

The American Recovery and Reinvestment Act (H.R. 1) Summary

February 24, 2009



The American Recovery and Reinvestment Act (H.R. 1)

- Signed by President Barack Obama on February 17, 2009
- Stimulus package provides over \$19 billion to support and promote the adoption of electronic health records (EHRs) for all Americans by 2014



Highlights

- Rep. Wu (D-OR) language:
 - Sec. 3016 provides assistance to educational institutions “to establish or expand medical health informatics educations programs, including certification, undergrad and masters degree programs for both health care and information technology students...”, with priority given to existing education and training programs and programs designed to be completed in less than six months.

Highlights

- Sen. Carper (D-DE) language:
 - The Coordinator is to estimate resources needed to reach the goal of EHR availability by 2014, including “resources needed to establish a health information technology workforce sufficient to support [this goal] including education programs in medical informatics and health information management”

Funding Highlights

- \$2 billion to the Office of the National Coordinator for HIT (\$300 million to support regional health information exchanges and \$20 million to the National Institute of Standards and Technology (NIST) for standards analysis)
- \$1.5 billion to the Health Resources and Services Administration (HRSA)



Funding Highlights

- \$1.3 billion to the NIH National Center for Research Resources (NCRR)
- \$8.2 billion to NIH (\$7.4 billion towards research)
- \$1.1 billion for comparative effectiveness research

HITECH Act Highlights

- Health Information Technology for Economic and Clinical Health (HITECH) Act - Title XIII
 - New requirements, enforcement provisions, and penalties for covered entities, business associates, vendors, and others
 - Privacy and Security

HITECH Act Highlights

- Codification of ONC
 - Establishes the position of Chief Privacy Office within ONC
 - Establishes the HIT Policy Committee
 - Establishes the HIT Standards Committee

HITECH Act Highlights

- Adoption of Standards
 - No later than December 31, 2009 an initial set of HIT standards, implementation specifications, and certification criteria must be adopted by the Secretary
 - Use of standards is voluntary for the private sector

HITECH Act Highlights

- Carrot and Stick Approach
 - \$17.2 billion for HIT funding will be distributed through Medicare and Medicaid payment incentives
 - Carrot: Incentives will be offered to both physicians and hospitals (the first ‘payment year’ will be no earlier than 2011)
 - Stick: The bill stipulates that Medicare fees will be reduced for ‘non EHR physician users starting in 2015



Privacy - Title XIII Subtitle D

- Notification of Breach
 - A key definition is that of “breach” - which includes all “unauthorized acquisition, access, use, or disclosure of” protected health information
 - Lays out breach notification obligations for CEs who must notify individuals and BAs who must notify CEs; regarding breaches, no ‘harm’ standard is included



Privacy - Title XIII Subtitle D

- Covered Entities and Business Associates
 - Provides that business associates (BAs) of covered entities will now be directly subject to provisions of the Security Rule in the same way that covered entities are, and that recognition of the administrative, technical and physical safeguards, and other applicable security procedures, must be incorporated in the BA agreement between the BA and the CE



Privacy - Title XIII Subtitle D

- Sec. 13405:
 - Restrictions on Certain Health Disclosures and Sales of Health Information;
 - Accounting of Certain Protected Health Information Disclosures;
 - Access to Certain Information in Electronic Format



Privacy - Title XIII Subtitle D

- Sec. 13405
 - A covered entity must restrict disclosure of PHI to a health plan for purposes of payment or health care operations at the request of the patient, if the patient self-pays for a service
 - Requires covered entities to use a limited data set to the extent practicable or, if necessary, the minimum necessary when making a use or disclosure



Privacy - Title XIII Subtitle D

- Sec. 13405 (cont.)
 - Provides that a covered entity must account for all non-oral disclosures of PHI related to treatment, payment, and health care operations (TPO) for a period of 3 years
 - Prohibits the sale of electronic health records or PHI obtained from EHRs absent an authorization by the individual, with exceptions for public health activities and research



Privacy - Title XIII Subtitle D

- Sec. 13405 (cont.)
 - Provides individuals the right to obtain from a covered entity using an EHR a copy of their information in electronic format, allowing the individual to designate a 3rd party, such as a PHR, to receive a copy

Privacy - Title XIII Subtitle D

- Guidances and Regulations
 - Issuance of guidance on minimum necessary risk within 18 months
 - Issuance of guidance regarding de-identification of PHI within 12 months
 - Promulgation of regulations on what information is to be included in the accounting of disclosures by covered entities and business associates within 6 months



Privacy - Title XIII Subtitle D

- Guidances and Regulations
 - Promulgation of regulations relating to the sale of EHRs and personal health information (PHI) obtained from EHRs without authorized consent
 - Promulgation of interim final regulations regarding the breach notice obligations with 180 days by the FTC

Comparative Effectiveness Research (CER)

- Provides \$1.1 billion for CER, divided into \$300 million to the Agency for Healthcare Research and Quality (AHRQ), \$400 million to the Office of the Director of NIH, and \$400 million to the Secretary of HHS
- The Institute of Medicine (IOM) is to submit a report to Congress and the Secretary by June 30, 2009 making recommendations on national priorities for CER

