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Impact Advisors Briefing:

Healthcare Information Technology for Economic and Clinical Healthcare (HITECH) Act

**Impact Advisors, LLC
March 6, 2009**

ABOUT THIS BRIEFING

This Impact Advisors' HITECH (aka Health Information Technology for Economic and Clinical Health) Act briefing provides an overview of the health incentives in the recently passed stimulus package, specifically the health IT funds, policy changes and HIPAA implications. The report also explains the incentive structure and timing for both hospitals and physicians and discusses some of the ambiguous elements of the Act requiring further clarification. It concludes with a set of issues and actions every health/health IT leader should consider as they plot an approach to capitalizing on the opportunities HITECH provides.

SUMMARY OF THE ARRA HEALTH COMPONENTS

On February 17th, 2009, President Obama signed the \$789 Billion American Recovery and Reinvestment Act (ARRA) of 2009, which provided over \$150 billion for healthcare related initiatives, including a net \$19.2 billion for HITECH. Furthermore, the HITECH act states a goal of all Americans having a certified EHR by 2014. The healthcare stimulus components are summarized below¹:

- A temporary \$86.6B increase to the federal share of the Medicaid program
- \$24.7B to subsidize COBRA insurance premiums for the unemployed at 65% for 9 months
- **\$19B for health information technology adoption**, with bonuses of \$44,000 to \$64,000 for physicians and as much as \$11 million for hospitals for the implementation of EHRs.
- \$14.2B for health investments, including \$10B for NIH biomedical research and facilities
- \$10B in NIH funding, including \$8.5B for research grants and \$1.5 billion for upgraded labs
- \$1.3B to extend the Transitional Medical Assistance program to December 31, 2010
- \$1.2B for the VA to build or improve medical and long-term care facilities and cemeteries
- \$1.1B for research to compare the effectiveness of drugs, surgery and medical devices
- \$1B for a new Prevention and Wellness Fund;
- A temporary increase of \$500M for disproportionate share hospitals
- A temporary extension of the moratorium on 7 Medicaid regulations (\$100M)

HITECH'S KEY FUNDS ALLOCATION

As per the Advisory Board's Analysis² "The health IT provisions of the stimulus bill are targeted at accelerating the adoption of EHR technologies and facilitating nationwide health information exchanges (HIEs) to improve the quality and coordination of care between health care providers, thereby reducing medical errors and duplicative care." The goal is to reach EHR adoption rates of 90% for physicians and 70% for hospitals by 2015.

¹ "Economic Stimulus Package Holds a Silver Lining for Hospitals", SG2 Consulting, 2/13/2009

² Protima Advani, The Advisory Board, 2/17/2009

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As planned, Medicaid/Medicare will actually spend well over \$30B in the next ten years through the HITECH plan. It estimates it will achieve ~\$12B in savings through reduced utilization, for a net cost of ~\$17B. Of the \$19.2 billion allocated for healthcare IT adoption, ~\$17 billion will be in the form of incentives to encourage physicians and hospitals who serve Medicare/ Medicaid patients to adopt and use certified EHRs. These incentive payouts begin in 2011 and only "meaningful users" of health IT will qualify for the incentives. While the HHS Secretary has yet to define "meaningful use," criteria will likely include using a certified EHR, reporting on quality metrics (potentially CMS Core Measures and/or JCAHO requirements, and/or new measures), and the ability to participate/participation in HIEs. For hospitals and provider offices, the EHR functionality must include CPOE, again not clearly defined in the bill, and clinical decision support.

The remaining \$2 billion will be dispersed in the near term – most likely in 2009 and 2011 - to enable development of health IT standards, enhance privacy and security guidelines, and build the infrastructure for health information exchanges (HIEs). Of the \$2B, about \$325M has already been earmarked for HIE and data standards development. The remaining \$1.7B in jump-start funds will likely be distributed to states as planning and implementation grants, which *may* be distributed to providers, for a number of initiatives, including³:

- Infrastructure and tools for telemedicine
- Improved health IT usage by public health departments
- Development of EHR software if HHS determines private market solutions don't meet certain providers' needs;
- Training on best practices in IT systems integration
- Promotion of strategies and tools to enhance health information privacy and security
- Establishment/promotion of the interoperability of clinical data repositories or registries

OTHER COMPONENTS OF THE HITECH ACT⁴

- Requires HHS to appoint a new Chief Privacy Officer and expands current HIPAA privacy and security protections for health information (see below)
- Provides nearly \$7.3B to improve broadband networks in underserved areas to advance telemedicine and connect geographically distant communities and facilities.
- Codifies the Office of the National Coordinator for Health Information Technology (ONCHIT) within the Department of Health and Human Services (HHS).
- Provides a minimum of \$300M to states to help establish/further HIEs.
- Authorizes provision of competitive grants to states and Indian tribes to develop EHR adoption loan programs to boost adoption across health care providers.
- Establishes a national health IT research center and regional extension centers.
- Authorizes HHS to create two grant programs; one to expand Medical Informatics programs and one to integrate EHRs into medical school curricula

Health Information Privacy and Accountability Act (HIPAA) Implications⁵

Under the ARRA's healthcare provisions, many existing health information privacy and

³ "Where does the \$2B Go? Health Data Management, 2/20/2009

⁴ Protima Advani, The Advisory Board, 2/17/2009

⁵ John Barlament, WTN News, 2/18/2009

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security regulations are tightened, and new ones are enacted. Key HIPAA and privacy/security implications include:

- Business associates must comply directly with many of HIPAA's rules, including appointing a security officer, having written ePHI policies, and complying with numerous HIPAA security requirements.
- Business associates will be subject to HIPAA's civil and criminal penalties
- Virtually all business associate agreements must be rewritten
- Communication and marketing practices must comply with more stringent requirements
- Various HIPAA policy violation penalties are significantly increased and remedial actions are expanded

HOSPITAL INCENTIVES IN HITECH⁶

- In addition to the EHR “meaningful use” requirement, hospitals must have a Medicaid patient volume of at least 10%. States may also define additional requirements
- The incentive payout formula uses a base payment of \$2M, adjusted for total discharges and the Medicare share (or Medicaid share, for Medicaid incentives) of the case mix.
- The incentives are phased out as follows
 - Year 2 = 75% of the original incentive payment
 - Year 3 = 50% of the original incentive payment
 - Year 4 = 25% of the original incentive payment
- Hospitals have a rolling five-year window in which to collect payments provided they demonstrate compliance before 2015.
- Hospitals that do not show “meaningful use” of EHRs by the end of 2015 will receive no incentive payments. Starting 2015, hospitals failing to show meaningful use will face penalties in the form of reimbursement reduction in their annual market-basket updates.
- Total Medicaid/Medicare incentive payments are capped at a total of \$11M per hospital.

Hospital Adoption Timing/Incentive Payout

Year of Adoption	2011	2012	2013	2014	2015	2016	2017
Payment for adopting before or in 2011	100%	75%	50%	25%			
If first adopting in 2012:		100%	75%	50%	25%		
If first adopting in 2013:			100%	75%	50%	25%	
If first adopting in 2014:				75%	50%	25%	
If first adopting in 2015:					50%	25%	
Penalties begin if not adopting by 2015: Three-quarters of the applicable market basket update is reduced by:					33.33%	66.66%	100%

Source: CHIME/NAHIT, 2/25/2009

⁶ Protima Advani, The Advisory Board, 2/17/2009

PHYSICIAN INCENTIVES IN HITECH⁷

- Physicians may only collect incentive payouts from Medicare or Medicaid.
- To be eligible for the higher Medicaid incentives, physicians must demonstrate “meaningful use” of health IT and have 30%+ of their cases be Medicaid (20% for pediatricians.)
- Under both Medicare and Medicaid, physicians will be eligible for incentive payouts in 2011
- Medicare Incentive for Physicians:
 - Physicians must demonstrate “meaningful use” of health IT by the end of 2014; physicians failing to show “meaningful use” will see reimbursements cut starting in 2015 of 1% that year, 2% in 2016, and 3% in 2007 and beyond.
 - Physicians demonstrating “meaningful use” of health IT in 2011 or 2012 will receive \$18,000 in their first year of collection, \$12,000 in year two, \$8,000 in year three, \$4,000 in year four, and \$2,000 in year five. \$44,000 in total.
 - Physicians who demonstrate “meaningful use” of health IT for the first time in 2013, will receive \$15,000 in their first year and a total \$39,000 over 4 years.
 - Physicians who begin in 2014 will collect \$35,000 over three years.
 - No Medicare incentives will be provided after 2016
 - Physicians practicing in designated health professional shortage areas will get a 10% increase in incentive payments.

PROVIDER - MEDICARE	2011	2012	2013	2014	2015	2016	2017 and beyond
If first adopting in 2011			Maximum Payout = 44,000				
If first adopting in 2012			Maximum Payout = 44,000				
If first adopting in 2013			Maximum Payout = 39,000				
If first adopting in 2014			Maximum Payout = 35,000				
If not adopted by 2014					-1% Medicare Reimb		
						-2% Medicare Reimb	
							-3% Medicare Reimb

- Medicaid Incentive Payouts for Physicians:
 - The Medicaid incentive plan is considerably more complicated and is only applicable to those with 20% or more of their panel being Medicaid patients (30% for pediatricians)
 - Over five years, physicians may collect a sum total of \$65,000. This is calculated as 85% of EHR purchase costs not exceeding \$25,000 in the first year followed by 85% of the annual maintenance costs not exceeding \$10,000 for the next five years.
 - The incentive payment timeline is extended through 2021.

TOPICS FOR FURTHER CLARIFICATION

Given the speed at which it was developed, and its complexity, it is not surprising there are areas in HITECH that will require further clarification by HHS or other agencies. For example, much ambiguity remains around the definition of “meaningful use” of EHRs by hospitals and providers. Similarly, for hospitals, there is a lack of clear definition of what specifically constitutes use of CPOE, in order to be eligible for the Medicare incentive payments.

⁷ Protima Advani, The Advisory Board, 2/17/2009

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For hospital-owned physician practices, or faculty practices, it is not clear if/how they will be treated for eligibility for the physician incentives and if the payments will flow through the hospital system.

Likewise, for independent community physicians, there is ambiguity about if and how HITECH interplays with the Stark and Anti-Kickback law relaxations. It appears there is nothing in the Act that preempts a hospital from moving forward with a program maximizing the relaxation of the Stark and Anti-Kickback laws⁸. If this is the case, hospitals may use funds they receive from the Medicare incentive plan to further EHR adoption in their larger community. However, the Health Information Management and Systems Society (HIMSS) stated in their analysis of HITECH they “anticipate that the HHS Secretary will need to clarify the Stark impact on these incentives.”⁹

ACTIONS AND ISSUES FOR CIOs

- The Congressional Budget Office estimates only 2.3 percent of the health IT funds will be distributed in fiscal years 2009 and 2010¹⁰. In addition, the ambiguity of several key terms and conditions within the act require clarification. Hence **healthcare providers should not expect a near-term windfall and must continue to plan and operate within current budget constraints while closely monitoring updates and/or clarifications issued by CMS and HHS.**
- While almost all US hospitals are deploying EHRs, most are not ready to show “meaningful use” of them by 2011; thus current, ongoing implementations must speed up. **CIOs should plan for an EHR deployment schedule, including CPOE, or expedite their current schedule, so their hospitals can most fully collect on the incentive payments**
- Hospitals can also expect their reporting requirements to grow as part of this incentive plan. **IT executives must secure and retain the staff, skills, and other needed resources to meet EHR implementation goals and subsequent, ongoing reporting requirements.**
- To meet emerging ONCHIT-issued standards regarding health information exchange, health IT vendors will need to modify their products to meet standards and ensure certification. **Subsequently, hospitals must ensure their EHRs also meet the forthcoming standards, and replace/upgrade non-compliant applications with certified EHRs.** CIOs should be wary of vendors seeking to pass through costs for federally-required changes that should be provided as part of the licensing agreement
- With the sizable Medicare and Medicaid incentives for physician adoption of health IT, **hospitals should expect an increased demand from physicians for hospital-subsidized EHRs.** IT executives must pair with other hospital executives to proactively plan for this potential demand based on business strategy and alignment goals

⁸ FAQs about American Recovery and Reinvestment Act and the HITECH Act, Allscripts, 2/18/2009

⁹ Legislative Overview, Policy Implications and Healthcare Ramifications, HIMSS 2/19/2009

¹⁰ Matthew Perrone “Stimulus for Health IT Will Take Time,” AP News, 2/17/2009

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- Given the increased funds for the deployment of broadband infrastructure in unserved and underserved areas, telemedicine programs may be more viable and attractive. **CIOs and medical informaticists may be expected to implement and support a growing number of telemedicine technologies** and programs
- The stimulus health IT legislation emphasizes the need for elevated levels of privacy and security around patient health information being exchanged electronically. **CIOs should prepare for a tougher set of privacy rules** including extension of HIPAA applicability and expanded individual rights.
- The legislation requires a minimum of \$300 million to support “regional or sub-national” efforts for health information exchanges (HIEs). **IT executives should stay abreast of HIE developments in their regions and states, actively contribute to standards and policy discussions, and ensure their hospital’s systems meet the requirements for participation in the HIE(s).**