

The Act also stipulates that the requirements for "meaningful use" will become more stringent over the years, which means that the conditions that EHRs must meet will continue to be modified for years. EHR solutions that qualify for "meaningful use" must be able to quickly respond to these anticipated changes.

Schedule of Medicare Incentive Payments

Healthcare professionals with Medicare patients who meet the requirements for "meaningful use" of a "certified" EHR are eligible to receive up to 75% of the Medicare allowable up the numbers according to the following schedule:

HITECH Act – Medicare Physician Incentive Payments*					
Year	Adopted EHR in 2011	Adopted EHR in 2012	Adopted EHR in 2013	Adopted EHR in 2014	Adopted after 2015
2011	$ 18,000	$ 0	$ 0	$ 0	$ 0
2012	$ 12,000	$ 18,000	$ 0	$ 0	$ 0
2013	$ 8,000	$ 12,000	$ 15,000	$ 0	$ 0
2014	$ 4,000	$ 8,000	$ 12,000	$ 15,000	$ 0
2015	$ 2,000	$ 4,000	$ 8,000	$ 12,000	$ 0
2016	$ 0	$ 2,000	$ 4,000	$ 8,000	$ 0
Total	$ 44,000	$ 44,000	$ 39,000	$ 35,000	$ 0
10% additional payment For Health Professional Shortage Areas	$ 4,400	$ 4,400	$ 3,900	$ 3,500	
Total	$ 48,400	$ 48,400	$ 42,900	$ 38,500	$ 0

* Chart provided by Chilmark research
* Numbers interpreted from the American Recovery and Reinvestment Act of 2009[5]
* No incentive payments will be made after the year 2016.

Medicare Disincentives or Penalties for Failure to Adopt EHRs

In addition to providing incentives to medical practices to adopt an EHR, the HITECH Act also creates penalties or disincentives for practices that fail to utilize an EHR. If eligible professionals have not become "meaningful users" of EHRs by 2015, their Medicare payments will be reduced as follows:

2015	Reduced by 1%
2016	Reduced by 2%
2017	Reduced by 3%
All Subsequent Years:	Reduced by 3%

However, the Act stipulates an exemption from this penalty: "If the Secretary determines, subject to annual renewal, that compliance with the requirement for being a meaningful EHR user would result in a significant hardship, such as in the case of an eligible professional who practices in a rural area without sufficient Internet access. In no case may an eligible professional be granted an exemption for more than 5 years."[6]

Schedule of Medicaid Incentive Payments

To be eligible to receive incentive payments from Medicaid, eligible professionals must demonstrate that a minimum of 30% [20% for pediatricians] of their patients are covered by Medicaid. Since Medicaid is administered and partly financed at the state level, the criteria will vary among states. However, by law state Medicaid requirements must be acceptable to the Secretary of HHS and aligned with the ones used by Medicare.[7]

The Act does not specify when Medicaid incentive payments will begin, but it's anticipated that payments will begin in 2011. Unlike Medicare incentive payments, first year costs are applied to purchase, installation and training. Note, that for the first five years, payments for adoption do not decrease based on the year the EHR is initially adopted. Therefore, a professional who adopts by 2015 will be eligible for incentive payments at the same annual rate as a physician who adopts in 2011.

HITECH Act – Medicaid Physician Incentive Payments*							
Year	Adopted EHR 2011	Adopted EHR 2012	Adopted EHR 2013	Adopted EHR 2014	Adopted EHR 2015	Adopted EHR 2016	Adopted after 2017
2011	$ 25,000	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0
2012	$ 10,000	$ 25,000	$ 0	$ 0	$ 0	$ 0	$ 0
2013	$ 10,000	$ 10,000	$ 25,000	$ 0	$ 0	$ 0	$ 0
2014	$ 10,000	$ 10,000	$ 10,000	$ 25,000	$ 0	$ 0	$ 0
2015	$ 10,000	$ 10,000	$ 10,000	$ 10,000	$ 25,000	$ 0	$ 0
2016	$ 0	$ 10,000	$ 10,000	$ 10,000	$ 10,000	$ 25,000	$ 0
2017	$ 0	$ 0	$ 10,000	$ 10,000	$ 10,000	$ 10,000	$ 0
2018	$ 0	$ 0	$ 0	$ 10,000	$ 10,000	$ 10,000	$ 0
2019	$ 0	$ 0	$ 0	$ 0	$ 10,000	$ 10,000	$ 0
2020	$ 0	$ 0	$ 0	$ 0	$ 0	$ 10,000	$ 0
Total	$ 65,000	$ 65,000	$ 65,000	$ 65,000	$ 65,000	$ 65,000	$ 0

* Chart provided by Chilmark research

Medicaid Disincentives or Penalties for Failure to Adopt EHRs

There is no reimbursement penalty for not adopting an EHR after 2016.

New Security Provisions

The Act includes several new security provisions including:

A. Requirement to notify patients and HHS of PHI (Protected Health Information) security breaches
B. New HIPAA regulations regarding business partners (PHRs, HIEs) and enforcement of penalties
C. Restrictions on the sale and marketing of PHI
D. Ensuring that patients have access to their electronic health information
E. Accounting of disclosures of PHI to patients

In short, the privacy restrictions will be more stringent; with more stringent patient access and notification requirements should any breaches in security occur.

Additional HITECH Funding

The HITECH Act also includes $2 billion in spending to support HIT infrastructure, loans, research, training, and education. Some major provisions are summarized below.

Grants to Institutions of Higher Education

HHS is authorized to award matching grants to carry out demonstration projects to develop academic curricula integrating qualified health information technology in the clinical education of health professionals. The Act also provides assistance to institutions of higher education to establish or expand medical health informatics education programs for both health care and information technology students to ensure the rapid and effective utilization and development of heath information technologies. The Act requires the establishment of multidisciplinary "Centers for Health Care Integration at Institutions of Higher Learning."

Training

The Act establishes a health information technology extension program to provide health information technology assistance services. The Act provides funding for HHS "to: (1) create a Health Information Technology Research Center to provide technical assistance and develop or recognize best practices to support health information technology; and (2) provide assistance for the creation of regional centers to provide technical assistance and information to support health information technology."[8]

Research

The Act also requires the National High-Performance Computing Program to coordinate federal research and development programs related to the development and deployment of health information technology, including activities related to: (1) computer infrastructure; (2) data security; and (3) development of large-scale, distributed, reliable computing systems."[9]

Indian Health Services Grants

The Act Provides for $85 million in grants with Indian Health Services to assist with Health IT adoption.

Conclusion

This is but a brief summary of some of the major provisions of the HITECH Act. For a copy of the Act, go to **www.whitehouse.gov/the_press_office/arra_public_review**. However, keep in mind that even a careful reading of the Act cannot provide a clear understanding of its requirements and consequences given that so many of the provisions have yet to be established. If you are interested in finding out more of the details as they emerge, go to **www.athenahealth.com/HITECHAct** for regular updates.

For practices making decisions about EHR adoption, it's important to understand the evolving provisions of the HITECH program. However, it's even more important that a practice choose an EHR strategy that meets the long-term needs of its healthcare professionals and patients. For insight into successful EHR implementation strategies, look for the Webinar and Whitepaper, *Be Prepared for the HITECH Act: 8 Tips for Successful EHR Adoption*, presented by Susan Ordway Harmon, Director of athenaClinicals, formerly of Allscripts and MassPro (**www.athenahealth.com/HITECHAct**).

[1]Keane, William, Ogunkeye and Metz, "Creating a EMR Pre-Implementation Organizational Structure that Insures Participation and Buy-in Across an Institution", presented at World Healthcare and Innovation Conference, November 2, 2006.

[2]Chilmark Research, "HITECH Act: Reimbursement Schedule a Challenge," February 16, 2009, at http://chilmarkresearch.com/2009/02/16/hitech-act-reimbursement-schedule-a-challenge.

[3]U.S. Congressional Budget Office, "Estimated Budgetary Impact of H.R.1, the American Recovery and Reinvestment Act of 2009, as passed by the House of Representatives on January 28, 2009," at http://www.cbo.gov/ftpdocs/99xx/doc9976/hr1aspassed.pdf.

[4]ARRA, 2009, HIMMS Summary, Page 3.

[5]ARRA Act (H.R.1), Title IV, Subtitle A. Section 4101, A(i).

[6]ARRA, Act (H.R.1.), page 359.

[7]ARRA, 2009, HIMMS Summary, page 7.

[8]Ibid.

[9]Ibid., Title IV, Subtitle B, Section 4202.

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