

President signs stimulus legislation: Includes \$17 billion in provider EHR incentives, new privacy provisions

President Obama today signed into law H.R. 1, the American Recovery and Reinvestment Act of 2009 - the economic stimulus package. Medicare and Medicaid providers, hospitals and other providers will be eligible for up to \$17 billion in incentive payments to adopt electronic health records (EHR). Medical practices meeting certain qualifications could see incentive payments of up to \$44,000 per physician.

The bill also targets Medicaid providers and hospitals for incentive programs. Practices not adopting EHR will see their Medicare payments decrease 1 percent starting in 2015, dropping to a maximum of -5 percent in 2019 and beyond. Many of the program qualifications and requirements will be crafted through the federal rule-making process.

To qualify for the Medicare incentives, medical groups will have to use a certified EHR in a "meaningful" way, defined initially in the legislation as:

- Using certified EHR technology that includes electronic prescribing; and
- Using EHR technology that allows electronic exchange of health information.
- Eligible professionals must submit information for the period on the clinical quality measures and other measures selected by the secretary of the Department of Health and Human Services (HHS).

The legislation also outlines an expanded set of privacy and security requirements for the Health Insurance Portability and Accountability Act (HIPAA). These provisions:

- Require medical practices with an EHR to provide patients with an electronic accounting of all disclosures of their information for treatment, payment and health care operations;
- Require notification to patients, and in some cases the federal government and local media, when there has been a breach of patient information;
- Impose restrictions on certain disclosures, sales and marketing of protected health information;
- Increase civil monetary penalties; and
- Create new authority to state attorneys general to enforce HIPAA.

As with the incentive programs, HHS will define many of the privacy requirements in detail through the regulatory process over the next six to 18 months.

The legislation addresses several other issues, including:

- *The authorization of \$1.1 billion in funding for comparative effectiveness research*, intended "to evaluate and compare the clinical outcomes, effectiveness, risk and benefits of two or more medical treatments and services that address a particular medical condition." As advocated for by MGMA and other national medical associations, the research funding will not be "used to mandate coverage, reimbursement or other policies for any public or private payer."
- *Consolidated Omnibus Budget Reconciliation Act (COBRA)*: The legislation authorizes a temporary COBRA premium subsidy of 65 percent for workers who have been involuntarily terminated from their jobs between Sept. 1, 2008, and Dec. 31, 2009. This subsidy is available for

up to nine months and would not be considered income for purposes of other federal/state program eligibility.

- *Training of primary care providers:* The legislation allocates \$500 million to address shortages of primary health care providers. It provides for training of physicians, dentists and nurses under Titles VII and VIII of the Public Health Service Act. In addition, the bill will help pay medical school expenses for students who agree to practice in underserved communities through the National Health Service Corps.
- *Three percent provider withholding tax:* The legislation delays, from Dec. 31, 2010, to Dec. 31, 2011, implementation of the 3 percent withholding tax on government contractors (including Medicare providers) that was enacted under section 511 of the Tax Prevention and Reconciliation Act of 2005.
- *National Institutes of Health (NIH) research and facilities:* The bill grants \$10 billion in funding for NIH research grants and renovations and construction at NIH campuses.

MGMA members can read a more comprehensive analysis of American Recovery and Reinvestment Act of 2009 on the [MGMA website](#).

[Access](#) the complete text of the legislation and conference report.