



AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

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

Regina M. Sharrow, Partner
October 2009

BACKGROUND

HEALTH INFORMATION TECHNOLOGY GENERALLY

□ HIT not new

- 2004 Bush Administration Executive Order
 - ONC (or ONCHIT) – Office of National Coordinator for HIT
 - AHIC - American Health Information Community
 - NeHC – National eHealth Collaborative
 - ANSI - American National Standards Institute
 - HITSP – HIT Standards Panel
 - CCHIT – Certification Commission for HIT
 - AHRQ – Agency for Healthcare Research and Quality
 - NIST – National Institute of Standards and Technology
- Medicare e-Prescribing
- Stark and Anti-Kickback safe harbors



AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA) HITECH ACT

- Office of National Coordinator (ONC) for HIT Codified
- \$19.5 billion in funding (\$32 billion gross, less projected savings of \$12.5 billion)
- Expand HIPAA Privacy and Security

FUNDING OPPORTUNITIES

Resource Centers

- HIT Research Center
 - Secretary of HHS will create to provide assistance and develop or recognize best practices for adopting, implementing and effectively using HIT
 - Provide forum for exchange of knowledge and experience
 - Provide technical assistance for the establishment and evaluation of health information networks

- Regional Extensions Centers
 - Secretary of HHS; Submit application to Secretary of HHS
 - For non-profit institutions or groups thereof
 - Broad participation of individuals from industry, universities and State governments
 - Financial assistance up to 4 years, 50% operating and capital
 - To provide technical assistance and disseminate best practices

FUNDING OPPORTUNITIES

Resource Centers

- State Grants to Promote HIT
 - HHS and ONC; Submit application to Secretary of HHS
 - Grants to State and State-designated nonprofit entities to expand the electronic movement and use of health information among organizations
 - Planning Grants and Implementation Grants
 - Must have broad stakeholder representation on its governing board
 - Grant funds subject to non-federal matching:
 - 2011, \$1 State for each \$10 fed
 - 2012, \$1 State for each \$7 fed
 - 2013 and beyond, \$1 State for each \$3 fed

FUNDING OPPORTUNITIES

Loan Program

- Competitive Grants to States and Indian Tribes
 - ONC
 - Funds to States and Indian Tribes to create Loan Fund
 - Loans must be used to adopt or enhance EHR or train personnel on EHR
 - Grant funds subject to non-federal matching of \$1 State for each \$5 Federal; no private contribution designations
 - Loan terms = 1-10 years at market interest rate

FUNDING OPPORTUNITIES

Education

- Centers for Health Care Information Enterprise Integration
 - Director of NIST and National Science Foundation
 - Merit-based grant to institutions of higher learning
- Demonstration Program to Integrate HIT into Clinical Education
 - Grant funds will comprise up to 50% of the recipients costs of the activity (cannot use to purchase hardware, software, or services)
 - Demonstration project to develop academic curriculum integrating certified EHR technology into clinical education of health care professionals
 - Secretary of HHS – Competitive basis; peer review; Submit application to Secretary HHS
 - Eligible organizations – graduate schools of medicine, osteopathy, dentistry, pharmacy, behavioral or mental health, nursing or physicians assistant
- Information Technology Professionals in Health Care
 - Secretary of HHS in consultation with National Science Foundation; Submit application to Secretary of HHS
 - Institutions of higher education
 - Establish or expand Medical Health Information Education Programs

INCENTIVES FOR HEALTH CARE PROVIDERS

Eligible Professionals (Medicare)

- Physicians and Physician Groups (non-hospital based)
 - Must be a meaningful user of EHR
 - Certified EHR in meaningful manner, including e-prescribing
 - Electronic exchange of data
 - Report to HHS on clinical quality measures
 - Low standards initially
 - Beginning in 2011, no payments after 2016
 - No payments if first payment year after 2014

INCENTIVES FOR HEALTH CARE PROVIDERS

Eligible Professionals (Medicare)(*cont.*)

- Payment Years – Up to \$44,000
 - Year 1 = \$15,000 (\$18,000 if first payment year is 2011 or 2012)
 - Year 2 = \$12,000
 - Year 3 = \$8,000
 - Year 4 = \$4,000
 - Year 5 = \$2,000 Payment – through Medicare Part B payments (single or installments per HHS)
- CMS will post on public website names, business address, business phone of meaningful users
- Not meaningful user of EHR during 2015, Medicare fees reduced:
 - For 2015 = 1%
 - For 2016 = 2%
 - For 2017 and each subsequent year = 3%
- Hardship exceptions case by case, e.g., rural area, insufficient internet

INCENTIVES FOR HEALTH CARE PROVIDERS

Hospitals (Medicare)

- Hospital Incentive Payments
 - Beginning with fiscal year 2011, no payments after 2015
 - Acute care hospitals payments based upon formula
 - Sum of the “base amount” (\$2 million)
 - plus an additional \$200 per discharge for the 1,150th through 23,000th discharge
 - all multiplied by the hospital’s “Medicare share” (proportion of charity case)
 - Formula amount phased out over four years
 - Year 1 = 100%
 - Year 2 = 75%
 - Year 3 = 50%
 - Year 4 = 25%

INCENTIVES FOR HEALTH CARE PROVIDERS

Hospitals (Medicare)(*cont.*)

- If no EHR adoption by 2015, hospital's Medicare payments reduced in 2016, 2017 and 2018 and beyond
- Critical access hospitals eligible for 20% increase (up to 100%). CAH not meaningful user by 2015, Medicare reimbursement reduced in 2015, 2016 and 2017 and beyond
- CMS will post list of names of eligible hospitals that are meaningful EHR users



INCENTIVES FOR HEALTH CARE PROVIDERS

Medicaid

- States may receive a 100% Federal Financial Participation match
- Eligible professionals may receive up to 85% of the cost of EHR over six years
- Hospitals may receive a formula amount over three to six years
- Providers must decide whether to receive incentives under Medicare or Medicaid (not both)



APPLICATION OF HITECH ACT

- No part of HITECH Act applies to private entity but many agencies of the federal government will require agreements with health care providers, health plans, health insurance issuers to provide that they must utilize certified HIT systems as they acquire or upgrade their HIT systems



THANK YOU.

QUESTIONS?

Regina M. Sharrow, Partner
Baker & Daniels LLP
600 E. 96th Street, Suite 600
Indianapolis, IN 46250
317.569.4604
regina.sharrow@bakerd.com