

HITECH Act brings challenges and uncertainty, monetary incentives

By Robert H. C. Ralston



On Feb. 17, 2009, President Obama signed the Health Information Technology for Economic and Clinical Health (HITECH) Act, which

was part of the American Recovery and Reinvestment Act (a.k.a. the stimulus act). The bulk of spending authorized by HITECH — more than \$17 billion — will go to pay incentives to providers to adopt electronic health record (EHR) technology. Similar to the Electronic Prescribing Incentive Program created by the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), HITECH includes tiered incentive payments and penalties to drive EHR adoption. Providers will need to tread carefully in order to maximize the benefits and minimize the penalties.

Starting in 2011, “eligible professionals” (in most cases, physicians) who demonstrate “meaningful use” of a certified EHR system will be eligible to receive incentive payments. Each annual incentive payment will be equal to 75 percent of the Medicare charges for the services furnished by the eligible professional, subject to a maximum cap. The first year is capped at \$15,000, the sec-

ond at \$12,000, the third at \$8,000, the fourth at \$4,000, and the fifth at \$2,000. In addition, early adopters whose first payment year is 2011 or 2012 will receive a higher first-year cap of \$18,000. There are no payments for meaningful EHR use after 2016. Likewise, eligible professionals who wait until 2015 or later to adopt EHR technology will not receive any incentives.

There are additional rules for certain providers. Eligible professionals practicing in a health professional shortage area will have their incentive payments increased by 10 percent. Hospital-based physicians who substantially furnish their services in a hospital setting are not eligible for incentive payments. Hospital-employed physicians who do not practice in a hospital setting will still be eligible for incentive payments; those payments will be paid to the physicians, not to the hospital. An eligible hospital that is a meaningful EHR user may receive up to four years of incentive payments, beginning in 2011. Subsection (d) hospitals and Critical Access Hospitals that are meaningful EHR users can receive bonus payments starting in October 2010.

All of these incentive payments — subject to the annual caps — are based on Medicare charges. Similar incentive payments are also available for participants in the Medicare program. An eligible professional may not, however, receive payments under both Medicare and Medicaid incentive programs in the same year.

HITECH’s penalties arrive in 2015. By then, providers are expected to have adopted and be actively utilizing an EHR system. A provider who has not done so will be subject to a reduction in the provider’s Medicare fee schedule payment. The penalty starts at 1 percent in 2015, and rises to 2 percent in 2016, 3 percent in 2017, and 3-5 percent in subsequent years, depending upon the rate of nationwide EHR adoption (lower rates of adoption will result in higher penalties). Hospitals that are not meaningful users by 2015 will be penalized with tiered yearly reductions in their market basket updates.

The greatest challenge and uncertainty under HITECH relates to a fundamental term that remains undefined: “meaningful use.” HITECH directs the Department of Health and Human Services (HHS) to develop a formal definition of the term by the end of 2009. If HHS adopts the recommendations advanced by the HHS Health IT Policy Committee, then the definition of “meaningful use” will be a moving target.

In August, the Health IT Policy Committee drafted recommendations that call for increasingly stringent minimum standards for meaningful use. The general goals released by the Committee include the capture of detailed patient information by 2011, the use of electronic information to support clinical decisions at the point of care by 2013, and widespread information-sharing, including device interoperability, by 2015. In addi-

tion to the general standards, the Health IT Policy Committee released a 10-page matrix proposing dozens of detailed objectives for 2011, 2013 and 2015. All of the recommendations can be found at <http://healthit.hhs.gov>.

At the moment, it remains unclear which objectives will be incorporated into the final definition. But it is likely that an increasingly-stringent tiered definition will be issued by HHS, and HHS has indicated that the 2013 and 2015 criteria may not be finalized until well into 2010. That means providers and vendors seeking the early-adopter bonus will be installing EHR systems that will necessarily require modifications and upgrades in order to qualify for “meaningful use” in later years. It will be critical to select a stable, experienced EHR vendor that can meet the challenge.

HITECH offers a significant monetary incentive for providers who can demonstrate the “meaningful use” of an EHR system. But implementing an EHR system is challenging enough, and a tiered definition of “meaningful use” will only complicate the matter. More than ever before, it will be critical to select an EHR system and EHR vendor that has the flexibility to adapt to the federal government’s moving targets. †

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