

Health Law Advisory: Stimulus Bill Passed by Congress Includes Medicare and Medicaid Incentives for Certified Use of Electronic Health Records

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Although current legislative initiatives promote the use of health information technology (HIT) and electronic health records (EHRs) in both the Medicare and Medicaid programs (e.g. e-prescribing standards, pay-for-performance demonstration, and Medicaid Management Information Systems), the American Recovery and Reinvestment Act of 2009 ("Stimulus Bill"), passed by Congress late last week, allows for even more incentives to adopt and implement HIT.

Incentive Payments for Medicare Providers

The Stimulus Bill allocates billions of dollars for the Centers for Medicare & Medicaid Services (CMS) to provide incentive payments to "eligible providers" that are "meaningful EHR users." In particular, it provides incentive payments (of \$18,000 in the first year, and in decreasing amounts thereafter) to eligible providers who show meaningful use of EHRs, beginning in 2011, with no such payments after 2016.¹ The Stimulus Bill also prohibits incentive payments to eligible providers who first adopt EHRs in 2015 or any year thereafter. Hospital-based professionals (e.g., pathologists, anesthesiologists, or emergency physicians) are not entitled to such incentive payments if they furnish most of their services in a hospital setting and use the facilities and equipment, including qualified electronic health records, of the hospital. Eligible providers who do not demonstrate meaningful use of EHRs will be subject to a reduction in reimbursement for services (as allowed under the Social Security Act), beginning in 2015.

Incentives for Hospitals

If an eligible hospital is a meaningful EHR user, the eligible hospital will be paid an incentive payment equal to the sum of:

- \$2 million; *plus*
- the applicable discharge-related amount for a 12-month period selected by the Secretary of HHS as follows:
 - For the first through 1,149th discharge, \$0.
 - For the 1,150th through the 23,000th discharge, \$200.
 - For any discharge greater than the 23,000th, \$0.

The Stimulus Bill also includes bonus payments for Critical Access Hospitals that are meaningful users of EHR technology. Finally, in addition to the funds otherwise made available by the Stimulus Bill, an appropriation will be made to HHS of \$100 million for each fiscal year 2009 through 2015 and \$45 million for 2016, which will be available (until expended) to carry out the certified EHR technology provisions

Payments to Medicaid Providers for HIT Adoption

The Department of Health and Human Services (HHS) pays each state a Federal Medical Assistance Percentage (FMAP) to cover the state's spending on Medicaid services and program administration, but the FMAP does not currently cover state spending to encourage the purchase, adoption, and use of electronic health records. The Stimulus Bill would amend Section 1903 (42 U.S.C. 1396b) of the Social Security Act by adding certain amounts² to what is already authorized to be paid by HHS to each state. In particular, each state that meets certain conditions will be paid 100% of the amounts spent each quarter by Medicaid providers for certified EHR technology and 90% of the amounts spent each quarter for reasonable administrative expenses related to those amounts.

The Stimulus Bill also provides funds for payments (with certain financial and timeframe limitations) to Medicaid providers for the use of certified EHR technology in accordance with an applicable percentage of the net allowable costs³ of such providers. For instance, a non-hospital Medicaid provider is entitled to 85% of the net allowable costs; a children's or acute care hospital, 100% of the net allowable costs; and a federally qualified health center or rural health clinic, a percent specified by HHS, but not less than 85% of the net allowable costs. Like the incentive payment provisions related to Medicare providers, hospital-based professionals are not entitled to such payments if they furnish most of their services in a hospital setting and use the facilities and equipment, including qualified electronic health records, of the hospital.

In addition to funds otherwise made available by the bill and out of any funds in the Treasury that have not been appropriated, an appropriation will be made to the Secretary of HHS for CMS of \$40 million for each fiscal year 2009 through 2015 and \$20 million for 2016, which will be available (until expended) for purposes of carrying out the certified EHR technology provisions.

Impact on Provider Community

Before the Stimulus Bill was passed, the provider community was very hesitant to adopt health information technology. In fact, a very small percentage of providers have implemented electronic health records. The most significant obstacle that providers, particularly solo practitioners or small providers, faced was the affordability of such technology. The funds in the Stimulus Bill would, according to the Conference Report, be sufficient enough to cover most, if not all, of eligible providers' costs for adopting certified EHRs under either the Medicare or Medicaid program. To that end, HHS would be responsible for ensuring that eligible providers do not receive payments from both the Medicare and Medicaid programs for certified EHR use. The billions of dollars in Medicare and Medicaid incentive payments available in the Stimulus Bill, coupled with the threat of reduced reimbursement payments, should encourage more providers to step up to the plate and adopt and implement health information technology.

Endnotes

¹ Eligible providers would be entitled to a 10% increase in incentive payments if the provider predominately serves beneficiaries in any area designated as a health professional shortage area.

² There are certain limitation of such amounts to hospitals.

³ Allowable costs are the costs for certified EHR technology (and support services), as determined by the Secretary of HHS to be reasonable. Net allowable costs are allowable costs reduced by any payment that is made to the Medicaid provider from any other source that is directly attributable to payment for certified EHR technology or services.

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